

ITEM 6
MANAGER'S REPORT NO. 40
COUNCIL MEETING 92/06/04

TO: MUNICIPAL MANAGER DATE: MAY 25, 1992
FROM: MUNICIPAL SOLICITOR
SUBJECT: INDEMNIFICATION BYLAW
PURPOSE: To obtain Council authority for an amendment to the Bylaw to extend indemnification to certain of the persons listed in section 755.1 of the Municipal Act

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RECOMMENDATION:

That an amendment to Burnaby Indemnification Bylaw be prepared for Council to include persons mentioned in section 755.1 (d), (f), (i), (j) and (k).

R E P O R T

Section 262 of the Municipal Act authorizes council, by bylaw, to indemnify an officer or employee of the municipality or a member of its council against claims for damages arising out of the performance of duties and to pay legal costs arising from the claim. In 1987 the section was amended to include council members and, as well, a subsection was added to include council to extend the protection to the following persons:

- "(d) a member of
- (i) any civic commission under Division (2) of Part 17 [parks commission], or
 - (ii) a library board under the Library Act,
 - (f) a member of an advisory planning commission under section 955,
 - (h) a member of the Islands Trust or Okanagan Basin Water Board,
 - (i) an officer or employee of a municipality, regional district, improvement district, library board under the Library Act, a greater board referred to in paragraph (e) [water, sewer, drainage body] and the Okanagan Basin Water Board,
 - (j) a volunteer fire fighter or a special constable, and
 - (k) any volunteer who participates in the delivery of services by a municipality, regional district or the bodies referred to in paragraphs (c) to (h) under the supervision of an officer or employee of the municipality, regional district or any of these bodies."

The Chief Librarian has requested that indemnification be given to library board members (see paragraph (d) above) and to library employees (paragraph (i)). The Management Committee has recommended that the protection be extended to all persons included in the above list with the exception of paragraph (h), which has no application in Burnaby.

Sections 262 and 755.1 of the Municipal Act are appended for reference.



Patricia W. Fliieger
Municipal Solicitor

PWF:sb
Attach.

c.c. Director Administrative & Community Services
Director Finance
Director Engineering
Director Planning & Building Inspection
Director Recreation & Cultural Services
Chief Librarian

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COUNCIL MEETING 92/06/04

RS CHAP. 290

MUNICIPAL

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Indemnification against proceedings

262. (1) The council may, by a vote of not less than 2/3 of all members, pay a sum required for the protection, defence or indemnification of an officer or employee of the municipality or a member of its council where an action or prosecution is brought against him in connection with the performance of his duties, or where an inquiry under Part 2 of the *Inquiry Act* or other proceeding involves the administration of a department of the municipality or the conduct of a part of the municipal business, and costs necessarily incurred and damages recovered. The council shall not pay a fine imposed on an officer, employee or member of council on his conviction for a criminal offence.

(1.1) A resolution or bylaw under subsection (1) is not invalid by reason only that a member of a council who would be entitled to payment under the resolution, voted on it.

(2) The council may by bylaw provide that the municipality will indemnify an officer or employee of the municipality or a member of its council against a claim for damages against an officer, employee or member of the council arising out of the performance of his duties and, in addition, pay legal costs incurred in a court proceeding arising out of the claim.

(3) The council shall not seek indemnity against an officer, employee or member of council in respect of any action of the officer, employee or member that results in a claim for damages against the municipality, but the council may seek indemnity against an officer, employee or member where the claim arises out of the gross negligence of the officer, employee or member, or where, in relation to the action that gave rise to the claim against an officer or employee, the officer or employee wilfully acted contrary to

- (a) the terms of his employment, or
- (b) an order of a superior.

(4) This section applies to the persons referred to in section 755.1 (2) (d), (f), (h), (i), (j) and (k) as though those persons were officers or employees.

* RS1960-255:196. 1975-47-5. 1987-14-3.

Personal liability of a municipal public officer

755.1 (1) No action for damages lies or shall be instituted against a municipal public officer or former municipal public officer for anything said or done or omitted to be said or done by him in the performance or intended performance of his duty or the exercise of his power or for any alleged neglect or default in the performance or intended performance of his duty or exercise of his power.

(2) In this section "municipal public officer" means

- (a) a member of a council,
 - (b) a director of a regional board,
 - (c) a trustee of an improvement district,
 - (d) a member of
 - (i) any civic commission under Division (2) of Part 17, or
 - (ii) a library board under the *Library Act*,
 - (e) a member of any greater board as defined in section 943 or of any board that provides similar services and is incorporated by letters patent,
 - (f) a member of an advisory planning commission under section 955,
 - (g) a member of a board of variance under section 961,
 - (h) a member of the Islands Trust or Okanagan Basin Water Board,
 - (i) an officer or employee of a municipality, regional district, improvement district, library board under the *Library Act*, a greater board referred to in paragraph (e) and the Okanagan Basin Water Board,
 - (j) a volunteer firefighter or a special constable, and
 - (k) any volunteer who participates in the delivery of services by a municipality, regional district or the bodies referred to in paragraphs (c) to (h) under the supervision of an officer or employee of the municipality, regional district or any of those bodies.
- (3) Subsection (1) does not provide a defence where
- (a) the municipal public officer has, in relation to the conduct that is the subject matter of the action, been guilty of dishonesty, gross negligence or malicious or wilful misconduct, or
 - (b) the cause of action is libel or slander.
- (4) Subsection (1) does not absolve any of the corporations or bodies referred to in subsection (2) (a) to (h) from vicarious liability arising out of a tort committed by any of the individuals referred to in subsection (2) which the corporation or body would have been liable for had this section not been in force.