



Staff Report for Committee of the Whole Meeting

Date of Meeting: June 19, 2018

Report Number: SRS.18.11

Department: Office of the Chief Administrative Officer

Division: Legal Services

Subject: **SRS.18.11 - Amendment to the Town's Indemnity By-law 91-02**

Purpose:

The purpose of this report is to present a draft by-law amending the Town's Indemnity By-law 91-02 to improve the procedure for seeking indemnification, determining eligibility for indemnity and indemnifying 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.

Recommendation(s):

- a) That a by-law to amend the Indemnity By-law #91-02, substantially in the form of Attachment 2 to staff report SRS.18.11, be presented for enactment.

Contact Person:

Antonio R. Dimilta, Town Solicitor – Ext. 2513

Report Approval:

Submitted by: Antonio R. Dimilta, Town Solicitor

Approved by: Neil Garbe, Chief Administrative Officer

All reports are electronically reviewed and/or approved by the Division Director, Treasurer (as required), Town Solicitor (as required), Commissioner, and Chief Administrative Officer. Details of the reports approval are attached.

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Background:

Section 279 of the *Municipal Act, 2001* (the “*Municipal Act*”) permits a municipality to act as an insurer for current and former employees and Councillors against any risk that may involve pecuniary loss or liability, subject to certain limitations. One such limitation is contained within Section 14(1) of the *MCIA*, which provides that a municipal council may only reimburse a Councillor’s legal expenses if that Councillor has been found not to have contravened Section 5 of the *MCIA*.

At its meeting on May 13, 2002, Council enacted Town By-law No. 91-02 (attached hereto as Appendix “1”) (the “Indemnity By-law”). Subject to the stated exclusions, the Indemnity By-law provides for certain insurance and reimbursement of Members of Council and employees for legal proceedings arising from actions taken or omissions made in their respective capacity as a member of council or employee of the Town.

Further, the Indemnity By-law provides for the reimbursement and indemnification of employees and Members of Council for “necessary and reasonable legal costs” 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 and the *Highway Traffic Act, R.S.O. 1990, c.H.8*, as amended, arising from any act done in the good faith performance of their duties.

Notwithstanding the above, the current Indemnity By-law provides no similar corresponding protection related to *MCIA*. A member of Town Council could be left in an adverse financial state if, despite being found not to have contravened the *MCIA*, only a portion of his or her legal costs are recoverable from the applicant in the matter, as is typically the case.

At its meeting on December 15, 2014, Council directed that Town staff review the provisions of the Indemnity By-law and report back in due course on any appropriate amendments to the Indemnity By-law.

The attached draft by-law (attached hereto as Appendix “2”) provides an update to the Town’s Indemnity By-law to improve the procedure for seeking indemnification for Members of Council named in a *MCIA* action.

It should be noted that the Town’s Public Entity Management Errors & Omissions Liability insurance coverage currently includes coverage for Municipal Conflict of Interest Reimbursement - Legal Expenses up to \$200,000 per occurrence (\$400,000 aggregate) subject to a \$25,000 deductible. Accordingly, providing for the indemnification of a Councillor’s legal expenses, if that Councillor has been found not to have contravened Section 5 of the *MCIA*, is consistent with our current insurance coverage.

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Indemnity Agreement

Another proposed amendment is the express requirement for an indemnity agreement to be executed by any individual requesting indemnification. Once it has been determined that an individual is eligible for indemnification, an Indemnity Agreement will be prepared outlining the terms and conditions of the arrangement, including various obligations of the individual. The Indemnity Agreement will enumerate the obligation to repay the Town if it is subsequently discovered that the Individual acted in bad-faith or breached the provisions of the Indemnity By-law.

Financial/Staffing/Other Implications:

There are no immediate financial, staffing or other implications with respect to this report.

Future financial impact is undetermined as the number of instances and costs for which indemnification will be paid cannot be accurately estimated. That being said, in the past it has been relatively rare that an employee or Councillor has been entitled to indemnification from the Town pursuant to the existing Indemnity By-law 91-02.

Relationship to the Strategic Plan:

Review of the Town's Indemnity By-law in the manner recommended by this report aligns with Goal 4 of the Strategic Plan, "Wise Management of Resources in Richmond Hill".

Conclusion:

It is recommended that Council enact the amendments to the Indemnity By-law attached as Appendix "2" to this report.

Attachments:

The following attached documents may include scanned images of appendixes, maps and photographs. If you require an alternative format please call contact person listed in this document.

- Appendix "1" – By-law No. 91-02 (existing Indemnity By-law)
- Appendix "2" – Proposed Amendments to the Indemnity By-law, By-law No. XX-18

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Report Approval Details

Document Title:	Amendment to the Town's Indemnity By-law 91-02.docx
Attachments:	- By-law 91-02.pdf - SRS.18.11 - Indemnity By-law - Appendix 2.docx
Final Approval Date:	Apr 30, 2018

This report and all of its attachments were approved and signed as outlined below:

Neil Garbe - Apr 30, 2018 - 4:26 PM