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**Report To:** Council

**From:** Rob Maciver, Deputy CAO/Solicitor, Legislative Services

**Date:** September 23, 2024

**Memo #:** Memo-005-24

**Re:** Delegation of Authority By-law – Court Matters

At the General Government Committee meeting of September 9, 2024, a resolution was adopted to refer Report LGS-026-24 back to Staff to provide further elaboration on the rationale for inclusion of Court Matters in the draft Delegation of Authority By-law.

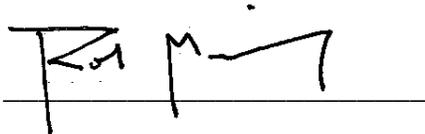
Court matters like those included in the draft by-law are routinely delegated to legal staff in other municipalities. The draft by-law includes eight separate items under the banner of court matters which are reproduced below, together with some additional commentary. As mentioned at the GGC meeting, some of the items are true delegations of authority from Council, while others were included as an exercise in transparency.

<p>To commence, defend, or conduct any proceeding before any court, administrative tribunal or other decision-making or advisory body in accordance with instructions received from Municipal Council or from officers or employees of the Municipality having operational responsibility for the subject matter of such proceeding.</p>	<p>This item presumes that Council has already provided direction and instructions on the court matter, and is simply reflecting that it would be the responsibility of the Deputy CAO/Solicitor to carry out those instructions. This is not a change to the status quo.</p>
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<p>To commence, defend, or conduct any proceeding before any court, administrative tribunal or other decision-making or advisory body on the Deputy CAO/Solicitor’s own initiative where necessary to protect, preserve or assert the best legal interests of the Municipal Corporation until such time as the matter can be reported to the appropriate instructing authority for consideration and direction.</p>	<p>This item is related to litigation matters other than by-law prosecutions and provides the flexibility for the Solicitor to respond where time might be limited. There is a requirement that all such matters will be reported to Council at the earliest opportunity at which time Council could choose to provide alternative instructions to the Solicitor.</p>
<p>To commence and conduct appeals of the decisions of courts, administrative tribunals, or other decision-making or advisory bodies; apply for standing; or make applications for judicial review of decisions; provided that any such measures undertaken shall be reported to Council as soon as reasonably practicable.</p>	<p>This item is a continuation of the previous item by extending the authority to appeals and other proceedings to review the findings of a lower court or tribunal. As with the previous item, all such matters will be reported to Council at the earliest opportunity at which time Council could choose to provide alternative instructions to the Solicitor.</p>
<p>To commence, defend, conduct, or settle any uninsured claim in the Ontario Small Claims Court on behalf of the Municipality.</p>	<p>This provides authority over Small Claims Court matters which are of low monetary value.</p>
<p>To commence, defend, conduct, or appeal any proceeding originating in the Provincial Offences Court or an applicable appellate court.</p>	<p>Authority for legal staff to prosecute POA matters is derived directly from the Ministry of the Attorney General and not from Council. This item was included in the schedule for transparency, however on further consideration, it has been removed from the schedule to avoid any confusion about the source of this authority. The Council approved Enforcement Policy reflects the legal requirement that prosecutions shall be conducted independently and not subject to influence by elected officials.</p>

<p>To settle uninsured claims (whether or not asserted in litigation), and authorize payment or acceptance of payment in settlement of such claims in an amount not to exceed \$250,000, exclusive of interest, provided that any action taken under this authority is subsequently reported to Council.</p>	<p>This item provides authority to the Solicitor, with the concurrence of the CAO, to settle any dispute up to the defined monetary limit. Included in this item is the expectation that all such matters will be reported to Council at the earliest opportunity. It is assumed that non-monetary concessions are not a prominent aspect of such claims.</p>
<p>To authorize the payment of any expenses, disbursements or costs reasonably incurred by or awarded against the Municipality in the course of a legal proceeding.</p>	<p>This item presumes a judgement has been entered against the Municipality, the payment of which is legally enforceable and non-discretionary.</p>
<p>To take all steps reasonably necessary or desirable to enforce orders, decisions, awards, and judgements made in favour of the Municipality.</p>	<p>This item provides authority to recover damages and costs awarded against a judgement debtor and is a logical and necessary step in the litigation process.</p>

Respectfully submitted,



Robert Maciver  
Deputy CAO/Solicitor