

DATE: Monday, January 27, 2020

TO: Mayor and Members of Council

FROM: Wendy Law, Deputy City Manager, Administrative Services and City Solicitor

RE: STAFF COMMUNICATION – 2019 INDEMNIFICATION BY-LAW AMENDMENTS

On January 21, 2020, Committee of the Whole directed staff to report to Council on the changes made in 2019 to the Indemnification Bylaw 91-2011, as amended.

Indemnification Bylaw Amendments in 2019

In February 2019, Council passed Bylaw 013-2019 to amend the Indemnification Bylaw 91-2011. The main changes to the Indemnification Bylaw were:

1. The definition of “employees” was expanded to cover current and former Integrity Commissioners and Lobbyist Registrars. Previously, the definition only included current and former Members of Council and employees. This change was made in compliance with the *Municipal Act, 2001* provisions that came into force on March 1, 2019.
2. The definition of “legal proceedings” was expanded to include proceedings under the *Municipal Conflict of Interest Act* (“MCIA”), where the Member of Council has been found not in contravention of section 5 of the Act.
3. An additional coverage was provided to Members of Council, being that they could seek reimbursement of legal expenses incurred for the purpose of determining whether they have any pecuniary interests in a matter.
4. Additional wording was included to clarify that indemnification is applicable when acts or omissions giving rise to the legal proceedings were done or made in good faith or based on the reasonable belief that the acts or omissions were lawful and in the best interest of the Corporation.

In the course of reviewing the Indemnification Bylaw, staff have identified an issue with respect to reimbursement of legal expenses incurred for Council Code of Conduct complaints, and hereby seek Council’s direction.

This Communication was prepared in consultation with the Integrity Commissioner.

The Issue: Non-MCIA Code Complaints

In 2017 the Province passed legislation to amend the *Municipal Act, 2001* and the MCIA. Among other things, starting March 1, 2019, this legislation gave Integrity Commissioners the authority to review and consider complaints made under the MCIA.

In response to these amendments, in 2019, the Integrity Commissioner and City staff brought forward a revised Code of Ethical Conduct for Members of Council and Local Boards ("Code"), as well as a revised Complaint Protocol. The revised Code as well as a revised Complaint Protocol were approved by Council on June 12, 2019.

Currently, if a formal complaint against a Member of Council is filed with the Integrity Commissioner with regards to a violation under the MCIA, the legal expenses related to responding to the complaint are covered under the Indemnification Bylaw. In other words, a Member of Council may seek reimbursement for such legal expense under the Indemnification Bylaw, if the Member is found not to have contravened section 5 of the MCIA.

However, the Indemnification By-law does not currently address indemnification for expenses incurred related to Code complaints that are not related to the MCIA.

Analysis

It is open to Council to provide indemnification for members of Council and/or Local Boards for expenses incurred related to Code complaints that are not related to the MCIA.

In reviewing prior amendments to the Code and Complaint Protocol, staff found that a provision providing for such indemnification was adopted by Council in 2011 and formed part of the Complaint Protocol until the Complaint Protocol was amended in 2019. However, there were no discussion in the reports leading up to the 2019 amendments that spoke to the removal of those provisions. In discussions with the Integrity Commissioner, she confirmed that there had been no recommendations made to remove the reimbursement provisions of the Complaint Protocol from the updated version.

In 2011, the following provisions were added to the Complaint Protocol:

(1) A Member of Council who is subject of an Integrity Commissioner complaint under Part A (Informal Complaint Procedure) or Part B (Formal Complaint Procedure) under

this Protocol may charge against the Member's office budget the actual legal expense incurred for consultation with a lawyer of up to \$500.00.

(2) A Member of Council who is the subject of an Integrity Commissioner complaint investigation under this Protocol may be reimbursed for actual and reasonable expenses incurred for consultation with a lawyer of up to \$5000.00, where it is determined that there has been no contravention of the Code of Ethical Conduct by the Member, such amounts to be charged against the Council Corporate Budget following approval by the Integrity Commissioner.*

** An Integrity Commissioner complaint investigation begins when the Integrity Commissioner opens a case file and gives notice of the same to the Member of Council subject of the formal complaint.*

The report from the Integrity Commissioner in 2011 that recommended the above indemnification is included as Appendix A to this Communication.

It is noted that the 2011 language does not provide for reimbursement for Local Board members because the Code did not apply to them until the 2019 amendments.

Should Council wish to provide indemnification for members of Council and Local Boards for legal expenses incurred related to Code of Conduct complaints that are not related to the MCIA, a section similar to the 2011 section, with any necessary modifications or other changes as Council deems appropriate, can be adopted as section 16 of the Complaint Protocol. A minor amendment to the Indemnification Bylaw will also be required to ensure consistency between the indemnification provisions of that bylaw and the Complaint Protocol.

Conclusion

The Indemnification Bylaw was updated in 2019 and one of the updated provisions was the reimbursement for legal expenses in relation to MCIA proceedings.

