Subject: [External] Fw: Indemnity By-law Email
Attachments: Indemnification By-law Comments (03.07.20) (11).docx-1.docx

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Communication
COUNCIL: Mar 11/20
CW Rpt. No. 11 Item 14

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Sent: Sunday, March 08, 2020 10:26 AM
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Subject: [External] Fw: Indemnity By-law Email

Hi all:

Firstly, I would like to thank the City Solicitor and her team for the hard work put into revising the Indemnity By-law. I appreciate that recommendations of this nature are never easy and that much time and effort went into drafting the by-law now before Council for consideration.

Through this communication, I am suggesting several revisions to the by-law which result from a difference of opinion on eight principles that I believe underly the draft by-law (I apologize in advance if I have misstated those principles). Below, I have set out the eight principles that I understand to have been the foundation of the proposed by-law and I have set out my position and/or area(s) of disagreement respecting those principles.

In proposing the revisions in the attached, my intention is to ensure that eligible persons receive the coverage they require to defend themselves to the full extent of the law, within the bounds of the law, and in accordance with the principles of natural justice and procedural fairness, while at the same time, ensuring that the City's financial interests are protected.

I provide the below and the proposed revisions set out in the attached chart with the utmost respect for the work undertaken by the City Solicitor and her team.

- *Principle 1: That the City Solicitor should have the authority to limit the costs associated with mounting a defense on behalf of an eligible person*

  - In my opinion, all eligible persons should have the right to defend themselves to the full extent of the law, so long as the costs associated with the defence are appropriate as determined by an independent person with requisite knowledge to make such a determination.

  - Put another way, it is my belief that the City Solicitor should not have the burden or right to limit the defense that an eligible person can mount by restricting their access to cost recovery; in my opinion, limiting the defence of an eligible person in this manner may run counter to natural justice and procedural fairness.

  - The proposed $25,000.00 cap on legal fees (subject to council approval for more) is unduly low.

  - In saying this, I must note that I believe that it is of the utmost importance to protect the Corporation from runaway legal fees. To address this, I have proposed that if the City Solicitor believes that the fees associated with a legal proceeding are not

reasonable, he/she can refer any invoice received to a Court Assessment Officer, and that if the City Solicitor takes advantage of this option, the Corporation should only be required to pay those fees which are deemed reasonable by a Court Assessment Officer. In Ontario, all persons may apply to the Court to have legal fees assessed by a Court Assessment Officer. This options ensures that an independent person with requisite knowledge determines whether the fees are reasonable or not – should the City Solicitor determine that this is necessary.

- To implement these principles, I am proposing revisions to the following sections: 3(4)(a) and 3(5), 5(5)(a), 5(5)(c), 5(6), 6(1)(a), 6(1)(b), and 6(1)(c).

- *Principle 2: That the City Solicitor should have the authority to choose the lawyer selected by the eligible person and that the default should be that the City Solicitor will take over the defense*

- In my opinion, all eligible persons should have the right to choose the lawyer that will represent them – a lawyer which in their opinion, has the requisite skill, knowledge, and experience to defend them.

- I understand that the right to be represented by the lawyer of your choice is a fundamental tenet of natural justice and procedural fairness.

- I also believe that the City Solicitor (and the City's legal department) should not have the burden of defending the eligible person as this may unduly bog down the legal department which should be focused on defending the interests of the Corporation – not the interests of an eligible person.

- To implement these principles, I am proposing revisions to the following sections: 2(3)(8), 3(7) – 3(9), and 5(1)(a).

- *Principle 3: That the City Solicitor should have the authority to determine whether the act or omission which is the subject of the proceeding was done in good faith prior to the conclusion of the legal proceeding*

- In my opinion, it is not appropriate to put the City Solicitor in the position of having to stand in judgement of the eligible person to determine whether an eligible person, including Members of Council, acted in good faith.

