
Memorandum

CWCD 2024-172

Subject: Councillor Information Request Related to Legal Obligations of Council regarding Safe Drinking Water Act

Date: October 18, 2024

To: Regional Council

From: Donna Gibbs, Director, Legal Services

This memo is in response to a Councillor Information Request at the September 12 Budget Review Committee of the Whole Meeting for information regarding the legal obligations of Council under the Safe Drinking Water Act.

The [Safe Drinking Water Act, 2002, S.O. 2002, c. 32](https://www.ontario.ca/laws/statute/02s32) (<https://www.ontario.ca/laws/statute/02s32>) (the “Act”) imposes a statutory standard of care that applies to municipal councillors. More specifically, *section 19 of the Act* requires that owners of the municipal drinking water system, and every person who, on behalf of the municipality, oversees the operating authority of the system or exercises decision-making authority over the system, shall:

- a) exercise the level of care, diligence, and skill in respect of a municipal drinking water system that a reasonably prudent person would be expected to exercise in a similar situation; and
- b) act honestly, competently and with integrity, with a view to ensuring the protection and safety of the users of the municipal drinking water system.

Council should be aware that failure to meet the statutory standard of care comes with serious consequences. In addition to potential community impacts given the criticality of safe drinking water, the Act further provides that every person who fails to carry out their statutory duty is guilty of an offence and upon conviction may be subject to a fine, and in certain circumstances may be liable to imprisonment. The penalty imposed in a given instance would be determined by the Court based on the severity and consequences of the offence in question.

It is important to note that although members of Council have some relief from the personal civil liability when they act in good faith pursuant to sections 448-450 of the Municipal Act (and to that end the Region also has a Legal Indemnification Policy and

insurance coverage in place to protect Councillors that are subject to legal proceedings); that would not apply to the extent that Councillors are negligent and fail to properly carry out their legislative duties. As such, a Councillor could be charged with (and convicted of) an offence for failing to meet the standard of care imposed under the Act and be personally responsible for all resulting penalties.

What is considered to be an appropriate level of care will vary from one situation to another. Councillors are not expected to be experts in the areas of drinking water and treatment but are expected to educate themselves on this statutory requirement (e.g. participate in standard of care training and read the provincial guide developed for municipal councillors as referenced below), gain an understanding of the Region's drinking water systems (e.g. ask questions, ensure familiarity with the Region's Water Quality Management System Operational Plan that is approved by Council, arrange a tour of the Region's drinking water facilities) and act on advice (including identified deficiencies and action items) identified in reports from Staff as appropriate to ensure legislative compliance.

The Province has developed a resource specifically for municipal councillors to answer questions about the statutory standard of care under the Act that is recommended for Councillors to review: [Taking Care of Your Drinking Water: A Guide for Members of Municipal Councils](https://www.ontario.ca/page/taking-care-your-drinking-water-guide-members-municipal-councils). (<https://www.ontario.ca/page/taking-care-your-drinking-water-guide-members-municipal-councils>)

To further support Council in understanding its legislative responsibilities, similar to other municipalities across Ontario, PW staff facilitate the delivery of training for each term of Council on the standard of care under the Act from the [Walkerton Clean Water Centre](https://wcwc.ca/) (<https://wcwc.ca/>) ("WCWC"). The WCWC is a board-governed operational service agency of the Government of Ontario that coordinates and provides mandatory training required by the Ministry of the Environment, Conservation and Parks, specialized training, and information to drinking water system owners, operators, operating authorities, and the public. This was offered to the current term of Council pursuant to report PW 5-2023 considered by the Public Works Committee on March 7, 2023; however Councillors can also individually enroll in online (on demand) training provided by WCWC designed to inform municipal councillors of their oversight responsibilities under section 19 of the Act [Responsibilities Under the Statutory Standard of Care - Safe Drinking Water Act - CEU: 0.3 - Walkerton Clean Water Centre \(wcwc.ca\)](https://wcwc.ca/coursecatalog/responsibilities-under-the-statutory-standard-of-care-safe-drinking-water-act/), (<https://wcwc.ca/coursecatalog/responsibilities-under-the-statutory-standard-of-care-safe-drinking-water-act/>) at a cost of \$150 plus HST.

Council may also be interested to review the [Minister's Annual Report on Drinking Water \(2023\) | ontario.ca](https://www.ontario.ca/page/ministers-annual-report-drinking-water-2023#section-3) (<https://www.ontario.ca/page/ministers-annual-report-drinking-water-2023#section-3>) that includes key findings from (and a link to) Ontario's Chief Drinking Water Inspector's annual report on the performance of Ontario's regulated drinking water systems.

Respectfully submitted and signed by

Donna Gibbs
Director, Legal and Court Services