

**THE CORPORATION OF THE TOWN OF RICHMOND HILL**

**BY-LAW NO. 91-02**

A By-law to Provide for Certain Insurance  
and Reimbursement of Members of Council  
and Employees by The Corporation of the Town of Richmond Hill

WHEREAS section 243 of the *Municipal Act*, R.S.O. 1990, c. 45, as amended, (the "Act") provides that the council of a municipality may provide by by-law for paying in whole or in part such expenses of the members of council and of the employees of the municipality as are actually incurred as a result of their acting in their capacity as members of council of the municipal corporation or employees of the municipality;

AND WHEREAS such a by-law is deemed advisable;

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

**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 *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) "Chief Administrative Officer" means the person holding the position of Chief Administrative Officer of the Town of Richmond Hill from time to time;
  - (c) "covered action or proceeding" means an action or proceeding commenced after the passing of this by-law and arising out of acts or omissions done or made by the member of council or employee in their capacity as a member of council of the Town or as an employee of the Town, including while acting in the performance of any statutory duty, and duties arising as an appointee to a board or other agency where such appointment was authorized by council, the Chair of Council or the Chief Administrative Officer of the Town, provided that the member of council or the employee is an individual within the meaning of this by-law and includes an action or proceeding arising out of or as a consequence of a Document Registration Agreement;
  - (d) "employee" means any salaried officer or any other person in the employ of Town and includes appointees and volunteers acting under the direction of a person in the employ of Town;
  - (e) "Document Registration Agreement" means an agreement establishing the escrow terms for the closing of a real estate transaction to which the Town is a party and documenting, inter alia, the closing procedures related to electronic registration of title documents.
  - (f) "individual" means a person who was a member of council of the Town or was an employee, as the case may be, at the time the cause of action or proceeding arose or at the time that the act or omission occurred that gave rise to the action or proceeding, notwithstanding that prior to judgment or other settlement of the proceeding the person ceased to be a member of the council or to be an employee;

### **LEGAL REPRESENTATION**

2. Subject to the provisions of this by-law, in a covered action or proceeding against an individual or in which the individual is a party and in which their conduct is called into question, the Town shall defend or represent, the individual in the covered action or proceeding in the name of, and on behalf of, the individual.

### **RETAINING LEGAL COUNSEL**

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; or
  - (b) the Town is satisfied that the interest of the Town and the individual conflict.
4. The Town shall not reimburse an individual under this by-law unless the Chief Administrative Officer has approved of the legal counsel retained by the individual.
5. The Town shall have the right to reasonably limit the amount which it shall pay an individual for legal costs, and may require that any account for legal costs for which reimbursement is sought be assessed by a Court Assessment Officer prior to payment by the Town. The Chief Administrative Officer shall have the right to review the account on a monthly basis upon request.
6. Any requirement that the Town reimburse an individual for the costs of defence or representation in a covered action or proceeding shall take into account any existing association sponsored, or pre-paid legal assistance plan, or any defence cost insurance, or funding that the individual has purchased or is available to the individual and shall be reduced by or repaid to the Town by the individual to the extent of any costs received or recovered by the individual, including costs awarded in the action or proceeding, provided such costs are received by the individual.
7. Where the Town is defending or representing an individual in a covered action or proceeding, the Town may make such investigation, negotiation and settlement of any claim in the covered action or proceeding as may be deemed necessary or expedient by the Town.
8. The Town shall reimburse members of Town Council for expenses incurred in obtaining legal advice to determine whether the member has a pecuniary interest in a matter which is the subject of consideration by council or a board as defined in paragraph 1(c).

### **THIRD PARTY ACTIONS**

9. An individual may not commence a third party action or proceeding unless such action or proceeding is part of the proper defence by the individual of a covered proceeding under this by-law, and only if such action or proceeding has been approved by the Chief Administrative Officer.

### **APPEALS**

10. Where an individual seeks to appeal a judgment in a covered action or proceeding, the Town shall have sole discretion to determine whether an appeal should be pursued, and whether the cost of the appeal will be covered by this by-law. If an individual pursues an appeal without representation by the Town and is successful in that appeal, the Town

shall have sole discretion to determine whether the individual shall be indemnified for his/her legal costs.