- In my opinion, it runs counter to natural justice and procedural fairness for the City Solicitor to make this decision without the benefit of evidence and submissions by the eligible person. I also believe that requiring the City Solicitor to have to have to receive such submissions and render a decision will unduly burden the City Solicitor and result in unnecessary costs to the Corporation.

- The underlying premise in our justice system is that all are innocent until proven guilty – requiring the City Solicitor to make this determination before the legal proceeding is concluded is unfair both to City Solicitor and the eligible person, and is not in-keeping with the principle that everyone is innocent until proven otherwise.

- Rather, eligible persons should be presumed innocent until proven otherwise and coverage should be provided based on an objective set of criteria – being that the person requesting coverage is an eligible person and the cost recovery must be in relation to a legal proceeding as those terms are defined in the By-law.

- To implement these principles, I am proposing revisions to the following sections: 2(1) and 3(2).

- *Principle 4: That the City Solicitor should have the authority to determine all of the legal steps taken by the eligible person*

- In my opinion, all eligible persons should have the right to defend themselves to the full extent of the law based on the legal advice that they receive from their individual lawyer. Put in another way, the City Solicitor should not be dictating the defence of eligible persons – the eligible person should be dictating their own defence taking into the consideration the advice they receive.

- Further, providing the City solicitor with notice of every legal step taken in order to receive the City Solicitors consent (and therefore cost coverage) may breach solicitor client privilege and is not appropriate. The defense of the eligible person must be governed by the eligible person and their lawyer only, not the City Solicitor, whose interest (the best outcome for the Corporation) may be at odds with the eligible persons best interest. The City solicitor's duty is to the Corporation, not eligible members. It is unfair an improper to require the City Solicitor to serve two masters.

- To implement these principles, I am proposing revisions to the following sections: 6(1)(d), 7, and 8.

- *Principle 5: That the by-law should not cover the eligible person where the interests of the corporation and the eligible person are not perfectly aligned or where the Corporation commenced the proceeding*

- In my opinion, the eligible person should be covered whether or not the interest of the Corporation and the interest of the eligible person are aligned and whether or not the Corporation commenced the proceeding.

- For example, in the Miele case, the City's interest(s) and the interest(s) of many members of council are not perfectly aligned.

- Also, in the case of a conflict of interest complaint, the law now dictates that an application against a member of council may be initiated by the Corporation through the integrity commissioner. This should not stop coverage.

- To implement these principles, I am proposing revisions to the following section: 1(h).

- *Principle 6: That because by-laws of this nature cannot be retroactive, the by-law should only cover those matters where a final decision is not yet issued*

- In my opinion, the by-law can and should cover all matters where a final decision is yet issued and/or where the invoices for legal services remain outstanding.

- To implement these principles, I am proposing revisions to the following section: 10(c).

- *Principle 7: That only the City Solicitor shall have the right to bring matters related to the By-law to Council*

- In my opinion, Members of Council should also be able to bring matters before Council.

- To implement these principles, I am proposing revisions to the following sections: 8(2).

- *Principle 8: That coverage should only be provided if the act or omission which is the subject of the proceeding was done through inadvertence or in good faith*

- In my opinion, this requires a subjective analysis which will complicate when the eligible person can/should be covered.

- To implement these principles, I am proposing revisions to the following sections: 3(4)(b), 5(2), and 5(3)(c).

Based on my difference(s) of opinion on the eight principles as set out above, I have suggested several revisions which are set out in detail in the attached word document which includes a chart that sets out: (i) the section reference, (ii) the suggested revisions to the by-law, and (iii) the detailed reasons for each proposed revisions.

I kindly request that my colleagues on Council and the City Solicitor review the attached document and consider the proposed revisions. I have invested a considerable amount of time considering the draft by-law and proposing the revisions set out in the attached document and I trust that my thoughts on this issue will receive fair and due consideration.

Thank you all.

