

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF APRIL 8, 2014

Item 21, Report No. 14, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on April 8, 2014.

21 DIRECTOR REMUNERATION FOR VAUGHAN'S HYDRO COMPANIES

The Committee of the Whole recommends approval of the recommendation contained in the following report of the Interim City Manager, dated March 25, 2014:

Recommendation

1. That the remuneration paid by Vaughan Holdings Inc. to the six directors sitting on the PowerStream Board of Directors be set at \$9,000 annually;
2. That the Vaughan Holdings Inc. per meeting fee be reduced to \$125.00 per meeting; and
3. That the three Vaughan Holdings Inc. (VHI) directors not sitting on the PowerStream Board of Directors appointed to the following VHI positions be reimbursed accordingly;

Chair	\$18,000
Vice Chair	\$15,000
Second (2 nd) Vice Chair	\$14,000

Contribution to Sustainability

Not Applicable

Economic Impact

There is no economic impact resulting to either the City of Vaughan or Vaughan's hydro companies as a result of the recommendations in this report as the total remuneration paid to directors is not increasing.

Communications Plan

Not applicable.

Purpose

The purpose of this report is to obtain Council approval, as shareholder, of the reallocation of current remuneration paid to Vaughan's hydro company directors, as a result of hydro company restructuring which took place in 2013.

Background - Analysis and Options

Council approved the restructuring of the City's 100% owned hydro companies during 2013. The original companies involved were Vaughan Holdings Inc. (VHI), Hydro Vaughan Holdings Inc. (HVHI), and Hydro Vaughan Energy Corporation (HVEC).

The restructuring dissolved the former VHI, and transferred the net assets to HVHI. Once this transaction was complete, HVHI underwent a legal name change to Vaughan Holdings Inc. The remaining active companies are Vaughan Holdings Inc. and Hydro Vaughan Energy Inc.

The new Vaughan Holdings Inc. holds 45.315% of PowerStream Holdings Inc. Six Members of Vaughan Council are appointed by VHI to sit on the PowerStream Board of Directors. PowerStream directors receive remuneration for their work on the PowerStream Board.

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All nine members of City of Vaughan Council were appointed as directors of the city's three original active hydro companies, and received remuneration for sitting as directors for each company. This remuneration has been publicly reported in March of each year as part of the statutory disclosure of council remuneration and expenses.

As a result of restructuring Vaughan's hydro companies in 2013, it is appropriate to reallocate the remuneration paid to the directors.

Director Remuneration Pre-Restructuring

HVHI paid directors \$3,000 annually and HVEC paid directors \$6,000 annually. Both companies also paid an additional \$250 to directors for each meeting attended.

VHI did not remunerate the six directors who were appointed to the PowerStream Board of Directors. Only the three directors not sitting on the PowerStream board were remunerated by VHI. These three directors were remunerated as follows:

Chair	\$14,000
Vice Chair	\$12,500
One (1) Director	\$10,750

VHI did not provide for additional per meeting remuneration.

Proposed Re-Allocated Remuneration Post-Restructuring

VHI has been dealing with increasingly important and complex PowerStream initiatives over the last several years, with the result of more strategic and impactful decision making. The restructuring recently completed lends itself to recognizing the increasing responsibilities of the VHI board members by remunerating all VHI directors, which is where the bulk of the work and decision making is done. It must be noted that the VHI Board of Directors instructed staff to bring a remuneration plan to Council for approval that does not increase the overall remuneration paid to directors under the previous structure.

It is therefore recommended that VHI pay the six directors sitting on the PowerStream Board \$9,000 annually, equivalent to the previous remuneration from HVHI (\$3,000) and HVEC (\$6,000). These six directors would not receive any remuneration from HVEC. It is also recommended that the additional \$250 per meeting be reduced to \$125 as it is anticipated that VHI will meet four times a year, which is more frequently than the former HVHI and HVEC.

The three VHI directors who do not sit on the PowerStream Board of Directors would be appointed to the positions of Chair, Vice Chair and Second Vice Chair. The remuneration paid to these positions would be comparable to similar positions on the PowerStream Board, reflecting the increasing complexity and impactful decisions relating to PowerStream initiatives.

