

DATE: March 28, 2022  
TO: Mayor and Council  
FROM: CAO and Municipal Clerk  
SUBJECT: Indemnification By-Law

## **Issue**

For Council to consider an Indemnification By-law

## **Facts**

- An indemnity by-law protects Council members, board members, staff and others for legal costs which may not be reimbursed through the Town's insurance coverage
- Municipal insurance coverage may act on behalf of individuals for example actions under the conflict of interest act where the court found no contravention occurred limited to other stipulations. Understanding that the primary objective of the insurance is to safeguard the interest of the corporation as an entity and not necessarily Council members or staff as individuals. Therefore while there is coverage it may not always apply.
- Outside of a conflict of interest coverage there are other times where Council and staff could face legal action
- Section 448 of the Municipal Act offers some protection for Council and Staff relevant to lawsuits these protections do not cover all situations. Actions in question must be in the performance or intended performance of a duty or authority under the Municipal Act and where the action be done in good faith of the duty or authority.
- Section 14 of the Municipal Conflict of Interest Act (MCIA) confirms that a municipality may indemnify a members legal fees incurred so long as the member has not contravened 5, 5.1 and 5.2 of the MCIA
- With respect to the Council Code of Conduct and investigations done by the Integrity Commissioner where a member may have opted for legal counsel section 17.3 of the Council Code of Conduct provides that "where a member is found not to have contravened this Code, the Municipality is authorized to protect that member against costs or expenses incurred by the Member as a result of the complaint proceedings" It is notable that section 17.3 is a "permissive" section. That means that the Municipality "may" choose to indemnify a councilor not must choose to indemnify the councillor. The way this section reads is that it indicates that the Municipality is authorized to protect the member from costs but is not mandated to do so.

## **Analysis**

- Understanding that there may be some coverage it may not be sufficient or may not apply at all.
- In the absence of an indemnification by-law, Council, Staff may be required to recover his or her legal costs after the fact.
- We live in a society that has increased expectations, regulations and laws. Council and Staff face complex and often controversial issues leaving Council and Staff more and more at risk of personal lawsuits.
- The provision of a proposed by-law would recognizes that indemnity would only apply if the Member or staff acted in good faith and within the scope of their duties.
- The proposed by-law does have a financial impact such as increased reimbursement for certain proceedings and increase scope of coverage. At this time it is not possible to provide an accurate estimate of these types of cost. Therefore any amounts incurred that are not already funded by the Town insurance it would be recommended that it be funded via the corporate contingency fund
- Staff recommends that Council review an Indemnification By-Law to enhance coverage as appropriate in accordance with best practices to ensure Council and Staff continue to be able to do their role effectively

## **RECOMMENDATION**

<p>THAT Council receive the report re: Indemnification By-Law AND THAT Council directs Staff to bring forward an Indemnification By-Law for review and consideration</p>
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