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**Date** December 1, 2020 **Report No.** 2020-562

**To** Chair and Members  
Committee of the Whole Operations and Administration

**From** Kimberly Jolie  
Legal Counsel

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## 1.0 Type of Report

Consent Item ☐  
Item For Consideration ☒

## 2.0 Topic **Amendments to Indemnification Policy [Financial Impact \$105,000 annually]**

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## 3.0 Recommendation

- A. THAT the Indemnification Policy, Corporate-026, BE AMENDED in accordance with the Schedule “A” hereto; and
- B. THAT an amount of \$105,000 to provide for indemnification resources for Members of Council and staff BE INCLUDED as an unavoidable increase in the 2021 operating budget; and
- C. THAT the necessary by-law to amend Appendix “A” of By-law 70-2010, being a By-law to Adopt various City of Brantford Policies and to create a Corporate Policy Manual, by repealing Corporate Policy – 026 – Indemnification Policy and replacing it with a new Corporate Policy – 026 Indemnification Policy as attached to Report 2020-562 and marked as Schedule “A”.

## 4.0 Purpose and Overview

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This report is to provide Council with an amended Indemnification Policy, containing amendments to clarify the policy and additional sections proposing that resources be made available to Council and staff to obtain professional services that staff are not able to provide, and in certain circumstances to provide indemnification of legal fees for actions commenced by Councillors or staff.

## **5.0 Background**

On July 14, 2020, Council directed staff to consider amendments to Corporate Policy, Corporate-026 Indemnification Policy, to address modern realities of social media, defamation and the lack of resources available to Council and staff to address these concerns.

## **6.0 Corporate Policy Context**

Corporate Policy - 026, Indemnification Policy, applies to requests for indemnification from legal fees and expenses incurred by members of staff and Council in the course of their duties.

Corporate Policy – 030, Respectful Workplace Policy, provides as follows:

The City encourages all employees, volunteers, contractors or others associated with carrying out the business of the City to report all incidents of violence, harassment or bullying. Further the City commits to making every reasonable effort to identify all potential sources of violence and to eliminate or minimize these risks.

The City is committed to establishing and maintaining a working environment and workplace interactions consistent with the following:

- Provide staff an environment conducive to personal and professional growth, dignity and self-esteem;
- That all staff are treated with dignity and respect in the course of their workplace interactions;
- Promotes equality of treatment and equality of opportunity for all members of the City workplace community;
- Free from favoritism, bullying, or any abuse of power; and
- Free from any form of harassment or discrimination.

As part of its review, KPMG recommended that Council “Implement an HR plan to attract and retain the right talent and increase retention of skilled labour”. While not a formal part of the HR Plan, changes of the nature proposed in the

amended Indemnification Policy are beneficial to staff and may assist in staff retention.

## **7.0 Input From Other Sources**

Input was sought from Finance, Human Resources and Risk Management.

## **8.0 Analysis**

Municipal Councillors serve a dual role; they are to represent the interests of the Corporation and are also to represent the interests of constituents. It can be difficult for Councillors to balance these roles as both an advocate for their constituents and a representative of the Corporation ensuring that it is operating efficiently. These competing interests naturally create conflict.

Staff also find themselves in situations where they must recommend decisions that constituents will be dissatisfied with and by the very nature of their roles may also find themselves in situations of conflict.

In this age of social media, there is a greater opportunity for people to voice their criticism of Councillors or staff in a public manner. These statements are then easily found in on-line searches which can have a dramatic impact on Councillors and staff in terms of their reputation and future employment. In recognition of this, Council requested that changes be made to the Indemnification Policy to allow some redress in the circumstances.

This redress must be balanced against legislation that specifically exists to ensure that the public has the ability to be heard in their opinions and concerns regarding the function and accountability of government.

