
HALDIMAND COUNTY

Report CSS-01-2020 Municipal Conflict of Interest – Notice of Application and Payment of Legal Costs



For Consideration by Council in Committee on March 3, 2020

OBJECTIVE:

To enact a bylaw allowing the municipality to pay for legal costs and expenses associated with an Application alleging contravention by a Member of Council under the Municipal Conflict of Interest Act, R.S.O. 1990.

RECOMMENDATIONS:

1. THAT Report CSS-01-2020 Municipal Conflict of Interest – Notice of Application and Payment of Legal Costs, be received;
2. AND THAT the legal costs associated with the Application made by Robert Duncan be paid on behalf of Mayor Ken Hewitt, with the stipulation that all costs will be reimbursed in full to the municipality if the Mayor is found in contravention of the legislation, except by way of inadvertence or error;
3. AND THAT if the Mayor is found not in contravention, or in contravention by way of inadvertence or error, that all funds received from the County's insurance policy for legal expenses, be applied to the costs paid on behalf of the Mayor.

Respectfully submitted: Cathy Case, General Manager of Corporate & Social Services

Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

A member of Council is the subject of an Application under the Municipal Conflict of Interest Act, R.S.O. 1990, alleging contravention of the legislation. The legislation allows a municipality to secure insurance coverage for legal fees and expenses associated with such an Application, or to pay these costs on behalf of the member. Haldimand County holds insurance coverage for this type of claim, however costs are only eligible to be reimbursed after a judgement has been made. Therefore, staff are recommending that the County pay the legal costs on behalf of the Member of Council, prior to adjudication, with the stipulation that if the member is found in contravention of the legislation, that the funds will be reimbursed to the County in full.

BACKGROUND:

The Municipal Conflict of Interest Act, R.S.O. 1990 (MCIA) is established to protect public interest by setting a framework to ensure involvement in local government decision making is appropriate, and to outline the process surrounding obligations to comply.

The MCIA allows for an elector, or a person acting in the public interest, to file an application against a member of Council who they allege to have contravened the legislation. Although there are

limitation periods set out in the legislation, and the onus is on the applicant to prove they are within the limitation period, once this is established, the burden of proof rests with the elected official to prove otherwise. Often the responding party must do far more in the way of investigation and marshalling of evidence to prepare a defence to the claim and the legal positions necessary than does the party who is advancing the claim.

The MCIA includes provisions allowing for a municipality to have insurance to cover legal costs and expenses associated with an Application against a member. It also allows for the municipality to act as the insurer for the purposes of covering a member's legal costs and expenses. The purpose of this report is to suggest an approach that will allow for such costs to be paid by the County, while considering the best interest of the municipality.

ANALYSIS:

When an application under the MCIA is filed against a Member of Council or a local board, the member is required to secure their own defense, independent of the County's legal services. The MCIA allows for a municipality to cover legal costs and expenses related to a member of Council or a local board, when an application is filed against the member. The mechanism in which this can occur is through the municipality's insurance program, or alternatively the municipality can act as the insurer for this purpose.

Haldimand County's General Insurance Program includes Municipal Conflict of Interest Policy coverage up to \$100,000 per claim. The policy does not carry a deductible. Coverage is intended to reimburse legal costs after they have been incurred by the member and the matter has been adjudicated. If the member of Council is found in contravention of the MCIA, the claim is not eligible for reimbursement unless the finding is clear that it was inadvertent or in error. As it currently stands individual Council members subject to an application under the MCIA have to up-front potentially significant legal costs until a decision is rendered which can be a fairly lengthy process.

The County does not have a policy or bylaw related to covering the costs and expenses of the member of Council prior to adjudication, in the event of an application alleging contravention. Staff have considered the development of such a policy, however, caution against it and suggest that each individual request be dealt with independently, due to the possibility of widely varying circumstances that inevitably come with each application.

Recently, an Application was filed by Robert Duncan, alleging contravention of the MCIA by Mayor Hewitt for actions as far back as 2011. Applications filed under the MCIA are public. The County's insurer has opened a claim regarding the matter, but as noted above, coverage is only eligible after the matter has been decided. The municipality has the option of covering the legal expenses on behalf of the Mayor, in advance.

Staff have considered this option in detail, based on the known information in the Application itself. Specifically, due to the fact that the MCIA indicates a limitation period of a maximum of six years, and several of the alleged incidents which occurred in 2011 and 2012 outside of this timeframe as well as lack of a clear pecuniary issue, staff are suggesting there is low risk to the municipality if Council should choose to pay the legal fees in advance, on behalf of the Member of Council. Staff are suggesting the following approach for consideration by Council:

- Haldimand County pay for the legal costs of the Mayor, in advance of a judgement, to defend the Application recently put forward;
- If the Mayor is found in contravention of the MCIA, and not in error or through inadvertence, he be required to reimburse the County for 100% of the costs paid on his behalf to defend the Application;

- If the Mayor is found not guilty, or in contravention but by way of error or inadvertence, that the funds reimbursed by the County's insurance company be applied to the costs that were paid by the County on the Mayor's behalf.

This approach will allow a member of Council to defend the Application against them and not be out of pocket personally, however, requires reimbursement in the event that they are determined to have contravened the MCIA other than inadvertently. Any future Applications will be presented to Council and considered based on the circumstances of each particular Application. It is important to deal with Applications independently, to protect the municipality in the event an Application is thought to hold strong merit in the eyes of Council, and not be considered a frivolous matter.

If Council should support this approach, approving the above noted recommendations will authorize the payment of legal costs on behalf of the Mayor.

FINANCIAL/LEGAL IMPLICATIONS:

There will be no net impact to the municipality by covering the costs in advance, since stipulations will be in place that fees need to be reimbursed by the Mayor in the event of a contravention judgement, or in the event of a not guilty judgement, or contravention by way of inadvertence or error – the insurance company will reimburse to the municipality, the costs paid.

Funding for the front ending of the legal costs will be from the corporate legal fees account. Reimbursement of these fees, either from the Mayor or the insurance company, will offset the costs in full.

STAKEHOLDER IMPACTS:

Not applicable.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

None.