



STAFF REPORT INFORMATION ONLY

Conflict of Interest Insurance

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| Date: | October 22, 2008 |
| To: | Executive Committee |
| From: | City Manager |
| Wards: | All |
| Reference Number: | P:\2008\Internal Services\Cf\Ec08033Cf – et (AFS #8210) |

SUMMARY

The purpose of this report is to provide information regarding Conflict of Interest insurance coverage for elected officials. Currently the City of Toronto purchases Conflict of Interest insurance as an endorsement to the Public Officials Errors and Omissions liability insurance policy.

Public Officials Errors and Omissions liability insurance provides coverage for liability resulting from errors or omissions in the performance of professional duties. It may also be referred to as the municipal form of directors & officers liability insurance. It applies to elected or appointed officials, officers, members of commissions, boards, units, committees and special purpose bodies operated by and under the jurisdiction of the City of Toronto. The insurance policy also applies to the City's lawyers, architects, engineers and accountants, as well as members of the Toronto Police Service. Endorsement No.1 of this insurance policy is Conflict of Interest Insurance.

Financial Impact

There is no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

City Council on July 15, 16 & 17, 2008 considered the Executive Committee report dated June 6, 2008 from the City Manager and City Solicitor entitled Review of Indemnification Policy for Members of Council and adopted the motion, "The City Manager be requested to canvass the Insurance Industry to determine if conflict of interest insurance is available to elected officials and report to the Executive Committee for its meeting on November 10, 2008."

The City of Toronto includes with the annual purchase of its property and casualty insurance policies, Conflict of Interest Insurance for its elected officials. The current policy term is June 1, 2008 to June 1, 2009.

ISSUE BACKGROUND

The City of Toronto Public Officials Errors & Omissions liability insurance policy Endorsement No.1 called Conflict of Interest Insurance extends coverage to elected officials for allegations that they acted in contravention of the Municipal Conflict of Interest Act. It should be noted that all insurance of this nature is intended to provide defence cost coverage but will exclude coverage where the elected official has been found by the court to have contravened the duties set out in section 5 of the Act.

COMMENTS

The Attachment to this report provides the exact insurance wording of the City's Public Officials Error & Omissions Liability insurance policy, Endorsement No.1, Conflict of Interest Insurance. This includes the insuring agreement, limit of coverage, definitions and exclusions.

The City's Conflict of Interest Insurance protects City Council Members and Members of the City's Local Boards who have been found not to have contravened section 5 of the Act. Section 5 sets out the duty of a Member under the Act. The insurance pays any costs or expenses incurred by the Member as a result of a proceeding brought under the Municipal Conflict of Interest Act. Costs and expenses eligible to be paid by insurance include court awarded costs and fees for solicitors, experts, investigators and consultants. Ineligible amounts include damages, penalties, fines and court assessed amounts such as restitution.

Under the Act, there is a duty on a Council Member to refrain from participation in the decision-making process on any matter before Council if the Member has a direct or indirect pecuniary or financial interest in that matter.

For example a zoning approval including the Member's land would directly affect the Member's pecuniary interest. A Member's indirect pecuniary or financial interest could arise as a shareholder in a corporation that has a direct pecuniary interest in an item to be decided by Council.

Allegations of a Council Member's wrongful decision, error, omission, misstatement or misleading statement, neglect or breach of duties under the Act with respect to declaring a conflict of interest and the subsequent need to defend against such allegations is the protection that is provided under the City's Conflict of Interest Insurance. The insurance indemnifies the Council Member for costs and expenses incurred as a result of proceedings under the Act. Claims covered by City insurance will be handled pursuant to the City's Insurance Claims Administration procedures, as adopted by City Council, with respect to the investigation and assignment of insurance defense counsel.

Insurance coverage is limited to defense costs and excludes indemnification if an elected official is found in breach of the Municipal Conflict of Interest Act by the courts. If insurance coverage is excluded then Council and staff will have to rely upon the current Indemnification Policy for Members of Council to extend assistance.

CONTACT

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Joseph P. Pennachetti
City Manager

ATTACHMENTS

Conflict of Interest Insurance – Insuring Agreement

ATTACHMENT 1

CONFLICT OF INTEREST INSURANCE - INSURING AGREEMENT

Subject to the provisions set out in this Endorsement, ACE INA INSURANCE agrees to:

1. reimburse the Named Insured for the amounts paid by such Named Insured to a Beneficiary hereunder, or
2. at the direction of the Named Insured, reimburse any Beneficiary directly for amounts paid by such Beneficiary; in respect of any specified part of the Costs incurred by the Beneficiary in defense of actual legal proceedings under the Conflict of Interest Act involving the beneficiary, provided such legal proceedings arose out of:
 - (a) Wrongful Acts that occurred prior to the inception of the Policy Period, but which were unknown to the Beneficiary on the inception of the Policy Period and the Beneficiary received notice for the first time of the initiation or existence of legal proceedings under the Conflict of Interest Act during the Policy Period, or
 - (b) Wrongful Acts that occurred within the Policy Period.

Limit of Liability

ACE INA INSURANCE's Limit of Liability respecting coverage afforded under this Endorsement is \$100,000 each claim. The Limit of Liability for this coverage shall be part of and not in addition of the Limits of Liability stated in the Declarations.

Definitions

Wherever used in This Endorsement:

1. "Beneficiary" means any elected or appointed member of the Council of the Named Insured at the time of the event, incident or occurrence out of which the legal proceedings under the Conflict of Interest Act arose.
2. "Costs" means costs awarded against, solicitor and client costs incurred by, and investigative, expert or other consultative expenses incurred by the Beneficiary, but "Costs" does not include any damages, penalties, fines, or similar monetary impositions of any court or any amount to be paid or paid as restitution.
3. "Wrongful Acts" means any act, error, omission, misstatement or misleading statement or neglect or breach of duty of a Beneficiary solely by reason of their having or having had the position or the status of those defined as a Beneficiary.

Exclusions

This insurance does not apply to:

1. acts or omissions of the Beneficiary in contravention of the Criminal Code as determined by court decisions; or
2. proceedings under the Municipal Conflict of Interest Act, 1983, where there is no finding by the court that the Beneficiary has not contravened Section 5 thereof.

