

THE REGIONAL MUNICIPALITY OF YORK

BYLAW NO. 2018-60

Indemnification Bylaw

WHEREAS section 279 of the *Municipal Act, 2001*, SO 2001, c 25, as amended, provides that a municipality may, subject to certain limitations, act as an insurer and protect present and former members of council, board members, employees and officers from risks that may involve pecuniary loss or liability on the part of those individuals;

AND WHEREAS subsection 14(1) of the *Municipal Conflict of Interest Act*, RSO 1990, c M 50, (the "MCIA") provides that a municipality may contract for insurance or act as an insurer, and indemnify and protect a member of council against any costs or expenses incurred for any proceedings under the MCIA, if the member has been found not to have contravened the MCIA;

The Council of The Regional Municipality of York hereby enacts as follows:

1. DEFINITIONS

1.1 In this bylaw:

"Act" means the *Municipal Act, 2001*, SO 2001, c 25, as amended;

"alternate member" means a member of a local municipal council who has been appointed as an alternate member of Council to act in place of a member who is unable to attend a meeting of Council;

"appointee" means a person appointed to a board or other agency where the appointment was made by Council or its authorized delegate;

"Board member" means a member of the board of a wholly-owned regional municipal corporation and includes former members of the board;

"Council" means the Council of The Regional Municipality of York;

“covered action or proceeding” means an action or proceeding commenced after the passing of this bylaw and arising out of acts or omissions done or made by an individual within the meaning of this bylaw and includes all civil actions, proceedings under the *Provincial Offences Act*, RSO 1990, c P 33 or other regulatory offences, a complaint to a professional organization and administrative proceedings, and includes an investigation of the conduct of a special constable under the *Ontario Special Investigations Unit Act, 2018* or the *Policing Oversight Act, 2018*;

“employee” means any salaried officer or any other person employed by the Region, or by a wholly-owned municipal corporation or by The Regional Municipality of York Police Services Board who is not a member of the police service, and includes former employees, appointees and volunteers acting under the direction of a person employed by the Region and includes a special constable;

“individual” means a person who was a member of Council or was an employee or appointee 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 Council or to be an employee or appointee;

“Member of Council” means an elected representative of the Region who is or was a member of Council and includes alternate members;

“paramedic” means a paramedic as defined in the *Ambulance Act*, RSO 1990, c A 19, as amended;

“Region” means The Regional Municipality of York;

“Regional Solicitor” means the Regional Solicitor of The Regional Municipality of York or his or her authorized delegate;

“special constable” means a person appointed by The Regional Municipality of York Police Services Board as a special constable for York Region Transit; and

“wholly-owned municipal corporation” includes Housing York Inc., York Region Rapid Transit Corporation, YTN Telecom Network Inc., and any other corporation established by the Region pursuant to the Act.

2. INDEMNIFICATION OF INDIVIDUALS

2.1 Individuals may be indemnified under this bylaw in a covered action or proceeding for actions or omissions resulting from their good faith performance of their duties.

3. LEGAL REPRESENTATION

3.1 In a covered action or proceeding against an individual or in which the individual is a party or participant and in which his or her conduct is called into question, the Region shall defend or represent the individual in the name of, and on behalf of, the individual provided that the individual’s actions were conducted in good faith and within the scope of his or her duties.

3.2 Where an individual is entitled to indemnification pursuant to this bylaw the Region shall:

(a) represent the individual in the name of, and on behalf of, the individual through legal counsel employed or retained by the Region or through the payment of reasonable legal fees incurred by the individual;

(b) pay all damages and reasonable legal costs, including interest, awarded against the individual; and

(c) pay all costs incurred in connection with the settlement of the covered action or proceeding provided that the Regional Solicitor approves the terms of the settlement in accordance with Section 13.1 of this bylaw.

3.3 Subject to Section 9 of this bylaw, the Region shall reimburse members of Council for expenses incurred in obtaining legal advice to determine whether the member has a pecuniary interest in a matter which is subject to consideration by Council or a board.

4. EXCLUSIONS

4.1 Except as expressly provided for herein, this bylaw excludes indemnification for a charge or proceeding pursuant to the *Highway Traffic Act*, RSO 1990, c H 8, as amended, the *Criminal Code*, RSC 1985, c C 46, as amended, the *Municipal Conflict of Interest Act*, or a municipal parking or traffic bylaw.

4.2 The Region shall not indemnify an individual where:

(a) the action or proceeding is commenced by the Region unless commenced pursuant to Section 12.1 of this bylaw or as otherwise approved by the Regional Solicitor;

(b) the individual acted in bad faith; or

(c) the subject actions or omissions were not within the individual's good faith performance of his or her duties.

