

Clause 26 in Report No. 12 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on September 20, 2018.

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Indemnification Bylaw

Committee of the Whole recommends adoption of the following recommendations contained in the report dated August 17, 2018 from the Regional Solicitor:

1. Council approve the enactment of a new indemnification bylaw for the payment or reimbursement of legal expenses for current and former Council members, board members and employees of the Region and its wholly-owned corporations in accordance with this report.
2. Bylaw No A-0263-1999-064, as amended, be repealed.
3. The Regional Solicitor prepare the new bylaw for consideration by Council.

Report dated August 17, 2018 from the Regional Solicitor now follows:

1. Recommendations

It is recommended that:

1. Council approve the enactment of a new indemnification bylaw for the payment or reimbursement of legal expenses for current and former Council members, board members and employees of the Region and its wholly-owned corporations in accordance with this report.
2. Bylaw No A-0263-1999-064, as amended, be repealed.
3. The Regional Solicitor prepare the new bylaw for consideration by Council.

2. Purpose

This report recommends that Council adopt an updated bylaw to authorize the indemnification of current and former Council members, board members, and employees of the Region and its wholly-owned corporations for legal expenses incurred as a result of good faith performance of their duties.

3. Background

An indemnity bylaw protects Council members, board members, staff and others for legal costs which would not be reimbursed through the Region's insurance coverage

The Region's insurance policy covers the actions of Council members, board members, employees and volunteers while acting within the scope of their duties in certain circumstances. While the Region's insurance coverage may respond on behalf of individuals, the primary purpose of the insurance is to protect the interests of the corporation as an entity, and not necessarily Council members or staff as individuals.

Absent an indemnification bylaw, a Council member, employee or volunteer might otherwise be required to recover his or her legal costs after the fact. The individual would be subject to a substantial deductible and coverage may be limited pursuant to the terms of the insurance policy.

Council enacted an indemnification bylaw in 1999

In 1999, Council enacted an indemnification bylaw (Bylaw No A-0263-1999-064) to provide certain coverage and reimbursement to Council members and employees for expenses incurred as a result of acting in the course of their duties. The current bylaw also specifically extends indemnity to employees of Housing York Inc. and the Police Services Board. Members of York Regional Police are not included in the coverage but are subject to the Police Services Board's policy for indemnification.

Subsequent amendments have been enacted to respond to emerging needs

The bylaw was amended in 2008 (Bylaw 2008-73) to provide defence and indemnification for emergency medical services ("EMS") paramedics charged with offences under the *Highway Traffic Act* ("HTA") regardless of whether the

EMS paramedic was acquitted, provided that the EMS paramedic performs their duties in good faith.

In 2018, two further amendments were enacted due to changes in provincial legislation. Bylaw 2018-01 extended indemnification to alternate members of Regional Council and Bylaw 2018-44 further expanded coverage to special constables employed by the Region who may become subject to Special Investigations Unit proceedings.

Staff undertook a review of comparative municipal indemnification bylaws and governing legislation

In preparing the consolidated and revised bylaw proposed in this report, staff reviewed indemnification bylaws of local area municipalities and other Regional municipalities, where available. Staff also reviewed current governing legislation, including the *Municipal Act, 2001*. As a result, staff recommend that a new bylaw be enacted to reflect legislative amendments and also to provide for enhanced coverage, as well as to consolidate the amendments to the bylaw.

4. Analysis and Implications

A number of provisions and principles in the current bylaw will remain unchanged in the amended bylaw

The current bylaw provides indemnification and coverage for Council members, board members, employees and volunteers who become subject to legal proceedings despite the good faith performance of their duties.

The Regional Solicitor will continue to oversee arrangements with retained legal counsel to ensure that the Region receives best value.

These fundamental principles will be reflected in the proposed bylaw.

The current bylaw requires updating to address amendments to legislation and changes in Regional governance

The revised bylaw updates references to the applicable provisions of the *Municipal Act, 2001* governing indemnification of municipal employees.

The proposed new bylaw also addresses changes in Regional governance, including the addition of coverage for employees and board members of entities incorporated by the Region, as follows:

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- YTN Telecom Network Inc.,
- York Region Rapid Transit Corporation

The revised bylaw is structured to be flexible to include future wholly-owned corporations, if such corporations are created, without requiring a further amendment to the bylaw.

The proposed bylaw will provide enhanced coverage for certain *Criminal Code* and *Highway Traffic Act* offences where the individual is acquitted

The current bylaw provides for a maximum limit of \$5,000 for indemnification of legal expenses where an individual is charged with a *Criminal Code* offence or a *Highway Traffic Act* offence and is subsequently acquitted, provided the individual was performing his/her duties in good faith. Regional staff propose to increase this maximum limit to \$15,000 in recognition of the increased cost of legal services.

The proposed bylaw will expand coverage for Council members and alternate Council members for *Municipal Conflict of Interest Act* claims where the member is found not to have contravened the Act

The *Municipal Conflict of Interest Act* (the "MCIA") provides that a municipality may protect a member of Council or any local board who has been found not to have contravened Section 5 of the MCIA by the payment of legal costs or reimbursement to the member for such costs. Regional staff propose to enhance the Region's indemnification bylaw to provide reimbursement for these circumstances in accordance with the MCIA and the *Municipal Act, 2001*. This is consistent with bylaws enacted by other municipalities, including Richmond Hill, Aurora, Newmarket and Georgina.

Additional provisions are proposed to address circumstances where staff may be subject to harassment

The current bylaw only addresses the defence of legal proceedings.

Developments in social media and the growth of the internet and related technologies have given rise to a need to combat and address harassment of individuals in certain circumstances.

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The new bylaw will provide that, at the discretion of the Regional Solicitor, the Region may, in limited cases, pay for the costs of initiating a legal action and seeking legal remedies where a third party engages in a course of conduct that causes injury or may cause injury to a Council member, employee, board member, or volunteer that the individual suffers as a direct result of their responsibilities.

Technical amendments governing the oversight of indemnified proceedings and actions are also proposed

Staff propose to incorporate a number of technical amendments for the oversight of legal counsel retained for indemnified proceedings to ensure that the Region receives best value.

This includes enhanced oversight and control of appeals, reporting requirements for retained legal counsel, notice requirements from indemnified individuals and explicit requirements for indemnified individuals to cooperate in the management of the proceedings.

5. Financial Considerations

The proposed bylaw provides for increased reimbursement for certain limited proceedings and increases the scope and coverage for Regional corporations. While it is not possible to precisely estimate, Regional staff do not anticipate the total increased cost to the Region will be substantial.

6. Local Municipal Impact

Local municipalities remain responsible for their own indemnification policies and bylaws for local Council members and staff with respect to local municipal matters.

7. Conclusion

The Region's current indemnification bylaw covers certain expenses incurred by members of Council and staff while acting in the course of their duties. The bylaw was enacted in 1999 and has been amended during the interim to respond to changing circumstances.

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Staff recommend that it is timely to enact a new bylaw to consolidate and to incorporate provisions to reflect developments in Regional governance and to enhance coverage as appropriate in accordance with best practices.

For more information on this report, please contact Dan Kuzmyk, Deputy Regional Solicitor at 1-877-464-9675 ext. 71401.

The Senior Management Group has reviewed this report.

Recommended by:

Approved for Submission:

Joy Hulton
Regional Solicitor

Bruce Macgregor
Chief Administrative Officer

August 17, 2018

Attachments (0)

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Accessible formats or communication supports are available upon request