

TO:	CHAIR AND MEMBERS CIVIC WORKS COMMITTEE MEETING ON JULY 22, 2013
FROM:	JAMES P. BARBER CITY SOLICITOR
SUBJECT:	ONTARIO'S SAFE DRINKING WATER ACT, 2002 STANDARDS OF CARE PROVISION

RECOMMENDATION

That, on the recommendation of the City Solicitor, this report **be received** for information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

Report to Civic Works Committee October 22, 2012 (attached).

BACKGROUND

At its meeting of October 30th, 2012, City Council adopted the following resolution:

“the City Solicitor BE REQUESTED to provide a report back at a future meeting of the Civic Works Committee with respect to legal protection for Councillors in regard to the associated legal liabilities and penalties, as well as any other implications or repercussions of the legislation outlined in Section 19 of the *Ontario's Safe Drinking Water Act, 2002*, that extends legal responsibility to people with decision-making authority over municipal drinking water systems. (2012-W13-00) (3/16/CWC)”

The above-mentioned resolution followed receipt of the **attached** report of the City Engineer to the Civic Works Committee on October 22, 2012 which described to the associated legal liabilities and penalties, as well as any other implications or repercussions of the legislation outlined in Section 19 of the *Ontario's Safe Drinking Water Act, 2002*, that extends legal responsibility to people with decision-making authority over municipal drinking water systems which report was reviewed by the City Solicitor's Office.

By virtue of section 19(2)3, each council member is subject to the standards prescribed in s. 19 with respect to drinking water in London. There have been numerous reports, seminars and other publications at which the methods available to councillors to ensure that they are in compliance with the Act have been discussed.

As the legislation is relatively new, advice concerning compliance has focussed to date on the interpretation of similar legislation and in particular the decision of the Supreme Court of Canada in *R. v. Sault Ste. Marie* which focussed on the *Ontario Water Resources Act* and established the standard for due diligence in Ontario. Various elements of the test established by the S.C.C. are as follows:

Liability rests upon control and the opportunity to prevent, i.e., that the accused could have and should have prevented the pollution.

(...)

This control may be exercised by “supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control”: Lord Evershed in *Lim Chin Aik v. The Queen*, [1963] A.C. 160 at 174.

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The attached provincial backgrounder published in 2007 itemized numerous potential measures which could be undertaken to evidence compliance with the statutory standards in s. 19.

The writer provided a public report in relation to legal protections for councillors on May 28, 2012 which can be found at:

<http://sire.london.ca/cache/2/px0ay155sab5ywujmrlvo5jp/7239006182013094231584.PDF>.

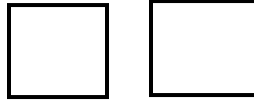
The Councillor Indemnification By-law A-5 appears to be available with respect to legal proceedings arising out of s. 19 to provide for indemnity as set out in the by-law but does not indemnify councillors against fines or other penalties under the *Safe Drinking Water Act, 2002*.

The insurance coverage for councillors is limited to civil liability and it relates to s. 19 of the *Safe Drinking Water Act, 2002* as shown in Schedule A, **attached**.

I have recommended to the City Engineer that the Water Boards seek advice from solicitors retained by the Water Boards in relation to the issues identified in the resolution of October 30, 2012 as it relates to council members who are members of the Water Boards.

RECOMMENDED BY:
JAMES P. BARBER CITY SOLICITOR

Att.



SCHEDULE A

INSURANCE COVERAGE

Note: The following are summaries of insurance coverage only. For information relating to specific situations, the applicable policy must be reviewed to determine the limit of coverage, deductibles or any other applicable terms or conditions.

City of London Insurance Program

City Councillors are insured under the Errors' and Omissions' Liability insurance policy included in the City's blanket insurance program. Under this policy, City Councillors' are insured for "... all sums which the Insured shall become legally obligated to pay as damages resulting from a Civil Action for claims arising out of any actual or alleged Wrongful Act".

Note; This policy will respond first if an alleged Wrongful Act is related to a Councillor's City of London duties.

- Errors and omissions in performing work on behalf of the City of London
- Defence costs coverage for charges under the criminal code (requires repayment if found guilty)
- Individual Councillors' and Civic Officials' who are not involved in an Wrongful Act by other Insureds will indemnified under the policy
- Former Councillors' and Civic Officials' are insured for Wrongful Acts that occurred while they were in their position on Council or as a City of London employee
- Reimbursement of defence costs incurred in defence of any Action alleging violation of any statute or regulation of the Province of Ontario or of Canada (including the Criminal Code of Canada or any criminal law of Canada) provided the Person Insured is finally determined by the court not to have contravened the law or the charge or charges are dismissed
- Claims related to improper administration of an Employee Benefits program.

Regional Water Boards Program

The following insurance coverage applies to those Councillors who are members of a Regional Water Board. Note: This policy will respond first if an alleged Wrongful Act is related to Water Board duties.

Directors' and Officers' are insured for the following types of liability claims:

- Errors and omissions in performing work on behalf of the Regional Water Board
- Defence costs coverage for charges under the criminal code (requires repayment if found guilty)
- Individual Board Members who are not involved in an Wrongful Act by other Insureds will indemnified under the policy
- Former Board Members and Water Board employees' are insured for Wrongful Acts that occurred while they were in their position on Council or as a City of London employee
- Insures the lawful spouse or domestic partner of an Board Member for claims arising solely out of his or her status as the spouse or domestic partner of the Board Member