4.3 Where the Region has determined that an individual 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 Region for all costs paid by the Region, and shall be responsible for payment of any penalty or damages or costs awarded or imposed against the individual in the action or proceeding.

4.4 Despite Section 4.1 of this bylaw, the Regional Solicitor, in his or her sole discretion, may elect to approve reimbursement to a member of Council charged with breaching Section 5, 5.1 or 5.2 of the *Municipal Conflict of Interest Act* for costs and/or expenses incurred by the member of Council to defend those charges, but only where the member of Council is found not guilty of the charge.

4.5 Despite Section 4.1 of this bylaw, where an individual is a paramedic and is charged with an offence under the *Highway Traffic Act*, RSO 1990, c H 8, as amended, whether or not the individual is subsequently acquitted of the offence, the individual shall be indemnified by the Region for the necessary and reasonable legal costs incurred in the defence of such charge or charges, provided that:

(a) the charge or charges arose while the individual, in the attempted performance or performance in good faith of his or her duties, was travelling to or transporting a patient; and

(b) the Regional Solicitor is of the opinion, in his or her sole discretion, that providing indemnity to the individual would be in the best interests of the Region.

5. NON-COVERED ACTIONS OR PROCEEDINGS

5.1 Despite Section 4.1 of this bylaw, where an individual is charged with and subsequently acquitted of an offence under the *Criminal Code*, RSC 1985, c C 46, as amended, the *Highway Traffic Act*, RSO 1990, c H 8 as amended, or a municipal parking or traffic bylaw, as a result of any act or omission or an allegation of the same in the attempted performance or performance in good faith of his or her duties, the individual may be entitled to receive payment from the Region for a retainer and/or interim payment of legal costs incurred in the defence of such charge or allegation, in an amount not to exceed \$15,000.00, in the sole discretion of the Regional Solicitor.

5.2 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*, RSC 1985, c C 46, as amended, a provincial statute or regulation, or a municipal bylaw, as a result of any act or omission or an allegation of the same in the attempted performance or performance in good faith of his or her duties, the individual may be entitled to receive payment from the Region for a retainer and/or interim payment of legal costs, in an amount not to exceed \$15,000.00, to obtain legal

representation during the investigation, in the sole discretion of the Regional Solicitor.

- 5.3 As a condition precedent to the Region making any payment pursuant to Sections 5.1 or 5.2 of this bylaw, the individual must agree in writing to repay the Region on demand in the event that the individual is convicted or not acquitted of an offence, all sums paid by the Region in respect of the costs of defence or representation as to such charges, including the retainer referred to in Sections 5.1 and 5.2, and must execute an indemnity or other documentation required by the Region to secure such repayment to the Region.

6. NOTICE TO THE REGION

- 6.1 Where an individual receives a threat of or a notice of action, claim or proceeding or otherwise becomes aware of a covered action or proceeding, the individual shall immediately notify the Regional Solicitor of the threat or claim.

7. DUTY TO COOPERATE

- 7.1 An individual has a duty to cooperate with the Regional Solicitor's office and legal counsel throughout the covered action or proceeding. This includes providing timely and fulsome responses to requests for information and attending the proceeding and meetings, as required.
- 7.2 Failure to cooperate with the Region or legal counsel may result in the termination of the Region's indemnification of legal costs, as determined by the Regional Solicitor in his or her sole discretion.

8. APPROVAL OF LEGAL COUNSEL

- 8.1 The Region shall not reimburse an individual under this bylaw unless the Regional Solicitor has approved of the legal counsel retained by or on behalf of the individual.
- 8.2 Where a special constable is subject to a proceeding or investigation conducted by the Special Investigations Unit, the individual shall only retain legal counsel

listed in the pre-approved roster of legal counsel established and maintained by the York Regional Police for Special Investigations Unit matters. Failure to retain pre-approved legal counsel may result in a denial of indemnification.

9. LIMITS OF INDEMNIFICATION

- 9.1 The Regional Solicitor may impose a limit on the quantum of indemnification provided to any individual.

10. TERMINATION OF INDEMNIFICATION

- 10.1 The Region may at any time during the covered action or proceeding, or after the completion of the covered action or proceeding, review its decision to provide an indemnity and may terminate or rescind the indemnity if it is determined by the Regional Solicitor in his or her sole discretion that the individual was not entitled to an indemnity pursuant to this bylaw.

- 10.2 Prior to terminating or rescinding the indemnity in accordance with Section 10.1, the individual shall be afforded the opportunity to present arguments relevant to the decision to terminate or rescind the indemnity but the decision is not otherwise subject to further review or appeal.

