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**STAFF REPORT: Finance and IT Services**



**REPORT TO:** Committee of the Whole  
**MEETING DATE:** May 16, 2016  
**REPORT NO.:** FAF.16.48  
**SUBJECT:** Indemnification By-law  
**PREPARED BY:** Serena Wilgress, Manager of Purchasing and Risk Management  
**SUBMITTED BY:** Troy Speck, CAO

**A. Recommendations**

THAT Council receive Staff Report FAF.16.48, entitled “Indemnification By-law”;

AND THAT Council enact a By-law to provide indemnification for members of Council, local boards, committees, employees or former employees with respect to certain actions or proceedings arising from their duties.

**B. Background**

The purpose of this report is to recommend enactment of an Indemnification By-law, to provide consistency and predictability in the ability to obtain financial assistance where legal proceedings are commenced against members of Council, local boards, committees, employees or former employees, in relation to actions taken in the course of official or employment duties.

Section 279 of the Municipal Act, S.O. 2001, c.25, as amended, permits the Town to act as an insurer for the protection of members of council and employees, or former members of council and employees to protect against risks that may involve pecuniary loss or liability, the payment of any damages or costs awarded or expenses incurred by them, as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as employees or members, including while acting in the performance of any statutory duty, as well as settlements paid and costs incurred to defend such proceedings.

The by-law will indemnify individuals for actions taken within the scope of authority or within the course of employment or office provided the individual was acting honestly and in good faith with a view to the best interests of the Town.

Staff began looking into indemnification by-laws at the request of a member of the previous Council. Such by-laws are common across municipalities, and during staff research on the subject, sample by-laws were provided by Innisfil, Barrie, Meaford, Hamilton, Peterborough, Vaughan, Kitchener, London, and Mississauga.

The attached By-law has been reviewed by legal counsel at Aird & Berlis as well as by the Town’s insurance provider, JLT Canada.

The Town's insurance policies provide coverage for a wide variety of potential claims, such as where a third party seeks compensatory damages because of an alleged wrongful act causing financial loss including negligence or misrepresentation. Coverage is also provided for payment of legal fees including disbursements incurred in the defence of civil proceedings. Despite the extensive coverage, there are gaps in coverage such as when the loss is within the deductible amount.

Currently there is no procedure in effect respecting reimbursement to members of Council or employees, for legal expenses, costs, damages or other losses incurred for actions taken in the course of official or employment duties which are not otherwise covered by insurance.

### **C. The Blue Mountains' Strategic Plan**

Goal #4: Promote a Culture of Organizational and Operational Excellence  
Objective #4: To Be a Financially Responsible Organization

### **D. Environmental Impacts**

None

### **E. Financial Impact**

The economic impact cannot be determined at this time. The legal costs that are incurred will be paid from the Insurance Reserve.

### **F. In Consultation With**

Ruth Prince, Director of Finance & IT Services  
Jody Johnson, Aird & Berlis  
Barbra Anne Vaspori, JLT Canada Inc.

### **G. Attached**

1. Draft Indemnification By-law

Respectfully submitted,

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Troy Speck  
Chief Administrative Officer

## THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

### By-law No. 2016 -

#### BEING A BY-LAW TO PROVIDE INDEMNIFICATION FOR MEMBERS OF COUNCIL, LOCAL BOARDS, COMMITTEES, EMPLOYEES OR FORMER EMPLOYEES WITH RESPECT TO CERTAIN ACTIONS OR PROCEEDINGS ARISING FROM THEIR DUTIES

**WHEREAS** Section 224 of the *Municipal Act*, S.O. 2001, c.25, as amended (the "Act"), provides that the role of Council is:

- a) to represent the public and to consider the well-being and interests of the municipality;
- b) to develop and evaluate the policies and programs of the municipality;
- c) to determine which services the municipality provides;
- d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- e) to maintain the financial integrity of the municipality; and
- f) to carry out the duties of council under this or any other Act; and,

**WHEREAS** Section 227 of the Act provides that the role of the Municipal Administration is being the officers and employees of the municipality.

- a) to implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- b) to undertake research and provide advice to council on the policies and programs of the municipality; and
- c) to carry out other duties required under this or any Act and other duties assigned by the municipality; and,

**WHEREAS** Section 279 of the Act provides that despite the *Insurance Act*, R.S.O. 1990, c. 1.8 (the "*Insurance Act*") a municipality may be or act as an insurer and may exchange with other municipalities in Ontario, reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the *Insurance Act* with respect to the following matters:

1. Protection against risks that may involve pecuniary loss or liability on the part of the municipality or any local board of the municipality.
2. The protection of its employees or former employees or those of any local board of the municipality against risks that may involve pecuniary loss or liability on the part of those employees.
3. Subject to section 14 of the *Municipal Conflict of Interest Act*, c. M.50 (the "MCIA") the protection of the members or former members of the council or of any local board of the municipality or any class of those members against risks that may involve pecuniary loss or liability on the part of the members.
4. Subject to section 14 of the MCIA, the payment of any damages or costs awarded against any of its employees, members, former employees or former

members or expenses incurred by them as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as employees or members, including while acting in the performance of any statutory duty.

