

THE CORPORATION OF THE
T O W N O F P E L H A M
BY-LAW NO 4143 (2019)

**Being a by-law to provide for the Indemnity and
Defence of Employees of The Corporation of the
Town of Pelham Against Liability Incurred While
Acting on Behalf of the Municipality**

WHEREAS Section 279 of the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended, states Council may pass By-Laws for paying any damages or costs awarded against any of the employees or expenses incurred by them as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as employees including while acting in the performance of any statutory duty or for paying any sum required in connection with the settlement of an action or other proceeding and for assuming the cost of defending any such person in such an action or other proceeding;

**NOW THEREFORE COUNCIL OF THE CORPORATION OF THE
TOWN OF PELHAM ENACTS AS FOLLOWS:**

DEFINITIONS

1. In this By-Law unless contrary intention appears:
 - (a) "Action" or "Proceeding" means an action or proceeding referred to in Section 5, but does not include an action or proceeding referred to in Section 3;
 - (b) "CAO" means the Chief Administrative Officer or the Acting Chief Administrative Officer of The Corporation of the Town of Pelham;
 - (c) "Clerk" means the Town Clerk or their designate;
 - (d) "Corporation" means The Corporation of the Town of Pelham;
 - (e) "Council" means the Council of the Corporation;
 - (f) "Employee" means any salaried officer, or any other person in the employment of the Corporation or of a Local Board thereof and shall, for the purposes of this By-Law only, include volunteers that provide services on behalf of the Corporation of a Local Board, acting under the direction of a person employed by the Corporation, thereof without remuneration, exclusive of reimbursement of expenses or honoraria;
- and

- (g) “Local Board” means any board, commission, committee, body or local authority established by the Corporation to exercise any power or authority with respect to any of the affairs or purposes of the Corporation, including the Pelham Library Board, but shall not include any boards established by the Regional Municipality of Niagara or a school board or conservation authority.

FORMER EMPLOYEES

2. This By-Law applies to any person who was an Employee at the time the cause of action or other proceeding arose, but who prior to judgment or other settlement of the action or proceeding has ceased to be an employee.

EXCLUDED ACTIONS AND PROCEEDINGS

3. This By-Law does not apply to:
- (a) an action or proceeding where the legal proceeding related to an employee grievance or to disciplinary action taken by the Corporation as an employer;
 - (b) an action or proceeding resulting from any dishonest, gross negligence, malicious, willful misconduct or reckless violation of any law, duty, contract, or obligation, fraudulent or criminal act committed by the Employee;
 - (c) an action or proceeding resulting from an Employee gaining a personal profit or advantage to which he or she was not legally entitled;
 - (d) an action or proceeding involving sexual misconduct;
 - (e) an action or proceeding commenced under the *Highway Traffic Act*, R.S.O. 1990, c H.8, as amended, the *Criminal Code*, R.S.C. 1985, c. C46, as amended, the *Controlled Drugs and Substances Act*, S.C. 1996, as amended, or municipal parking and traffic by-laws, unless the CAO determines that Sections 5 (a) or 5(b) of this By-Law apply;
 - (f) an action or proceeding commenced by the Corporation against the Employee.

IF CAO IS EMPLOYEE

4. If the Employee seeking relief is the current CAO, Council shall designate one of the Clerk, the Treasurer or the Human Resource Coordinator to carry out the duties under this By-law assigned to the CAO; however, any decisions that the CAO would make under the By-law are to be made by Council.

INDEMNIFICATION

5. The Corporation shall indemnify an Employee, their heirs and legal representatives in the manner and to the extent provided by Section 6, in respect of any civil, criminal or administrative action or proceeding by a third party for acts or omissions arising out of the scope of the Employee's authority or within the course of the Employee's employment or office, including acting in the performance of any statutory duty, if in the opinion of the CAO:
 - (a) he or she acted honestly and in good faith with a view to the best interests of the Council or the Corporation;
 - (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Employee had reasonable grounds for believing their conduct to have been lawful.

MANNER OF INDEMNIFICATION

6. The Corporation shall indemnify a person referred to in Section 5 by:
 - (a) assuming the cost of defending such person in an action or proceeding;
 - (b) paying any damages or costs, including a monetary penalty, awarded against such person as a result of an action or proceeding;
 - (c) paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such person as a result of an action or proceeding; and,
 - (d) paying any sum required in connection with the settlement of an action or proceeding;

to the extent that such costs, damages, expenses or sums are not assumed, paid or reimbursed under any provision of the Corporation's insurance for the benefit and protection of such person against any liability incurred by him or her.