A revised Code, as well as a revised Complaint Protocol, were approved by Council in 2019. The provision for reimbursement of legal expenses related to Code Complaints that are filed with the Integrity Commissioner was no longer included.

As such, staff seek Council's direction on whether it wishes to re-introduce reimbursement provisions into the Complaint Protocol, such that legal expenses in relation to non-MCIA Code complaints are also subject to reimbursement. If Council wishes to do so, staff will require direction on:

- a) Whether Council wishes to adopt the provisions in the 2011 amendment as noted above, subject to necessary modifications to ensure consistency in language with the updated Complaint Protocol, and any other changes as deemed appropriate by Council; and

- b) Whether Council wishes to extend similar indemnification to members of Local Boards (which would include members on various committees or body as established by Council from time to time, and currently includes the Accessibility Advisory Committee, Committee of Adjustment, Heritage Vaughan Committee, and Property Standards Committee).

If Council wishes to reintroduce the reimbursement provisions, a complementary amendment will also be required for the Indemnification Bylaw to clarify that MCIA complaints to the Integrity Commissioner will be reimbursed through the Complaint Protocol.

APPENDIX A

COMMITTEE OF THE WHOLE MARCH 22, 2011

REPORT ON REIMBURSEMENT OF LEGAL EXPENSES FOR MEMBERS OF COUNCIL ON COMPLAINTS TO THE INTEGRITY COMMISSIONER

Recommendation

The Integrity Commissioner recommends that Council amend the Complaint Protocol for the Code of Ethical Conduct ("Complaint Protocol"), by including a provision to reimburse actual legal expenses incurred by Members of Council as outlined in Appendix 1.

Contribution to Sustainability

N/A

Economic Impact

The economic impact will depend on the number of complaints to the Integrity Commissioner.

Communications Plan

This staff report has been posted on the City of Vaughan's public website

Purpose

The purpose of this report is to amend the Complaint Protocol to provide reimbursement of actual legal expenses incurred by Members of Council for complaints to the Integrity Commissioner, subject to the limits set out.

Background - Analysis and Options

On March 23, 2010, Committee of the Whole considered the report of the Commissioner of Legal & Administrative Services and City Solicitor to adopt an Indemnification By-law and directed that the recommendation be referred to the Integrity Commissioner for review and comment as it pertains to Members of Council prior to reporting back to Council.

Providing legal assistance and indemnification to Members of Council is essential to the fair treatment of public officials and the effective oversight of an organization. Members of Council may be subject to Code of Ethical Conduct complaints and investigations despite the fact that they may be acting in good faith, within the scope of their duties or in the course of their mandate. It is therefore necessary that they receive appropriate legal advice from their own counsel. This is necessary to provide Members of Council with protection from personal liability as long as they are acting in their official capacity and not acting against the interests of the City.

The objective of the inclusion of a section for payment of legal reimbursement into the Complaint Protocol is to provide Members of Council with reasonable protection from personal financial losses or expenses incurred while they were acting within the scope of their duties or in the course of their mandate, and were not acting against the interests of the City in matters governed by the Code of Ethical Conduct.

In considering payment of legal reimbursement to Members of Council, the Integrity Commissioner shall consider all facts available and make a determination on whether the Member of Council:

- i. Acted in good faith;
- ii. Did not act against the interests of the City; and
- iii. Acted within the scope of his or her duties.

The attached recommendation was formulated in consultation with the Commissioner of Legal & Administrative Services and City Solicitor and is not inconsistent with the proposed Indemnification By-law which is concurrently provided to Committee of the Whole for consideration.

Relationship to Vaughan Vision 2020/Strategic Plan

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Regional Implications

There are no Regional implications to the recommendations contained in this report.

Attachments

Appendix 1- New Draft Section 19 of the Complaint Protocol for the Code of Ethical Conduct.

Report prepared by:

Suzanne Craig
Integrity Commissioner

Respectfully submitted,

Suzanne Craig
Integrity Commissioner

Appendix 1

Complaint Protocol for the Code of Ethical Conduct for Members of Council

New Section 19

Reimbursement of Legal Expenses

19. (1) A Member of Council who is subject of an Integrity Commissioner complaint under Part A (Informal Complaint Procedure) or Part B (Formal Complaint Procedure) under this Protocol may charge against the Member's office budget the actual legal expense incurred for consultation with a lawyer of up to \$500.00.

(2) A Member of Council who is the subject of an Integrity Commissioner complaint investigation * under this Protocol may be reimbursed for actual and reasonable expenses incurred for consultation with a lawyer of up to \$5000.00, where it is determined that there has been no contravention of the Code of Ethical Conduct by the Member, such amounts to be charged against the Council Corporate Budget following approval by the Integrity Commissioner.

* An Integrity Commissioner complaint investigation begins when the Integrity Commissioner opens a case file and gives notice of the same to the Member of Council subject of the formal complaint.