It is recommended that the Indemnification Policy be amended to create a fund available to each Councillor. The intention of this fund is to provide resources for Councillors to obtain the necessary professional opinions required, whether legal, financial or otherwise, to determine how best to respond to defamatory statements made against them related to their work as Councillors. It is recommended that this fund be in the amount of \$5,000.00 per Councillor, which would allow for an initial assessment of the circumstances and a determination of whether further action is required or warranted.

It is also recommended that funds be made available for staff in similar circumstances. Again, the fund would allow staff to obtain the necessary professional opinions required, whether legal, financial or otherwise, to

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determine how best to respond to defamatory statements made against them related to their work. Staff would be required to complete an application to the City Solicitor, who would then consider the application together with either the Director of Human Resources or the CAO to determine whether it was appropriate to use the funds in the circumstances. It is recommended that an additional \$50,000.00 be added to the Professional Services budget for Legal and Real Estate Services, and that a cap of \$5,000.00 per year be set for staff.

In certain, limited circumstances, it may also be appropriate to provide more than just the annual funds available to allow Councillors or staff and to indemnify Councillors and staff who pursue litigation to protect their reputation against defamation. To address situations where a Councillor or staff member believes that more compensation is required, staff recommend that the Indemnification Policy be amended to permit an application to be made to the City Solicitor for analysis. The City Solicitor would then report to Council with a recommendation on whether further funds should be provided. It is recommended that this be a reimbursement of costs that have already been incurred to avoid the appearance of funding litigation and to allow the municipality a better opportunity to assess on the factual circumstances of each case to determine whether the payment of additional funds is warranted.

In the analysis of whether additional reimbursement is to be made for costs incurred, certain criteria are recommended that need to be satisfied before reimbursement should be provided. Council will have to determine if litigation is required in order to remedy the harm caused by the defamatory statements or if there is some alternative measure that could be employed to achieve the same result. Council will also have to determine a funding source for this reimbursement. This ensures the City that only the most egregious of circumstances that require litigation to provide appropriate recourse are reimbursed. Litigation of this nature should be seen as the last resort.

Where litigation is successful, costs are typically recovered. Consequently, there will need to be a provision in the amended policy that any legal costs recovered will be paid to the City.

The proposed amendments to the Indemnification Policy are set out in Schedule "A", attached hereto.

## **9.0 Financial Implications**

If the recommended amendments are adopted there will be an increase to each year's budget of \$55,000 for funds available to Councillors and by \$50,000 for

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funds available to staff. In 2021, it would be considered an unavoidable increase to the budget during the budget process.

## 10.0 Conclusion

Staff are recommending that the Indemnification Policy be amended to include \$5,000.00 per Councillor, per year to allow each Councillor to obtain the necessary professional opinions required, whether legal, financial or otherwise, to determine how best to respond to defamatory statements made against them related to their work as Councillors.

In addition, it is recommended that an additional \$50,000.00 be added to the Professional Services budget for Legal and Real Estate Services to allow indemnification for staff to obtain the necessary professional opinions required, whether legal, financial or otherwise, to determine how best to respond to defamatory statements made against them related to their work. These funds would only be accessible after a successful application to the City Solicitor and would be limited to a maximum of \$5,000.00 per staff member per year.

Finally, staff are recommending that an application process be approved that would allow Councillors or staff whose reputations have been significantly harmed, and for whom the only recourse is litigation, to apply to Council to have indemnification for their costs in pursuing the litigation, subject to being required to pay to the City any funds recovered in legal costs following successful litigation.



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Kimberly Jolie  
Legal Counsel



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Heidi DeVries  
City Solicitor, Director of Legal and Real  
Estate Services

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Attachments (if applicable)

Schedule "A" Proposed Amendments to Corporate 026 – Indemnification Policy

Copy to:

In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required ☐ yes ☒ no

Agreement(s) or other documents to be signed by Mayor and/or City Clerk ☐ yes ☒ no

Is the necessary by-law or agreement being sent concurrently to Council? ☒ yes ☐ no