

# THE TOWNSHIP OF STRONG

## BY-LAW NUMBER 2011-004

### *Being a by-law for Indemnification*

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

WHEREAS Section 279 of the *Municipal Act*, S.O. 2001, as amended, (the Act) provides that, despite 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:

- a. Protection against risks that may involve pecuniary loss or liability on the part of the municipality or any local board of the municipality.
- b. 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.
- c. Subject to Section 14 of the *Municipal Conflict of Interest Act*, 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.
- d. Subject to Section 14 of the *Municipal Conflict of Interest Act*, 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.
- e. Subject to Section 14 of the *Municipal Conflict of Interest Act*, the payment of any sum required in connection with the settlement of an action or other proceeding referred to in Paragraph d and for assuming the cost of defending the employees or members in the action or proceeding.

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 Municipality.

**NOW THEREFORE, THE COUNCIL OF THE TOWNSHIP OF STRONG HEREBY ENACTS AS FOLLOWS:**

#### **DEFINITIONS:**

1. In this By-law, unless a contrary intention appears:
  - 1.1 *Action or Proceedings* means an action or proceeding described in Section 3;
  - 1.2 *Council* means the Council of the Township of Strong;

1.3 **Employee** means any salaried officer, contract 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 Municipality without remuneration, exclusive of reimbursement of expenses or honoraria provided that such persons are appointees of the Municipality or volunteers acting under the direction of a person in the employ of the Municipality;

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 Municipality or Local Board;

1.6 **Individual** means a person who was a member of Council, a member of a Local Board 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 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 Municipality, excluding a School Board and a Conservation Authority. 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 Municipality.

1.8 **Municipality** means the Township of Strong

## **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 Municipality 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, 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 by members of Council or a Local Board 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 Local Board.

## **INDEMNIFICATION:**

3. The Municipality 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 The Individual acted honestly and in good faith with a view to the best interests of the Municipality; and 3.2 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. In the event that any determination is required as to whether an Individual meets the requirements of this Section, the Municipality's Solicitor shall obtain the advice and assistance of a qualified and independent Solicitor, including advice on any terms and conditions that the Municipality's Solicitor may apply to the indemnification of an Individual.

**MANNER AND EXTENT OF INDEMNIFICATION:**

4. The Municipality 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 Municipality'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 Municipality's Solicitor.

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

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

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

7. Subject to Section 11 and to Paragraph 2 of this section, the Municipality shall have the right to select and retain the lawyer to represent an Individual and the Municipality's Solicitor shall:
- 7.1 Advise such Individual of the lawyer selected to represent the Employee; and
  - 7.2 Advise the Council of the final disposition of the matter.

**CONDUCT OF DEFENSE:**

8. Where possible, the Municipality's Solicitor shall conduct the defence of such actions or proceedings. In exceptional circumstances the use of the Municipality's Solicitor may not be possible and subject to Section 6 and Section 12 outside legal counsel may be retained having regard to:
- 8.1 Whether the Municipality's Solicitor has the required expertise;
  - 8.2 Whether the Municipality's Solicitor can provide the commitment of time and resources which is required;
  - 8.3 Whether the Municipality's Solicitor is (are) or may be in a conflict of interest situation by virtue of conducting the defence of the Individual.

**SETTLEMENT:**

9. Council shall have the right to approve the settlement of any Action or Proceeding.

### **APPROVAL OF OTHER LAWYER:**

10. Subject to the provisions of this Section, an Individual may request approval to be represented by the lawyer of the Individual's choice by writing to the Municipality's Solicitor.

11. The Municipality's Solicitor shall within 10 days from receiving the request; either approves the request or denies the request and nominates a lawyer of the Municipality's choice and, in either case, advise the Individual in writing of such decision.

12. If, after 10 days from receiving the request, the Municipality's Solicitor 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 Municipality retains another lawyer to represent the Individual, and shall forthwith so advise the Municipality's Solicitor in writing of any such retainer.

13. If the Municipality 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 Municipality 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 Municipality.

### **DUTY TO CO-OPERATE:**

14. An Individual involved in any Action or Proceeding shall co-operate fully with the Municipality and any lawyer retained by the Municipality 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 Municipality 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 Municipality maintains many different policies of insurance for both the Municipality and members of Council, members of Local Boards, officers 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 Municipality shall have the 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 Municipality and is successful in that appeal, the Municipality 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.

**READ a FIRST and SECOND time this 11<sup>th</sup> day of January, 2011 on a motion by: Jason Cottrell and Seconded by: J. D. Newstead**

**READ a THIRD time and finally passed on a motion by: J. D. Newstead and Seconded by: Jason Cottrell this 25<sup>th</sup> day of January, 2011.**

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Christine Ellis, Mayor

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Linda Maurer, Clerk/Treasurer

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