Chair	\$18,000
Vice Chair	\$15,000
Second (2 nd) Vice Chair	\$14,000

Although the remuneration for these three VHI positions increases slightly, it will be offset by the remuneration paid by HVEC in order to achieve the same overall total remuneration paid prior to the restructuring. Hydro Vaughan Energy Corp. (HVEC) now exists as a subsidiary of Vaughan Holdings (rather than a subsidiary of the City), therefore HVEC remuneration decisions will be made by the shareholder, VHI.

The remuneration paid to directors of the City of Vaughan's hydro companies will continue to be disclosed annually, as required by the Municipal Act, Section 283(1).

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Relationship to Vaughan Vision 2020/Strategic Plan

This report is consistent with the priorities previously set by Council.

Regional Implications

Not applicable

Conclusion

The objective of this report is to align director remuneration with the work effort and decision making responsibilities under Vaughan's new hydro company structure. In addition, the second objective is to maintain overall total director remuneration level consistent from the previous structure to the new structure.

In order to achieve these objectives, staff recommend that the remuneration paid by Vaughan Holdings Inc. to the six directors sitting on the PowerStream Board of Directors be set at \$9,000 annually, that the Vaughan Holdings Inc. per meeting fee be reduced to \$125.00 per meeting and that the three Vaughan Holdings Inc. (VHI) directors not sitting on the PowerStream Board of Directors appointed to the following VHI positions be reimbursed accordingly;

Chair	\$18,000
Vice Chair	\$15,000
Second (2 nd) Vice Chair	\$14,000

Attachments

Not Applicable

Report prepared by:

Barbara Cribbett, Interim City Manager

COMMITTEE OF THE WHOLE – MARCH 25, 2014

JOINT AND SEVERAL LIABILITY REFORM CITY OF VAUGHAN SUPPORT FOR PRIVATE MEMBERS BILL

Recommendation

The Commissioner of Legal & Administrative Services/City Solicitor in consultation with the City Clerk and Manager of Insurance and Risk Management recommends:

1. That the City of Vaughan support the AMO initiative to reform joint and several liability for municipalities by submitting a letter to the provincial government substantially in the form attached as Attachment 1.

Contribution to Sustainability

Municipalities are being financially burdened with increasing premium costs which insurers attribute to joint and several liability being imposed against them. Limiting the financial contribution to claims' settlements will allow insurers the ability to stabilize insurance premiums to the municipal sector.

Economic Impact

There is no immediate financial impact associated with this report however legislative modifications have the potential to reduce insurance costs for municipalities in the future.

Communications Plan

Subject to Council's approval, a letter substantially in the form of Attachment 1 will be sent to The Honourable Kathleen Wynne, Premier of Ontario, The Honourable John Gerretsen, Attorney General and to The Honourable Linda Jeffrey, Minister of Municipal Affairs and Housing outlining the City of Vaughan's support for reduced municipal liability resulting from the application of joint and several liability, also known as the '1% rule'.

Purpose

The purpose of this report is to seek Council's support for changes being proposed by the Association of Municipalities of Ontario (AMO) to amend the *Negligence Act* in order to reduce municipal liability for damages beyond their proportionate share of actual liability.

Background - Analysis and Options

On March 4, 2014, AMO issued a 'breaking news' communication to municipalities advising that on February 27, 2014, MPPs from all parties supported a motion calling on the government to reform joint and several liability. Nearly 200 municipalities supported the motion introduced by Randy Pettapiece, MPP for Perth-Wellington which called on the government to implement a comprehensive, long term solution no later than June 2014.

Joint and several liability may oblige a defendant who is found to be little as 1% at fault to be responsible for the cost of a plaintiff's entire judgment, particularly where the other defendant(s) are unable to meet the award ordered by the court. As a result municipalities are often brought into a lawsuit when it is anticipated other defendants may not have the means to satisfy a judgment. The result of having been found even minimally liable raises the potential that municipalities, and their insurers, will be required to fund the plaintiff's damages well beyond the proportion attributed to municipal fault. The impact on municipal insurance premium and deductible costs is significant.

