

## THE CORPORATION OF THE TOWN OF RICHMOND HILL

### BY-LAW NO. \*\*\*-18

A By-law to amend By-law 91-02, as amended, of the Corporation of the Town of Richmond Hill to provide for the indemnification of Members of Council against any costs or expenses incurred for any proceedings under the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, (the "MCIA"), if the member has been found not to have contravened the MCIA

**WHEREAS** subsection 279(1) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended (the "Act") provides that a municipality may, subject to certain limitations, act as an insurer and protect present and former members of council and employees from risk that may involve pecuniary loss or liability on the part of those members of council and employees;

**AND WHEREAS** subsection 283(2) of the *Act* provides that a municipality may only pay the expenses of its members of council, officers and employees if the expenses are of those persons in their capacity as members of council, officers or employees;

**AND WHEREAS** subsection 14(1) of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, (the "MCIA") provides that a municipality may contract for insurance or act as an insurer, and indemnify and protect a member of council against any costs or expenses incurred for any proceedings under the *MCIA*, if the member has been found not to have contravened the *MCIA*;

**AND WHEREAS** Council enacted By-law 91-02, being a By-law to Provide for Certain Insurance and Reimbursement of Members of Council and Employees of The Corporation of the Town of Richmond Hill, and deems it advisable to amend said by-law to provide for the indemnification of Members of Council against any costs or expenses incurred for any proceedings under the *MCIA*, if the member has been found not to have contravened the *MCIA*;

### **NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF RICHMOND HILL ENACTS AS FOLLOWS:**

1. That Town of Richmond Hill By-law No. 91-02, as amended, be and it is hereby further amended by:
  - a. Deleting sub-clause 1 (a) and replacing it with the following:

#### **DEFINITIONS**

1. In this By-law,
    - (a) "action or proceeding" includes all civil actions, provincial offences, or administrative proceedings, except a proceeding brought under the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as amended, (the "MCIA") unless the individual has been found not to have contravened the *MCIA*, the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended, the *Criminal Code*, R.S.C. 1985, c.C.46, as amended, or municipal parking and traffic by-laws;
  - b. Deleting sub-clause 3 and replacing it with the following:
    3. An individual may retain their own legal counsel for their defence or representation in a covered action or proceeding in lieu of the defence or representation provided by the Town, provided that the Town shall not reimburse the individual for their legal costs and shall not make payment under this by-law except where the Town has declined to defend or represent the individual because either:

- (a) the Town has determined that it would be inappropriate for the Town to defend or continue to defend or represent the individual;
- (b) the Town is satisfied that the interest of the Town and the individual conflict; or
- (c) the disposition of the proceedings brought under the *MCIA* remains outstanding.

c. Adding the following sub-clause after sub-clause 10:

10.1 For appeals of an action or proceeding under the *MCIA* in which the individual is successful in overturning a lower court decision and is rendered not to have contravened the *MCIA*, the Town shall indemnify the individual for the costs of the action or proceeding both at the lower and appeal court levels, subject to other provisions of this By-law.

d. Adding the following sub-clause after sub-clause 14:

14.1 Once it has been determined that the Individual is eligible for indemnification under this By-law and whether the Town will represent the individual or arrange for external counsel to represent the individual, the Town Solicitor shall prepare an indemnity agreement between the individual and the Town, to be executed by the individual and the Chief Administrative Officer, the Mayor or both the Mayor and Clerk, as the case may be, outlining the terms of the indemnification as set out in this By-law. No retainer shall be made on behalf of an individual and/or no money shall be paid by the Town with respect to any action or proceeding until an indemnity agreement has been executed. The CAO, the Mayor and the Clerk are hereby authorized to execute such indemnity agreements on behalf of the Town upon the recommendation of the Town Solicitor.

e. Deleting sub-clause 16 and replacing it with the following:

16. Notwithstanding any other provision of this By-law, the Town may choose not to indemnify an individual, or may cease to indemnify an individual if it has commenced to do so, if:
- (a) the individual breaches any provision of this By-law at any time;
  - (b) the individual or their legal counsel took a step which was unnecessary or otherwise prejudicial to the conduct of the action or proceeding;
  - (c) the individual initiated a counterclaim, crossclaim, third party claim, or other proceeding related to the action or proceeding for which the reimbursement is sought, without first obtaining prior approval from the Chief Administrative Officer; or
  - (d) the action or proceeding arises out of the individual's bad faith acts and omissions, or their intentional or malicious wrongful conduct.

f. Adding the following sub-clauses after sub-clause 16:

16.1 In the event the Town has made any monetary payment as provided in Section 14 of this By-law, and:

- (a) it is later determined by a court, administrative tribunal or quasi-judicial tribunal that, irrespective of a determination of guilt or liability, the Individual did not act in good faith or on the reasonable belief that their act or omission was lawful and in the best interest of the Town;

(b) the Individual committed an act mentioned under Section 16 of this By-law; or

(c) the Individual was initially found not to have contravened the *MCIA* and indemnified, but was subsequently found to have contravened the *MCIA* by a higher court;

the Town may request repayment of a portion or all of the payments made to the individual under Section 14 of this By-law, and the individual shall forthwith repay the Town accordingly.

16.2 The individual shall reimburse the Town for amounts received from the damages, costs, awards, or fees ordered to be payable to the individual arising from the action or proceeding, to the maximum amount of the damages, costs, awards, or fees received by the individual.

PASSED THIS XXTH DAY OF JUNE, 2018.

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**David Barrow**

**Mayor**

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**Stephen M.A. Huycke**

**Clerk**