



Town of Niagara-on-the-Lake

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REPORT #: CS-25-008

COMMITTEE DATE: 2025-04-29

DUE IN COUNCIL: 2025-04-29

REPORT TO: Council

SUBJECT: Municipal Conflict of Interest Act - Notice of Application and Payment of Legal Costs

1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 That Report CS-25-008 Municipal Conflict of Interest – Notice of Application and Payment of Legal Costs be **RECEIVED**;
- 1.2 That legal costs associated with applications made under the Municipal Conflict of Interest Act, R.S.O. 1990, be paid on behalf of Councillors with the stipulation that all costs be reimbursed in full to the Town if a Councillor is found in contravention of the legislation, except by way of inadvertence or error;
- 1.3 If a Councillor is found not in contravention, or in contravention by way of inadvertence or error, that all funds received from the Town's insurance policy for legal expenses, be applied to the costs incurred by the Town.

2. EXECUTIVE SUMMARY

- The Town is in receipt of an application under the Municipal Conflict of Interest Act (MCIA), R.S.O. 1990, a member of Council.
- The Town does not have an existing policy, procedure, or By-law that lays out an approach to handling legal costs of Council members with respect to an MCIA claim.
- The MCIA lays out the ability for a municipality to secure insurance for legal costs or act as an insurer to pay for legal costs on behalf of Members of Council named in applications.
- MCIA claims can represent significant upfront costs to Members of Council, which must be paid out of pocket.
- The Town holds an insurance policy for \$100,000 per claim with no deductible. The policy reimburses expenses following adjudication, and only if the Member named is not in contravention of the MCIA, or if found in contravention, it is clear that it was inadvertent or in error.
- Staff are proposing an approach to MCIA claims in which the Town will pay legal costs upfront on behalf of a Member of Council, with the stipulation that if a Member of Council is found in contravention of the MCIA, not inadvertently or in error, the member will reimburse the Town for legal costs.
- Staff will prepare a policy for Council's approval based on Council's decisions for potential future MCIA applications.

3. PURPOSE

This report suggests an approach to Council on handling costs associated with claims made under the Municipal Conflict of Interest Act, R.S.O. 1990.

4. BACKGROUND

The Municipal Conflict of Interest Act, R.S.O. 1990 (MCIA), protects public interest by setting a framework to ensure appropriate involvement in local government decision-making and outlining the process surrounding compliance obligations.

The MCIA allows 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 exists with the elected official to prove otherwise. Often, the responding party (Councillor) must do far more to investigate and marshal evidence to prepare a defence to the claim and the legal positions necessary than the party advancing the claim.

The MCIA includes provisions allowing a municipality to have insurance to cover legal costs and expenses associated with an application against a member. It also allows the Town to act as the insurer to cover a member's legal fees and expenses.

The Town does not have an existing process, policy, or By-law to cover this situation, but it is in receipt of a claim under the MCIA.

5. DISCUSSION / ANALYSIS

When an application under the MCIA is filed against a Member of Council or a local board, the member must secure defence independently of the Town's legal services. The MCIA allows a municipality to cover legal costs and expenses related to a member of Council or a local board when an application is filed against a member. A municipality may secure insurance for MCIA claims through its insurance program or act as insurer for this purpose.

The Town's policy covers up to \$100,000 per claim with no deductible. Expenses are reimbursed after they have been incurred and the matter has been adjudicated. If a 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. This could represent significant up-front legal costs until a decision is rendered, which can be a lengthy process.

The Town does not have a policy or By-law covering the costs and expenses of MCIA claims. The Town has received a claim, and the Town's insurer has been put on notice. The Town can cover the legal expenses on behalf of members in advance. Due to short timelines, Staff have engaged legal counsel on behalf of the member.

Staff are recommending the following approach for consideration by Council:

- The Town pays the legal costs, in advance of judgment, to defend the Application put forward;

- If the member is found in contravention of the MCIA, and not in error or through inadvertence, they will be required to reimburse the Town 100% of the costs paid on their behalf to defend the application.
- If the member is found not guilty, or in contravention but by way of inadvertence, then the funds reimbursed by the Town's insurance policy will be applied to the costs incurred by the Town on the member's behalf.

This approach will allow a member of the Council to defend the application against them and not be personally responsible for the funds. However, reimbursement is required if it has been determined that they are contravening the MCIA and it is not inadvertent or in error.

Staff will prepare a policy for the Council to consider based on the decisions made for this report regarding future MCIA claims.

6. STRATEGIC PLAN

N/A

7. OPTIONS

- 7.1 Option 1: Council approve the recommendations as presented. **(Recommended)**
- 7.2 Option 2: Council direct Staff on how MCIA claims and legal costs should be handled. *(Not Recommended)*

8. FINANCIAL IMPLICATIONS

The Town holds an insurance policy for MCIA claims for up to \$100,000 with no deductible.

Should Members of Council be found not in contravention of the MCIA, or in contravention by way of inadvertence or error, the insurance company will reimburse the municipality up to the policy limit. The Town will absorb costs above and beyond the \$100,000 limit should costs reach that level.

Should Members of Council be found in contravention of the MCIA, members are expected to reimburse the Town in full.

Funding for these costs would come from the Town's Corporate Legal Account, with any reimbursed amounts, either through insurance or Council Members, being placed against this account following adjudication.

9. ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with this report.

10. COMMUNICATIONS

There are no communications associated with this report.

11. CONCLUSION

Staff have provided recommendations for Council to consider regarding an existing Municipal Conflict of Interest Act application and will prepare a policy for future MCIA applications should they arise based on Council's decisions.

Prepared by:

A handwritten signature in blue ink, appearing to read 'Freeborn'.

Kyle Freeborn, CPA, CMA
Director of Corporate Services/Treasurer

Submitted by:

A handwritten signature in blue ink, appearing to read 'Zvaniga'.

Bruce Zvaniga
Chief Administrative Officer (Interim)