The following example illustrates the concern:

A motorist travelling at an excessive speed along a municipal road collides with another vehicle. The municipality is found to be 1% at fault because it is determined that a warning sign is not properly situated. \$3,000,000 in damages is awarded to the plaintiff for his injuries, however the speeding driver carries only \$1,000,000 in insurance. Even though the vast proportion of liability is attributed to the speeding driver, the municipality becomes responsible for \$2,000,000 of the award, which is the amount the award exceeds the coverage held by the offending driver.

The Ministry of the Attorney General is consulting with municipalities and the legal community on a comprehensive long term solution and has identified three options for consideration which are listed below:

The Saskatchewan Model:

This modification to joint and several liability was adopted in Saskatchewan in 2004. Under the Saskatchewan model, where there is a shortfall due to one defendant being insolvent and the plaintiff's own negligence contributed to the harm, the shortfall is to be divided among the remaining defendants and the plaintiff in proportion to their fault. This model would apply to all types of defendants in all types of negligence claims.

The Multiplier Model:

In road authority cases (auto accident cases in which a municipality is sued for breach of duty to maintain a public road), where there is a shortfall due to one defendant being insolvent, the municipality would never be liable for more than two times its proportion of damages, even if this means the plaintiff does not fully recover. Because this rule has the potential to result in a seriously injured plaintiff being unable to fully recover, the proposal would be limited to road authority cases which municipalities have advised impose the most significant and unfair burden.

The Combined Model:

The Saskatchewan model and the Multiplier model could be combined. In a case in which both models would apply – a road authority case involving contributory negligence on the part of the plaintiff – the Saskatchewan model would be applied first. The Multiplier model would be applied if needed to ensure the municipality would not be liable for more than two times its proportion of damages.

AMO supports adoption of the Combined Model as it places some reasonable limits on the damages that may be recovered from a municipality under limited circumstances.

Relationship to Vaughan Vision 2020/Strategic Plan

In consideration of the strategic priorities related to Vaughan Vision 2020, this report supports:

- Organizational Excellence – Ensure Financial Sustainability

Regional Implications

There are no regional implications resulting from the recommendations contained in this report.

Conclusion

Municipalities currently bear a disproportionate responsibility for the cost of insurance claims in circumstances where they are minimally at fault but represent the 'deep pocket' amongst other defendants who may not have the means to satisfy a judgment. It is therefore recommended that the City of Vaughan support AMO's initiative on joint and several liability reform by sending a letter of support substantially in the form of Attachment 1.

Attachments

Attachment 1: AMO Draft Letter

Report prepared by:

Joseph Chiarelli, Manager – Licensing and Permits, Insurance – Risk Management

Respectfully submitted,

MaryLee Farrugia
Commissioner of Legal & Administrative Services/City Solicitor

Attachment 1
AMO Draft Letter

The Honourable Kathleen Wynne
Premier of Ontario
Legislative Building - Room 281
Queen's Park
Toronto ON M7A 1A1

The Honourable John Gerretsen
Attorney General
McMurtry-Scott Building
720 Bay Street – 11th Floor
Toronto ON M7A 2S9

The Honourable Linda Jeffrey
Minister of Municipal Affairs and Housing
777 Bay Street - 17th Floor
Toronto ON M5G 2E5

Dear Premier, Attorney General, MMAH Minister:

[I or we] support the government's consideration and adoption of measures which limit the impact of joint and several liability on municipalities. Specifically, we understand three options are under consideration – the Saskatchewan Model, the Multiplier Model, or a third model which combines both.

I write to you in support of this third Combined Model as described by AMO's March 4, 2014 policy update. We support AMO's advice to the government that such changes would represent a significant incremental step to address a pressing municipal issue. This places some reasonable limits on the damages that may be recovered from a municipality under limited circumstances.

The provisions of the *Negligence Act* have not been updated for decades and the legislation was never intended to place the burden of insurer of last resort on municipalities. It is entirely unfair to ask municipalities to carry the lion's share of a damage award when at minimal fault or to assume responsibility for someone else's mistake.

For this reason, [I or we] support the adoption of the Combined Model under consideration. We strongly encourage the government to immediately proceed with legislation which gives effect to this model.

Sincerely,