Respectfully

Mario Ferri

Proposed Revisions:

Subsection	Revision	Reason
1(h) – definition of 'legal proceeding'	Remove: "But excludes" section in its entirety.	The current section excludes the following from coverage: (i) any proceeding commenced by the Corporation; (ii) any proceeding in which the Corporation is a party adverse in interest; (iii) any proceeding where the Corporation's and the Eligible Person's interests conflict; or (iv) any proceeding under the *Municipal Elections Act* • There is no legal requirement to exclude any of the foregoing from coverage; UNREASONABLE AND ARBITRARY LIMITATION OF COVERAGE: • In my view, the proposed limitation of coverage is well beyond what is reasonable or acceptable. The purpose of the indemnification provisions of the Municipal Act is to protect eligible persons against loss due to action or inaction in carrying out their role in their capacity as an Eligible Person. This protection is not limited to only where their interests and the City's interests are aligned, as you will see below. Rather, this section has the effect of deeming otherwise eligible persons ineligible based on a preconceived notion of guilt or wrongdoing which I cannot support; • With respect to (i) above, I have been given to understand that this clause would have the effect of nullifying coverage for many Conflict of Interest proceedings. Respecting Conflict of Interest proceedings, the City through its integrity commissioner is now the one who may make an application against an employee – see section 223.4.1 (15) of the Municipal Act. Under this provision of the by-law, if the integrity commissioner started an application, it is doubtful that the employee would be covered, even if they are found not to have contravened, because this would be a proceeding commenced by the City. I believe that eligible persons must be covered no matter who commences the proceedings, to do otherwise would deem the eligible person to be in the wrong no matter the outcome of the proceeding – this is not just right. It would also stop councillors form being covered where the City

		commences a proceeding and the party who the City commenced the proceeding against, makes a third-party claim against an eligible person. My view is, we must provide coverage, no matter who commences the proceeding. This arbitrary limitation on coverage is unjustified. • With respect to (ii) and (iii) above, these clauses may have the effect of nullifying coverage for many future proceedings. A good example is the current Miele claim against the City and many Councillors where the interests of the councillors in the action may not align with the City. This arbitrary limitation on coverage is unjustified. • With respect to (iv) above, this section should only apply where the proceeding is commenced against the otherwise eligible person when the eligible person is not taking an action in their capacity as an employee or representative of the City. In which case, coverage should not be provided as the eligible person is not acting within their duties as an employee or representative of the City. This exclusion is not required as case law already makes this rule applicable <u>and section 2(1) implements this rule as the action complained of must be taken in his/her capacity as an Eligible Person, which you are not doing if the action was taken as a candidate rather than a councillor for example</u>. Alternatively, this section could be saved so long as subsections (i) – (iii) are deleted in their entirety.
Section 2(1)	Delete the following: (b) acting in good faith and based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation or local board as applicable.	BY-LAWS MUST BE <u>OBJECTIVE</u> NOT SUBJECTIVE: It is my understanding that, by-laws of this type are not permitted to be subjective in Ontario – whereas this section requires a subjective analysis of what was in the mind of the eligible person when the act complained of occurred. This by-law should not put any decision maker, and especially not an employee of the Corporation, in the position that they need to read into the mind of the eligible person. Should the City solicitor be standing in judgement of the eligible person? Is that fair to the City Solicitor? In this case, coverage is only provided if a decision maker makes the <u>subjective</u> determination that the eligible person thought that the act complained of was right without any

