

DISTRICT OF BARRIERE

BYLAW NO. 0003

A BYLAW TO INDEMNIFY MUNICIPAL OFFICIALS AGAINST DAMAGES AND THE COSTS OF LEGAL PROCEEDINGS ARISING OUT OF THE PERFORMANCE OF THEIR DUTIES AND THE CONDUCT OF MUNICIPAL BUSINESS

WHEREAS Section 287.2 of the *Local Government Act* authorizes a municipality to provide by bylaw for the indemnification of its municipal officials against claims for damages and the costs incurred in a legal proceeding arising out of such claim pursuant to the performance of their duties and the conduct of municipal business:

NOW THEREFORE the Council of the District of Barriere, in open meeting assembled, enacts as follows:

1. Title

This bylaw may be cited as “DISTRICT OF BARRIERE INDEMNIFICATION BYLAW 2007 NO. 0003”.

2. Definitions

“District” means the Barriere District Municipality, more commonly known as “District of Barriere”.

“Municipal Official” means

- (a) Member of Council for the District of Barriere;
- (b) members of a commission established by the District;
- (c) members of a select or standing committee of Council who are not also members of Council;
- (d) members of an advisory body of Council;
- (e) volunteers who participate in the delivery of services by the District or a body referred to in subsections (a) through (d) under the supervision of a person referred to in paragraphs (f) or (g);
- (f) an individual employed with the District under a Collective Agreement; and
- (g) those individuals employed by the District who are excluded from the Collective Agreement;

3. Indemnification

The District will:

- (a) indemnify a Municipal Official for any costs reasonably required or incurred to defend an action or prosecution brought against the Municipal Official in connection with the exercise or intended exercise of his or her powers or the performance or intended performance of his or her duties or functions, including amounts required to satisfy a judgment, award or penalty imposed in such an action of prosecution.

- (b) The District will indemnify a Municipal Official for any legal costs reasonably required or incurred in relation to a proceeding that involves the administration of the municipality or the conduct of municipal business.

4. Former Municipal Officials

The terms “Municipal Officials” include persons who are former “Municipal Officials”, as applicable, but only in relation to the exercise of powers of the performance of duties or functions for or on behalf of the District.

5. Exclusions from Indemnification

- (a) Notwithstanding Section 3 and 4 above, the District will not pay or indemnify a Municipal Official for any fine or penalty imposed as a result of the Municipal Official’s conviction for an offense that is not a strict or absolute liability offence.
- (b) Further, Section 3 and 4 above does not apply in any case where the Municipal Official:
 - i. has not acted within the scope of his or her duties;
 - ii. has been grossly negligent or dishonest, or engaged in willful or malicious misconduct; or
 - iii. in the case of an officer or employee, has acted contrary to the terms and conditions of his or her employment, or contrary to law, or has acted contrary to an order given by a person in authority over him or her; or
 - iv. in the case of a Council Member, has acted in a conflict of interest with the District or otherwise not in accordance with his or her duties.
- (c) If a court or tribunal makes a finding listed in subsections 5 (b) i to iv of this bylaw, and the District has already paid the costs or damages of the Municipal Official, the Municipal Official must repay those costs or damages to the District.

6. Indemnification Process

- (a) Where indemnity is or may be claimed under this bylaw by a Municipal Official, the Municipal Official shall, within 7 days of receipt, forward to the Corporate Officer appointed by the Members of Council under section 148 of the *Community Charter*, every statement of claim, writ of summons, information letter, document or advice relating to the claim or prosecution in respect of which the indemnity is or may be claimed.

- (b) Upon Receipt of all information available under section 6 (a) above, the Corporate Officer must make a determination as to whether the Municipal Official is entitled to indemnification pursuant to this bylaw, and in order to make this determination, may request additional information from the Municipal Official, which must be provided to the best of the Municipal Official's knowledge and ability.
- (c) If the Corporate Officer determines that the Municipal Official is entitled to indemnity, pursuant to this bylaw, the Corporate Officer shall proceed to provide the indemnity to the Municipal Official, and report the provision of the indemnity to Council at its next regular meeting or, if necessary, at a special Council meeting.
- (d) Where indemnity is or may be claimed under this bylaw by a Municipal Official, the Municipal Official shall not:
 - i. voluntarily assume any liability, settle any claim, or enter any plea except at his or her own cost, and no indemnification shall be paid in relation to any such assumption of liability, settlement or plea; nor
 - ii. interfere with the District in any negotiation or settlement in any legal proceedings with respect to the claim or prosecution.
- (e) Whenever requested by the District or its legal counsel, a Municipal Official shall:
 - i. assist in securing information and evidence and the attendance of witnesses;
 - ii. give evidence himself or herself; and
 - iii. co-operate with the District in the defense of any action or proceeding or in the prosecution of any appeal taken by the District of behalf of the Municipal Official.
- (f) The District or its insurer will have sole discretion to appoint legal counsel to defend the claim or prosecution.
- (g) It is a condition precedent to the District's liability to indemnify a Municipal Official, as provided in this bylaw, that the Municipal Official shall comply with the provisions of subsections 6 (a), (b), (d), (e) and (f) of this bylaw.

7. Specific Case

Nothing in this bylaw precludes a Municipal Official from applying for indemnification pursuant to Council's jurisdiction under Section 287.2 (2) (b) of the *Local Government Act* for a resolution indemnifying the Municipal Official in a specific case.

PASSED FIRST READING 2007 December 17

PASSED SECOND READING 2007 December 17

PASSED THIRD READING 2007 December 17

ADOPTED January 07, 2008

Mike Fennell

MAYOR

Wayne Vollrath

DIRECTOR,

CORPORATE ADMINISTRATION