APPEALS

7. Where an Employee who received indemnification as set out in Section 6 of this By-Law seeks to appeal a judgement in an action or proceeding, the Corporation shall have sole discretion to determine whether indemnification shall be extended by the Corporation for the purposes of the appeal. If an Employee pursues an appeal without indemnification by the Corporation and is successful in that appeal, the Corporation shall have the sole discretion to determine whether the Employee will be indemnified for his or her legal costs.
8. In exercising discretion under Section 7, Council shall consider the factors set out in Section 5.

PERSONS SERVED WITH PROCESS

9. Where a person referred to in Section 5 is served with any process issued out of or authorized by any court, administrative tribunal or other administrative, investigative or quasi-judicial body, whether or not the Employee is named a party, in connection with any action or proceeding, the Employee shall:
 - (a) unless he or she is a Director, forthwith deliver the process or a copy thereof to the Director of the department for which the Employee works, who in turn shall deliver a copy thereof to the CAO; or,
 - (b) if he or she is a Director, deliver the process or a copy thereof to the CAO;
 - (c) if he or she is the CAO, deliver the process or a copy thereof to the Clerk and inform Council;

- (d) in the event the Employee fails to give such notice or deliver such documents to the CAO within 30 days of receipt of such notice or such document, no indemnity will be provided to the Employee pursuant to this By-law, absent extenuating circumstances.

LAWYER RETAINED BY CORPORATION'S INSURERS

10. Notwithstanding any other provision of this By-Law to the contrary, any lawyer retained by the Corporation's insurers from time to time to defend the Corporation in any action or proceeding may represent a person referred to in Section 5 with respect to that action or proceeding unless the Corporation advises such person otherwise.

TOWN'S RIGHT TO SELECT LAWYER

11. The Corporation shall have the right to select and retain the lawyer to represent a person referred to in Section 5 and the CAO shall:
- (a) advise such person of the lawyer representing him or her;
 - and
 - (b) advise the Council of the disposition of the matter.
12. The CAO shall have the right to approve any settlement of any Action or Proceeding.

DUTY TO CO-OPERATE

13. A person referred to in Section 5 involved in any Action or Proceeding shall co-operate fully with the Corporation and any lawyer retained by the Corporation to defend such action or proceeding, shall make available to such lawyer all information and documents relevant to the matter as are within the knowledge, possession or control of such person, and shall attend at all proceedings when requested to do so by such lawyer.

FAILURE TO COMPLY WITH BY-LAW

14. If a person referred to in Section 5 fails or refuses to comply with the provisions of this By-Law, the Corporation shall not be liable to assume or pay any of the costs, damages, expenses, or sums mentioned in Sections 6 or 7 of this By-Law.

CONFLICT

15. The Corporation typically maintains a policy of insurance for both the Corporation and its Council, officers, and employees and the provisions of this By-Law are intended to supplement the protection provided by such policies of insurance. In the event of conflict between this By-Law and the terms of any such policy of insurance in place from time to time, the terms of such policy or policies of insurance shall prevail.

EXECUTIVE ACTS AUTHORIZED

16. The CAO and Clerk are hereby authorized and directed to do all the things necessary, including executing any necessary documents under the seal of the Corporation, to give effect to this By-Law according to its true intent and meaning.

REIMBURSEMENT

17. Where the Employee has been so indemnified by the Corporation, the amount of the indemnification shall be reduced by the amount of any costs or damages recovered and where indemnification has been paid, any costs or damages recovered shall first be paid to the Corporation up to the amount of the indemnification.

PARAGRAPHS

18. Paragraph titles are for guidance in locating paragraphs only and are not to be relied on for interpretation of the By-Law.

TITLE

19. The short title of this By-Law is the "Employee Indemnification By-Law".

SEVERABILITY

20. If any section or sections of this By-Law or parts thereof be found by any court to be illegal or beyond the power of Council to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this By-Law shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found and this By-Law shall be enacted as such.

REPEALS

21. This By-Law supersedes any corresponding By-Laws of the Corporation which, through inadvertence, might not have been repealed.

COMMENCEMENT

22. This By-law 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.

READ, ENACTED, SIGNED AND SEALED THIS 12th DAY OF August, 2019

Mayor, Marvin Junkin

Nancy J. Bozzato, Town Clerk