		facts or submissions by the eligible person – whereas, a decision of this type is required to be objective. DENIAL OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS: If this section is to remain, natural justice and procedural fairness would require that the eligible person must be given the opportunity to make submissions on this issue – <u>this will complicate this process unnecessarily and bog down staff resources.</u> IMPACT ON CITY RESOURCES: As it is proposed, this would require the City Solicitor to decide whether an action taken was in good faith. This would put him/her in a very precarious situation of judging the veracity of eligible persons intent – including the intent of members of council (who have power over her/his position). This is not a fair position to put the City Solicitor in. In addition, it would require the City Solicitor to review facts, hear submissions on the topic, and render a decision – this will have an impact on City resources which is not required or preferred. LIMITATION ONLY REQUIRED FOR COVERAGE OF INTEGRITY COMMISSIONER: The current by-law limits coverage to acts or omissions made in good faith and based on the reasonable belief that such acts or omissions were lawful and in the best interests of the Corporation. This limitation is only required to apply to the Integrity Commissioner and those officers who act under its instruction(s) pursuant to section 223.6(6) of the Municipal Act. However, in the current by-law, this section applies the limitation to all employees in all legal proceedings even though such limitation is not required.
Section 2(3) – (8)	Delete in its entirety	This section means that an eligible person must be represented by the City unless the City Solicitor thinks the City cannot represent the eligible person. DENIAL OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS: This denies the eligible person their fundamental right embedded in the law of procedural fairness and natural justice to choose their own lawyer. It will also bog down the resources of the City. Eligible persons must, in my opinion, be given the right to select the representation they believe

		best suits them and who has their best interests at heart. What if the eligible person is not happy with the representation or attention they are receiving from the City Solicitor? – In accordance with this section, they would be forced to continue to use the City Solicitor in their defence, or face not having coverage, this is unacceptable. INHERENT CONFLICT OF INTEREST AND IMPROPER ROLE OF THE CITY SOLICITOR: It is generally accepted that the City Solicitor must, in accordance with his/her rules of professional conduct, take in the interests of the Corporation over any eligible person. Therefore, in a vast majority of cases, there will be an inherent conflict of interest if the City Solicitor is charged with defending an eligible person in a proceeding because the City Solicitor's only obligation is to the corporation. A good example is the current Miele claim where the City and many councillor's interests are not aligned. COMPLICATION BECAUSE COUNCIL WILL DIRECT PROCEEDINGS: Since the City Solicitor must act in accordance with direction from council, Council will be conducting the proceeding. IMPACT ON CITY RESOURCES: This will also bog down resources in the City's legal department for individual eligible persons whereas the focus of the City's legal department must be in the furtherance of the City's interests. REQUIRED SHARING OF INFORMATION: Pursuant to section 2(6) eligible persons are required to provide information to the City that they would otherwise only share with their personal representative. Eligible persons should not be required to share personal information with City staff in order to have coverage.
Section 3(2)	Revise section 3(2) as follows: Upon receipt of a request for indemnification, the City	BY-LAWS MUST BE OBJECTIVE NOT SUBJECTIVE: In my opinion, by-laws of this type cannot, and should not be subjective – and the current section requires a

	Solicitor shall provide a written response within 10 business days of delivery of the request. Coverage shall be provided if: (a) the requestor is an Eligible Person; and (b) the coverage requested is a proceeding. Otherwise, coverage shall be denied.	subjective analysis of what was in the mind of the eligible person when the act complained of occurred. BY-LAWS MUST BE CLEAR AND THE APPLICATION MUST BE REPEATABLE – THEREFORE CLEAR AND OBJECTIVE CRITERIA FOR COVERAGE MUST BE SET OUT: I believe that, Indemnification By-laws must have criteria and if met, coverage must be provided. In other words, anyone should be able to review the by-law and determine if they meet the pre-conditions for coverage. This is the case if the criteria to determine coverage is objective. My proposed revisions create an objective set of criteria that can be applied and will result in a repeatable outcome.
Sections 3(4)(a) and 3(5)	Delete in their entirety.	ARBITRARY CAP ON ONES RIGHT TO DEFEND THEMSELVES TO THE FULL EXTENT OF THE LAW: The proposed By-law caps the amount of indemnification to $25,000.00. It seems to me that this is an arbitrary restriction on ones right to defend themselves, especially where their interests are not aligned with the City's (for instance in the Miele Claim) to the full extent of the law in a proceeding and I understand that it is not required by law. Ones ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council. For example, in Miele claim, damages can be substantial if allegations are found to be valid. What if the City chose to limit indemnification to a fraction of the amount needed to cover the cost damages? Should employees be put to this risk? Currently eligible persons could be liable for millions of dollars through no fault of their own. I agree that eligible persons should not be permitted to act unreasonably in their defence and therefore run up improper legal bills. I am given to understand that, this is best addressed through a referral of the bills to an independent person with the requisite qualifications/knowledge to determine if such legal expenses are appropriate. The courts in Ontario already have this function through a 'Court Assessment Officer'. This is a fair and independent way to ensure that eligible persons do not unduly overcharge the City and will effectively reign in legal expenses.