5. Subject to section 14 of the MCIA, the payment of any sum required in connection with the settlement of an action or other proceeding referred to in paragraph 4 and for assuming the cost of defending the employees or members in the action or proceeding; and,

**WHEREAS** subsection 280 (1) of the Act provides that a municipality may contract for insurance for, pay any part of the premiums for or pay for any part of the damages, risks or costs referred to in subsection 279 (1) of the Act for any local board of the municipality or for any of the members, former members, employees or former employees of a local board of a municipality; and,

**WHEREAS** subsection 280 (2) of the Act provides that a local board of a municipality has the same powers with respect to itself, its members, former members, employees and former employees to contract for insurance, pay premiums for the insurance, be or act as an insurer, exchange reciprocal contracts of indemnity and to pay damages and costs as are conferred upon a municipality by the Act; and,

**WHEREAS** Council deems it desirable to indemnify its members, members of local boards and employees against certain pecuniary loss or liability which may arise as a result of their duties on behalf of the Town.

**NOW THEREFORE, THE COUNCIL OF THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS HEREBY ENACTS AS FOLLOWS:**

**DEFINITIONS:**

1. In this By-law, unless a contrary intention appears:
  - 1.1. **Action or Proceeding** means a civil or administrative action or proceeding, including but not limited to a claim or an application, in any court, administrative tribunal or other administrative, investigative or quasi-judicial body including investigations by an integrity commissioner or related to workplace violence or harassment, which may result in pecuniary loss, liability, damages or costs imposed or awarded against an Employee, Former Employee, Member or Former Member;
  - 1.2. **Council** means the Council of The Corporation of the Town of The Blue Mountains;
  - 1.3. **Employee** means any salaried officer, or any other person in the employ of the Municipality or of a Local Board and includes persons that provide their services on behalf of the Town without remuneration, exclusive of reimbursement of expenses or honoraria provided that such persons are appointees of the Town or volunteers acting under the direction of a person in the employ of the Town;
  - 1.4. **Former Employee** means a person who was formerly an Employee.
  - 1.5. **Former Member** means a person who was formerly a member of a Council of the Town or Local Board;
  - 1.6. **Individual** means a person who is Member, Former Member, Employee or Former 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 judgement or other settlement of the proceedings, the person may have become a Former Member or Former Employee;
  - 1.7. **Local Board** means a Municipal Service Board, Public Library Board, Board of Health, Police Services Board, Museum Board, or any other Board, Committee,

Body or Local Authority established or exercising any power under any Act with respect to the affairs or purposes of the Town, excluding a School Board and a Conservation Authority and Local Board also means a Committee of Council that does not exercise any power under any Act with respect to the offices or purposes of the Town;

1.8. **Member** means a person who is a member of the Council of the Town or of a Local Board; and

1.9. **Town** means The Corporation of the Town of The Blue Mountains.

#### **EXCLUDED ACTIONS AND PROCEEDINGS:**

2. This By-law does not apply to:

2.1. An Action or Proceeding where the legal proceeding relates to a grievance filed under the provisions of a collective agreement or to disciplinary action taken by the Town as an employer;

2.2. An Action or Proceeding brought under the *Highway Traffic Act*, R.S.O. 1990, as amended, and the *Criminal Code*, R.S.C. 1985, as amended, or the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, unless such proceedings arose as a result of the Individual's good faith pursuit or performance of the Individual's assigned duties;

2.3. Any expenses incurred in obtaining legal advice to determine whether the member has a pecuniary interest in a matter which is the subject of a determination or consideration by Council or a Local Board.

#### **INDEMNIFICATION:**

3.

3.1. The Town shall indemnify an Individual in the manner and to the extent provided by Section 4 in respect of any civil, criminal or administrative Action or Proceeding, including appeals, by a third party for acts or omissions arising out of the scope of the Individual's authority or within the course of the Individual's employment or office if:

3.1.1. The Individual acted honestly and in good faith with a view to the best interests of the Town; and

3.1.2. In the case of a criminal or administrative Action or Proceeding that is enforced by a monetary penalty, the Individual had reasonable grounds for believing that his or her conduct was lawful.

3.2. In the event that any determination is required as to whether an Individual meets the requirements of this Section, the Town's Lawyer may obtain, at the Town's expense, the advice and assistance of a qualified and independent Lawyer, including advice on any terms and conditions that the Town's Lawyer may apply to the indemnification of an Individual.

3.3. Notwithstanding the provisions of section 3.1, above, the Town shall not indemnify an Individual in respect of any Action or Proceeding for which insurance coverage is provided through a policy of insurance purchased by the Town.