#### **NON-COVERED ACTIONS OR PROCEEDINGS**

11. Where an individual is charged with and subsequently acquitted of an offence under the *Criminal Code*, R.S.C. 1985, c.C.46, as amended, the *Highway Traffic Act*, R.S.O. 1990, c.H.8, as amended, or municipal parking or traffic by-laws, because of any act done or any failure to act or allegations of same in the attempted performance or performance in good faith of his/her duties, the individual shall be indemnified by the Town for the necessary and reasonable legal costs incurred in the defence of such charges or allegations. The individual may be entitled to receive payment from the Town for a retainer and/or for interim payment of legal costs incurred in the defence of such charges or allegations, to a maximum of \$5,000, at the discretion of the Chief Administrative Officer.
12. Where an individual is the subject of an investigation in a matter which may result in charges being laid against the individual under the *Criminal Code*, provincial statute or regulation, or municipal by-law, because of any act done or any failure to act or allegations of same in the attempted performance or performance of his/her duties, the individual may be entitled to receive payment from the Town for a retainer and/or interim payment of legal costs, not to exceed \$5,000.00, to obtain legal representation during the investigation, at the discretion of the Chief Administrative Officer.
13. As a condition precedent to the Town making any payment in respect of the costs of defence or representation of any individual pursuant to paragraphs 11 or 12 of this by-law, the individual must agree in writing to repay the Town on demand in the event that the individual is convicted of an offence, all sums paid by the Town in respect of the costs of defence or representation as to such charges, including the retainer referred to in paragraphs 11 and 12, and must execute an indemnity or other documentation required by the Town to secure such repayment to the Town.

#### **DAMAGES, FINES AND COSTS**

14. Subject to this by-law, in a covered action or proceeding, the Town will:
  - (a) pay all damages and legal costs, including interest, awarded against an individual;
  - (b) pay all sums required in connection with the settlement of the action or other proceeding against an individual provided that as a condition precedent the Town approves the terms of the settlement;
  - (c) pay any fines, monetary penalties or award of damages levied or imposed against an individual by reason of the individual being convicted of any violation of any federal, provincial or municipal statute or by-law except the *Highway Traffic Act*, municipal parking and traffic by-laws, and *Criminal Code* offences;

provided always that the legal liability for damages or for the imposition of a fine or monetary penalty arose out of acts or omissions done or made by the member of council or employee in their capacity as a member of council or employee of the Town including while acting in the performance of any statutory duty, and in the attempted performance in good faith of their duties, and provided further that the individual agrees to execute any documents required by the Town to enable the Town to subrogate as to the position and as to any rights or cause of action of the individual.

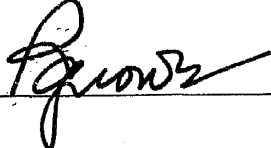
Without limiting the generality of the foregoing, the Town will indemnify every solicitor who is an employee of the Town in respect of any action or proceeding by a third party arising out of a Document Registration Agreement to which that solicitor is a party where such Document Registration Agreement is entered into for the purpose of completing a real estate transaction on behalf of the Town.

15. Where an individual who is no longer a member of council or an employee is summoned as a witness in an action or proceeding, the individual shall be compensated for their time on a per diem basis at the rate of pay received by him/her immediately prior to termination of employment or appointment to council, and reasonable travel costs.
16. Notwithstanding the foregoing, in respect of any action or proceeding where an individual has acted in bad faith, or outside the scope of their authority, the Town may determine that the said individual is not entitled to coverage pursuant to the within by-law. In the case where the Town has determined that a person is not entitled to coverage, that person shall be responsible for all costs in connection with representation in the action or proceeding and shall reimburse the Town for all costs paid by the Town, and shall be responsible for payment of any penalty or damages or costs awarded or imposed against the individual in the action or proceeding.
17. This by-law does not apply to an action or proceeding where the legal proceeding relates to a grievance filed under the provisions of a collective agreement or to a disciplinary action taken by the Town as an employer, except insofar as the individual is exercising management or management support functions.
18. In determining whether an action or proceeding is a covered action or proceeding, the Town may obtain the advice and assistance of a qualified and independent party.
19. This by-law comes into force on the day it is passed.

READ A FIRST AND SECOND TIME THIS 13TH DAY OF MAY, 2002.

READ A THIRD TIME AND PASSED THIS 13TH DAY OF MAY, 2002.

  
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Mayor

  
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Town Clerk