		Section 5(6) ensures the City only pays reasonable legal costs as may be assessed by a Court Assessment Officer and the City will only be responsible for the amount found to be reasonable by this independent person with requisite expertise. Section 5(7) requires monthly invoices so the City Solicitor can determine the appropriateness of the amounts and can refer to the court assessment officer where required. This provides adequate protection for the City from run away legal fees. Section 3(5) is not required if section 3(4)(b) is deleted and therefore, it should be removed if section 3(4)(b) is removed.
Section 3(4)(b)	Revise as follows: (b) the requirement to reimburse the City, as set out in sections 5(2)~~,~~ and 5(3)~~, and 5(4)~~;	As will be discussed below, it is my opinion that section 5(2) is not appropriate as for the reasons set out. Therefore, reference to 5(4) should be deleted simply for to adjust for renumbering when section 5(2) is deleted.
Sections 3(7) – 3(9)	Delete in its entirety.	This section gives the City Solicitor the right to determine who the eligible person chooses to defend him/her or to provide him/her with legal advice. DENIAL OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS: This denies the eligible person their fundamental right embedded in the law of procedural fairness and natural justice to choose their own lawyer. Eligible persons must, in my opinion, be given the right to select the representation they believe has the requisite skill and knowledge, best suites them, and who has their best interests at heart.
Section 5(1)(a)	Delete in its entirety.	This section states that the City will assume carriage of the defence of the eligible person in a proceeding. I object to this section for the same reasons I object to section 3(7) – 3(9). DENIAL OF NATURAL JUSTICE AND PROCEDURAL FAIRNESS: This denies the eligible person their fundamental right embedded in the law of procedural fairness and natural justice to choose their own lawyer. I believe that eligible persons must, be given the right to select the representation they believe best suits them and who has their best interests at heart.
Section 5(2)	Delete in its entirety.	This section states expenses occurred in a Legal Proceeding

		will not be covered if it is determined that the act or omission giving rise to the Legal Proceeding did not [sic]: (b) were not done or not made iin good faith; or (c) were not based on the reasonable belief that such acts or omissions were lawful and in the best interests of the corporation. It is my understanding that in most cases a court in a proceeding will not make this determination. In such a case – who would make the determination? Will the city take part in the hearing to request a court make such determination even where it is not relevant to the proceedings? This section should be removed for vagueness, for the potential financial impact on the City, and for mere impracticality. It is my belief that legal expenses incurred must be covered so long as such coverage does not offend the law. There is no requirement at law to provide for this limitation.
Section 5(3)(c)	Delete in its entirety.	This section states expenses occurred in defence of a code complaint will not be covered if the IC finds a contravention unless it is determined that the violation: (i) occurred through inadvertence; (ii) occurred by reason of a bona fide error in judgement; (iii) the referral was frivolous or vexatious, or (iv) where the investigation is stopped and investigation is terminated. Firstly, subsections 5(2)(c)(iii) and 5(2)(c)(iv) seem to be in error as these are circumstances where, by their very nature, no contravention of the code can be found so they must be deleted for that reason. Respecting subsections 5(2)(c) generally, it is my opinion that legal expenses incurred in defence of a code investigation must be covered, so long as such coverage does not offend the law. There is no requirement at law to provide for this limitation.
Sections 5(5)(a) and 5(5)(c)	Delete in its entirety.	Current section allows City to set budgets capping legal costs. ARBITRARY CAP ON ONES RIGHT TO DEFEND THEMSELVES TO THE FULL EXTENT OF THE LAW: It seems to me that this is an arbitrary restriction on ones right to defend themselves, especially where their interests are not aligned with the City's (for instance in the Miele

