

THE CORPORATION OF THE TOWNSHIP OF GREATER MADAWASKA

BY-LAW 47-2015

Being a By-Law to provide for the indemnity and defence of Councillors and Employees of the Township of Greater Madawaska against liability incurred while acting on behalf of the Township of Greater Madawaska

WHEREAS Sections 278 and 279 of the *Municipal Act*, R.S.O. 2001, provides that the Council of a municipality may pass By-laws for the protection of its employees or former employees or members or former members of the Council against risks that may involve pecuniary loss or liability and provide for the payment of any damage or costs awarded as a result of any action or other proceedings rising out of acts or omissions done or made by them in their capacity as employees, former employees, members or former members, including while acting in the performance of any statutory duty as well as for assuming the cost of defending them in the action proceeding;

NOW THEREFORE the Council of the Corporation of the Township of Greater Madawaska hereby enacts as follows:

1. Definitions

In this By-law, unless a contrary intention appears:

- (a) "action or proceeding" means an action or proceeding referred to in Section 2;
- (b) "employee" means any salaried officer, or any other person in the employ of the Township and persons who were pre-approved, by Council and/or Chief Administrative Officer, to that provide their services on behalf of the Township without remuneration, exclusive of reimbursement of expenses or honoraria, if Council of the Township has passed a by-law designating such persons or class of persons as employees for the purposes of this By-law;
- (c) "former employee" means a person who was formerly an employee of the Township;
- (d) "former member" means a person who was formerly a member of the Township Council.

2. Indemnification

The Township, subject to Section 14 of the *Municipal Conflict of Interest Act*, shall indemnify an employee, former employee, member of Council and former member of Council in the manner and to the extent provided by Section 3 in respect of any civil, criminal or administrative action or proceeding by a third party for acts or omissions arising out of the scope of the employee's, former employee's, member of Council or former member of Council's authority or within the course of that person's employment or office, including acting in the performance of any statutory duty, if in the opinion of the Council:

- (a) the person acted honestly and in good faith with a view to the best interests of the Township; and

- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the person had reasonable grounds for believing that his or her conduct was lawful.

3. Manner and Extent of Indemnification

The Township shall indemnify a person referred to in Section 2 by:

- (a) assuming the cost of defending such person in an action or proceeding;
- (b) paying any damages or costs, including a monetary penalty awarded against such person as a result of an action or proceeding;
- (c) paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such person as a result of an action or proceeding;
- (d) 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 Township's insurance program for the benefit and protection of such person against any liability incurred by him.

4. Persons Served with Process

Where person referred to herein 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 person shall:

- (a) unless he or she is the head of a department, forthwith deliver the process or a copy thereof to the head of the department for which the person works or to a person designated by the Department Head to receive such process, who shall, in turn, deliver a copy to the Chief Administrative Officer and the Township Solicitor; or,
- (b) if he or she is the head of the department or member of Council or former member of Council, forthwith deliver the process or a copy thereof to the Chief Administrative Officer and the Township Solicitor.
- (c) The Chief Administrative Officer in consultation with the insurance company shall determine if the litigation is covered by Township Insurance Policy.
- (d) A report shall be drafted by the individual's Manager in consultation with the Chief Administrative Officer and/or a Solicitor chosen by the Council of the Township Greater Madawaska. The report shall indicate why the incident is not covered by the Township Insurance Policy AND if the individual should be covered by the indemnification bylaw.
- (e) Upon Council making a decision, the individual will be advised within 10 business days of the meeting as to whether or not he/she will be indemnified.

5. Lawyer Retained by Township's Insurers

Notwithstanding any other provision of this By-law to the contrary, any lawyer retained by the Township's insurers from time to time to defend the Township in any action or proceeding shall represent the person herein with respect to that action or proceeding unless the Township instructs such lawyer otherwise.

6. Township's Right to Select Lawyer

Subject to Section 12 hereof, the Township shall have the right to select and retain the lawyer to represent the person and the Chief Administrative Officer shall:

- (a) advise such person of the lawyer selected to represent the person;
- (b) advise the Council of the final disposition of the matter; and
- (c) the Township shall have the right to approve the settlement of any action or proceeding.

7. Approval of Other Lawyer

- (a) the person who has been served with an action or proceeding, may request approval to be represented by the lawyer of his or her choice by writing to the Chief Administrative Officer;
- (b) Council shall within 10 days from receiving the request, either approve the request or deny the request and nominate a lawyer of the Township's choice and in either case, the Chief Administrative Officer will advise the person in writing;
- (c) if, after 10 days from receiving the request, the Chief Administrative Officer has not advised the person in writing of the disposition of his or her request, the person may retain his or her choice of lawyer to act on his or her behalf until the Township retains another lawyer;
- (d) if the Township retains another lawyer to act on behalf of the person in place of the lawyer originally retained by him or her in accordance with Subsection (c), the Township shall, subject to the *Solicitors Act*, pay to the person's lawyer all of the reasonable legal fees and disbursements for services rendered and work done in connection with the action or proceeding from the time that the person retained the lawyer in accordance with Subsection (c), until replaced by the lawyer retained by the Township.

8. Duty to Cooperate

The person involved in any action or proceeding shall cooperate fully with the Township and a lawyer retained/approved by the Township to defend such action or proceeding, shall make available to such lawyer all information and documents 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.

9. Limits of Indemnification

Council, acting reasonably and in consultation with the Chief Administrative Officer and/or Township Solicitor, may request or impose one or all of the following:

- a) Period Budgets for anticipated legal costs, which may be revised; and/or
- b) Status Updates in respect of the progress of the proceedings; and/or
- c) A limit on quantum of indemnification.

The Township shall have the right to reasonably limit the amount which it shall pay an employee for legal costs, and may require that any account for legal costs for which reimbursement is sought to be assessed by a Solicitor chosen by the Council of the Township of Greater Madawaska prior to payment by the Township. The Chief Administrative Officer shall be provided with copies of the statements of account on a monthly basis, which shall outline all fees and disbursements, and shall be provided with information relating to these accounts, as may be requested from time to time.

10. Failure to Comply with By-law

If the person fails or refuses to comply with the provisions of this By-law, the Township shall not be liable to assume or pay any of the costs, damages, expenses, or sums mentioned in Section 3 or Section 7 of this By-law.

11. Conflict

The Township maintains many different policies of insurance for both the Township and members of Council, officers and employees and 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 any such policy of insurance in place from time to time, the terms of such policy or policies of insurance shall prevail.

12. Excluded Action or Proceeding

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 Township as an employer.

13. Reimbursement

Where the person has been indemnified by the Township, the amount of the indemnification shall be reduced by the amount of any costs or damages recovered and where indemnification has been paid, prior to any recovery, any costs or damages received shall first be paid to the Township up to the amount of the indemnification.

14. Title

The short title of this By-law is the "Legal Indemnification By-law".

15. Commencement

This By-law shall come into force and take effect on the passing thereof.

READ a first and second time this 22nd day of September, 2015

READ a third time and passed this 22nd day of September, 2015

Glenda McKay
Mayor

Allison Holtzhauer
CAO Clerk/Treasurer