- 10.3 Where the Region has paid for the legal costs, or any portion thereof, to defend an individual in an action or proceeding and the indemnification is subsequently terminated or rescinded, the individual shall be responsible for all costs in connection with his or her defence of the action or proceeding and the individual shall be responsible for the payment of any damages or costs awarded against him or her in the action or proceeding. The individual shall be liable to repay to the Region, upon written demand, all costs incurred by the Region in the defence of the action or proceeding.

11. CONFLICTS OF INTEREST

- 11.1 Where an individual has been provided an indemnity pursuant to this bylaw and where in connection with an action or proceeding it is determined that there is a conflict of interest between the individual and the Region, the individual may,

subject to the provisions of this bylaw, retain his or her own legal counsel for the defence of the action or proceeding.

- 11.2 The Region shall not be obligated to pay for the legal costs of the individual's own legal counsel unless, in addition to the other requirements of this bylaw being met, the Regional Solicitor has pre-approved the legal counsel retained and approved a monetary limit for the defence of the action or proceeding, which monetary limit shall not be exceeded without the express consent of the Regional Solicitor.
- 11.3 Where there is a dispute between the Region and the individual as to whether a conflict exists, the opinion of the Regional Solicitor, in his or her sole discretion, shall be final.
- 11.4 Neither the termination of an employee for cause, nor the decision to refuse to indemnify or to terminate an indemnity shall constitute a conflict of interest.

12. ADVERSE CONDUCT BY THIRD PARTIES

- 12.1 Where a third party engages in a course of conduct that results, or is likely to result in an injury, and is directly related to an individual's status or actions as an employee, appointee, member of Council, Board member or volunteer, the individual may apply to the Regional Solicitor for coverage pursuant to this bylaw. The Regional Solicitor may, in his or her sole discretion, elect to provide coverage and direction on any action to be taken in response to the third party's course of conduct.
- 12.2 The extent of coverage and steps to be taken in response to a course of conduct described in Section 12.1 of this bylaw will be in the sole discretion of the Regional Solicitor.

13. SETTLEMENTS

- 13.1 All settlement terms in an action or proceeding indemnified pursuant to this bylaw are subject to approval of the Regional Solicitor. Failure to obtain the Regional

Solicitor's approval of a settlement may result in the termination of the Region's indemnification of the individual.

14. MANAGEMENT OF PROCEEDINGS

14.1 Where the Region is providing indemnification pursuant to this bylaw, an individual shall not commence a counterclaim or third party claim as part of an action or proceeding, unless the commencement of such proceeding has been approved by the Regional Solicitor.

14.2 Where the Region is providing indemnification pursuant to this bylaw, and where there is a potential appeal, the Regional Solicitor, in his or her sole discretion, shall determine whether an appeal should be commenced.

14.3 Where the Regional Solicitor has determined that it is not in the Region's interest to commence an appeal and an individual seeks to appeal a judgment in an action or proceeding, the Regional Solicitor, in his or her sole discretion, shall determine whether to represent the individual in the appeal and whether the cost of the appeal will be paid by the Region. Where the Region determines that it is not in the Region's interest to commence an appeal, and an individual elects to proceed with such an appeal, all costs will be at his or her own expense, including any award of costs.

14.4 The Regional Solicitor shall have the right to require and approve work plans, periodic budgets, status reporting and/or any other management of legal counsel that the Regional Solicitor deems to be appropriate.

14.5 The Region shall have the right to assess any account rendered by legal counsel acting for an individual where an indemnity has been afforded under this bylaw.

15. AWARDS OF COSTS

15.1 Any award of costs paid to an individual in an action or proceeding shall be paid to the Region and by accepting an indemnity pursuant to this bylaw, the individual shall be deemed to agree to this provision as a condition of the Region providing the indemnity.

16. GENERAL

- 16.1 Nothing in this bylaw, including the decision to provide indemnification to an individual shall prejudice any right the Region may have as against any individual.
- 16.2 Nothing in this bylaw shall prejudice any right the Region may have as against any individual in connection with any action or proceeding.
- 16.3 The provisions of this bylaw, including the decision to provide an indemnity, shall not limit the Region's rights respecting discipline, removal and dismissal of an individual.

17. REPEAL AND EFFECTIVE DATE

- 17.1 Bylaw numbers A-0263-1999-064, 2008-73, 2018-01 and 2018-44 are hereby repealed.
- 17.2 Despite the repeal of bylaws numbered A-0263-1999-064, 2008-73, 2018-01 and 2018-44, these bylaws shall continue to apply to coverage for any action or proceeding commenced prior to the enactment of this bylaw.
- 17.3 This bylaw shall be effective as of the date it is passed by Council and shall apply to any action or proceeding commenced on or after the effective date, regardless of the date of the alleged act or omission.

ENACTED AND PASSED on September 20, 2018.

Christopher Raynor

Regional Clerk

Wayne Emmerson

Regional Chair