		Claim) to the full extent of the law in a proceeding and is not required by law. One's ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council. In this case, it is determined by the City Solicitor or Council because they have the right to deny financial coverage. For example, in the Miele claim, damages can be substantial if allegations are found to be valid. What if the City chose to limit indemnification to a fraction of the amount needed to cover the cost damages? Should employees be put to this risk? Currently eligible persons could be liable for millions of dollars through no fault of their own. I agree that eligible persons should not be permitted to act unreasonably in their defence and therefore run up improper legal bills. In my opinion, this is best addressed through a referral of the bills to an independent person to determine if such legal expenses are appropriate. I understand that the courts in Ontario already have this function through a 'court assessment officer'. This is a fair and independent way to ensure that eligible persons do not unduly overcharge the City and will effectively reign in legal expenses. Section 5(6) ensures the City only pays reasonable legal costs as may be assessed by a Court Assessment Officer and the City will only be responsible for the amount found to be reasonable by this independent person with requisite expertise. Section 5(7) requires monthly invoices so the City Solicitor can determine the appropriateness of the amounts and can refer to the court assessment officer where required. This provides adequate protection for the City from run away legal fees.
Section 5(6)	Add the following to the end of the section: "The Corporation shall have the right to limit the amount which it will reimburse, or provide Advance Payment, to the amount arrived at by the Court Assessment Officer"	This ensures that the City has the authority to limit reimbursements to the amount assessed by a Court Assessment officer. This strengthens the City's control over runaway legal expenses.
Section 6(1)(a)	Delete in its entirety	Current section allows City to set budgets capping legal costs.

		It appears to me that this section allows the City solicitor to deny coverage if the Solicitor does not agree with a legal step taken by the employee. This amounts to permitting the City solicitor to dictate legal steps taken. This section may be inappropriate as it may place the City solicitor in a conflict of interest (where the interests of the City and employee are not the same – for instance in the case of the Miele Claim), and may require the sharing of privileged legal strategy so the City Solicitor can determine the appropriateness of the action taken – this may require that the eligible person to reveal their legal strategy as sharing of this information may be determined to be a waiver of solicitor client privilege. Using the Miele claim as an example, the City Solicitor is required to defend its client (the City) and take all measures legally available to her to defend the City. If this by-law is passed as is, the City Solicitor would be permitted, by law, to limit the defence of the co-defendants by denying coverage of a legal step proposed to be taken which he/she believes is unnecessary, but which the lawyer hired to defend the eligible persons deems to be necessary. There is no appeal of this decision.
Section 6(1)(b)	Delete in its entirety	The current section allows the setting of limits to the City budget thereby capping legal costs. ARBITRARY CAP ON ONES RIGHT TO DEFEND THEMSELVES TO THE FULL EXTENT OF THE LAW: Again this is an arbitrary restriction on ones right to defend themselves, especially where their interests are not aligned with the City's (for instance in the Miele Claim) to the full extent of the law in a proceeding and is not required by law. One's ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council. I agree that eligible persons should not be permitted to act unreasonably in their defence and therefore run up improper legal bills. In my opinion, this is best addressed through a referral of the bills to an independent person to determine if such legal expenses are appropriate. The courts in Ontario already have this function through a 'court assessment officer'. This is a fair and independent way to ensure that eligible persons do not unduly

