

10

INDEMNIFICATION OF EMERGENCY MEDICAL SERVICES PARAMEDICS

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report, October 9, 2008, from the Regional Solicitor:

1. RECOMMENDATION

It is recommended that:

1. Regional Council amend the Indemnification By-Law to allow the Regional Solicitor discretion to authorize indemnity for Emergency Medical Services paramedics charged with *Highway Traffic Act* offences, regardless of the outcome of the charges, under the following limited circumstances:
 - (a) The charges must have arisen while the Emergency Medical Services paramedic was transporting or traveling to a patient during an emergency situation; and
 - (b) Providing indemnification and a defence to Emergency Medical Services paramedics would be limited to those circumstances where, in the discretion of the Regional Solicitor, it would be in the best interests of the Region to do so.

2. PURPOSE

The purpose of this report is to recommend that Regional Council amend the current by-law dealing with the indemnification of Regional Employees and members of Regional Council to allow indemnification and defence of Regional Emergency Medical Services (“EMS”) paramedics in limited circumstances where the EMS paramedics may have been charged with offences under the *Highway Traffic Act* (“HTA”), regardless of whether the EMS paramedic is acquitted or not. This is a change from the present indemnification provisions, under which employees are reimbursed for their legal expenses associated with defending HTA charges only if an acquittal is obtained.

3. BACKGROUND

The Region’s Indemnification By-Law—Reimbursement for HTA Defence is Linked to Acquittal

The Region’s Indemnification By-Law was passed in 1999 prior to the responsibility for the provision of EMS services being downloaded to the Region. The By-Law provides, in part:

- (a) Where an employee is charged with a HTA offence in the performance in good faith of his/her duties, the employee shall be indemnified for all reasonable and

necessary legal costs incurred in the defence of such charges or allegations, provided that the employee is acquitted of the charges. (emphasis added)

- (b) The Regional Solicitor, in consultation with the Regional Treasurer, has the discretion to authorize providing the employee with up to \$5,000 for a retainer or for the payment of interim legal costs, provided that the employee agrees to repay the Region on demand, if the employee is convicted of the offence.

Where an employee is the subject of civil liability arising out of actions carried out in the good faith performance of his or her duties, the Region Indemnification By-Law provides legal representation and indemnification for the employee.

4. ANALYSIS AND OPTIONS

EMS Paramedics: Unique Among Regional Employees

EMS paramedics are required, among other duties, to transport critically ill or injured patients to hospital to receive life saving treatment. Obviously, in many situations “minutes count” and the patient’s recovery or survival may depend on how fast the patient is able to be transported to hospital. At the same time, the EMS paramedics must transport the patient safely, being careful not to endanger themselves, the patient, or the persons using the roadway.

Regrettably, in some cases applicable traffic laws and/or regulations may be contravened where EMS paramedics are transporting patients in emergency situations. In some of these cases, the EMS paramedics may be subject to HTA and, potentially, civil liability if an accident also occurs while the EMS Medic is carrying out his or her duties. By operation of the employer relationship, the Region would also share in potential civil liability in such cases.

The Suggested Amendment: Indemnity for EMS Paramedics Charged With HTA Offences Regardless of Whether They Have Been Acquitted

Because the Region’s liability position may be linked to the EMS paramedic’s conviction or acquittal on HTA charges, it is therefore suggested that it would be in the Region’s best interest to amend the Indemnification By-Law to allow the Regional Solicitor discretion to authorize indemnity for EMS paramedics charged with HTA offences, regardless of whether they have been acquitted, under the following limited circumstances:

- (c) EMS paramedics charged with traffic offences while transporting patients during emergency situations would be the only Regional employees who would be eligible for indemnification other than that already provided for under the Indemnification By-Law.

- (d) Providing indemnification and a defence to EMS paramedics would be limited to those circumstances where, in the discretion of the Regional Solicitor, it would be in the best interest of the Region to do so.

The suggested amendment would counter any disincentive by an EMS paramedic to defend charges on the basis of potentially bearing ultimate financial responsibility for legal costs associated with the defence.

5. FINANCIAL IMPLICATIONS

The potential financial implications in cases involving EMS paramedics charged with HTA offences could be characterized in two ways:

- (a) HTA-With respect to the HTA Charges, the financial implications would be limited to the costs of providing a defence and paying any possible fines imposed. Generally all such costs would be under \$10,000.
- (b) Civil Context-In cases where civil actions result, the financial implications of not providing the best possible defence to the EMS paramedic could be far-reaching if an adverse inference were drawn against the Region and/or the employee arising out of an HTA conviction. It would not be possible to quantify the impact, but it could be potentially significant.

6. LOCAL MUNICIPAL IMPACT

There is no local municipal impact associated with this report.

7. CONCLUSION

It would be in the best interests of the Region to allow the Regional Solicitor the discretion to authorize indemnification for EMS paramedics who have been charged with HTA offences for the reasons discussed in this report.

For more information on this report, please contact Daniel E. Kuzmyk, Senior Counsel, at Ext. 1401. Members of Regional Council may also refer to the companion Private Memorandum from the Regional Solicitor which provides legal advice in this matter.

The Senior Management Group has reviewed this report.

(The Committee received a private attachment relating to this Clause [Solicitor-Client] and forwarded it to Council for consideration in Private Session at its November 20, 2008 meeting.)