#### **MANNER AND EXTENT OF INDEMNIFICATION:**

4. The Town shall indemnify an Individual who meets the requirements of Section 3 by:

4.1. Assuming the cost of defending such Individual in an Action or Proceeding;

- 4.2. Paying any damages or costs, including a monetary penalty, awarded against such Individual as a result of an Action or Proceeding;
- 4.3. Paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such Individual as a result of an Action or Proceeding; and
- 4.4. Paying any sum required in connection with the settlement of an Action or Proceeding to the extent that such costs, damages, expenses or sums are not assumed, paid or reimbursed under any provision of the Town's Insurance program for the benefit and protection of such Individual against any liability incurred by such Individual.

**PERSONS SERVED WITH PROCESS:**

5. Where an Individual is served with any process issued out of or authorized by any court, administrative tribunal or other administrative, investigative or quasi-judicial body, other than a subpoena, in connection with any Action or Proceeding the Individual shall forthwith deliver the process or a copy thereof to the Chief Administrative Officer, who in turn shall deliver a copy thereof to the Town's Lawyer.

**LAWYERS RETAINED BY TOWN'S INSURERS:**

6. Notwithstanding any other provision of this By-law to the contrary, any lawyer retained by the Town's insurers from time to time to defend the Town in any Action or Proceeding shall represent an Individual with respect to that Action or Proceeding unless the Town instructs such Individual otherwise.

**TOWN'S RIGHT TO SELECT LAWYER:**

7. Subject to Sections 8 through 11 the Town shall have the right to select and retain the lawyer to represent an Individual and the Town's Lawyer shall advise such Individual of the lawyer selected to represent the Employee.

**APPROVAL OF OTHER LAWYER:**

8. Subject to the provisions of this section and sections 9 through 11, an Individual may request approval to be represented by the lawyer of the Individual's choice by writing to the Town's Lawyer.
9. The Town's Lawyer shall within 10 days from receiving the request either approve the request or deny the request and nominate a lawyer of the Town's choice and, in either case, advise the Individual in writing of such decision.
10. If, after 10 days from receiving the request, the Town's Lawyer has not advised the Individual in writing of the disposition of his or her request, the Individual may retain his or her choice of lawyer to act on his or her behalf until the Town retains another lawyer to represent the Individual, and shall forthwith so advise the Town's Lawyer in writing of any such retainer.
11. If the Town retains another lawyer to act on behalf of an Individual in place of the lawyer originally retained by him or her in accordance with Section 12, the Town shall, subject to the *Solicitors Act*, pay to the Individual's lawyer, all of the reasonable legal fees and disbursements for services rendered and work done in connection with the Action or Proceedings from the time that the Individual retained the lawyer in accordance with Section 12, until replaced by the lawyer retained by the Town.

**CONDUCT OF DEFENCE:**

12. Where possible, the Town's Lawyer shall conduct the defence of such actions or proceedings. In some circumstances the use of the Town's Lawyer may not be possible and subject to Section 6 and Section 13 outside legal counsel may be retained by the Town having regard to:
  - 12.1. Whether the Town's Lawyer has the required expertise;

- 12.2. Whether the Town's Lawyer can provide the commitment of time and resources which is required;
- 12.3. Whether the Town's Lawyer is or may be in a conflict of interest situation by virtue of conducting the defence of the Individual.

**SETTLEMENT:**

13. Council shall have the right to approve the settlement of any Action or Proceeding. Where an Individual disagrees with the position of Council, the Individual may elect to take the opposite position but if the Individual continues with an Action or Proceeding where Council prefers to settle, the Town shall have the sole discretion to determine whether the Individual shall be indemnified for his or her legal fees.

**DUTY TO CO-OPERATE:**

14. An Individual involved in any Action or Proceeding shall co-operate fully with the Town and any lawyer retained by the Town to defend such Action or Proceeding, shall make available to such lawyer all information and documentation relevant to the matter as are within his or her knowledge, possession or control, and shall attend at all proceedings when requested to do so by such lawyer.

**FAILURE TO COMPLY WITH BY-LAW:**

15. If an Individual fails or refuses to comply with the provisions of this By-law, the Town shall not be liable to assume or pay any of the costs, damages, expenses or sums arising from the Action or Proceeding and shall not be subject to the requirements of Section 4 of this By-law.

**CONFLICT**

16. The Town maintains many different policies of insurance for the Town and for Members and Employees. The provisions of this By-law are intended to supplement the protection provided by such policies of insurance. In the event of conflict between this By-law and the terms of such policy of insurance in place from time to time, the terms of such policy or policies of insurance shall prevail.

**APPEALS:**

17. Where an Individual seeks to appeal a judgement in a covered Action or Proceeding, the Town shall have the sole discretion to determine 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 the sole discretion to determine whether the Individual shall be indemnified for his or her legal fees.

**FORCE AND EFFECT:**

18. This By-law shall come into full force and effect upon the final passing thereof.

Enacted and passed this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
John McKean, Mayor

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Corrina Giles, Clerk