		overcharge the City and will effectively reign in legal expenses. Section 5(6) ensures the City only pays reasonable legal costs as may be assessed by a Court Assessment Officer and the City will only be responsible for the amount found to be reasonable by this independent person with requisite expertise. Section 5(7) requires monthly invoices so the City Solicitor can determine the appropriateness of the amounts and can refer to the court assessment officer where required. This provides adequate protection for the City from run away legal fees.
Section 6(1)(c)	Delete in its entirety	The current section allows the setting of the City budget thereby capping legal costs. ARBITRARY CAP ON ONES RIGHT TO DEFEND THEMSELVES TO THE FULL EXTENT OF THE LAW: This is an arbitrary restriction on ones right to defend themselves, especially where their interests are not aligned with the City's (for instance in the Miele Claim) to the full extent of the law in a proceeding and is not required by law. Ones ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council. I agree that eligible persons should not be permitted to act unreasonably in their defence and therefore run up improper legal bills. In my opinion, this is best addressed through a referral of the bills to an independent person to determine if such legal expenses are appropriate. The courts in Ontario already have this function through a 'court assessment officer'. This is a fair and independent way to ensure that eligible persons do not unduly overcharge the City and will effectively reign in legal expenses. Section 5(6) ensures the City only pays reasonable legal costs as may be assessed by a Court Assessment Officer and the City will only be responsible for the amount found to be reasonable by this independent person with requisite expertise. Section 5(7) requires monthly invoices so the City Solicitor can determine the appropriateness of the amounts and can refer to the court assessment officer where required. This provides adequate protection for the City from run away legal fees.

Section 6(1)(d)	Delete in its entirety	Requires City approval for an appeal, crossclaim, counterclaim, third-party claim, judicial review, etc. Eligible persons should not be required to get the consent of the City for these matters which are related to receiving the best defence possible. DENIAL OF PROCEDURAL FAIRNESS AND NATURAL JUSTICE: In order to ensure that justice is served, the eligible persons must be permitted to take all legal options they deem necessary in their own defence. To me this provision may act to effectively limit the options one can take. This arbitrary limit is unfair and not required. If the concern meant to be addressed is the legal fees, we can address this in the by-law through the ability to have the fees assessed by a Court Assessment Officer. POTENTIAL FOR CONFLICT: This section is inappropriate, may place the City solicitor in a conflict of interest (where the interests of the City and employee are not the same – for instance in the case of the Miele Claim), and may require the sharing of privileged legal strategy. If, for instance councillors were found to have offended the law in the Miele Claim, but the City was let off, the City Solicitor may be bound by her/his duty to the City to deny the councillors right to appeal, because any such appeal could open the City back up to being found to have been offside.
Section 7	Delete in its entirety	This amounts to permitting the City solicitor to dictate legal steps to taken. DENIAL OF PROCEDURAL FAIRNESS AND NATURAL JUSTICE: Ones ability to defend themselves to the full extent of the law should not be determined by the City Solicitor or Council. Under the MCIA, if a councillor is found to violate and wish to appeal the decision, the City Solicitor should not have the right to deny coverage so the eligible person would be required to pay out of their own expense in order to defend themselves to the full extent of the law. POTENTIAL FOR CONFLICT:

		This section is inappropriate, may place the City solicitor in a conflict of interest (where the interests of the City and employee are not the same – for instance in the case of the Miele Claim), and may require the sharing of privileged legal strategy. If, for instance councillors were found to have offended the law in the Miele Claim, but the City was let off, the City Solicitor may be bound by his/her duty to the City to deny the councillors right to appeal, because any such appeal could open the City back up to being found to have been offside.
Section 8(2)	Revise as follows: "Nothing in this By-law shall prevent the City Solicitor or Member of Council from bringing a report to Council to seek direction on any matter related to indemnification.	This allows a member of council to also bring a matter to council as required.
Section 10(c)	Revise as follows: For ongoing Legal Proceedings in which an Eligible Person was required to retain their own counsel, including Code Complaints filed with the Integrity Commissioner prior to the enactment of this By-law where a final disposition has not been rendered or where final accounts have not been settled, the provision of this By-law will apply.	Extends coverage to those instances where final accounts have not been settled.