

THE CORPORATION OF THE  
T O W N O F P E L H A M  
BY-LAW NO 4144 (2019)

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

**WHEREAS** by Section 279 of the *Municipal Act, 2001*, S.O. 2001, Chapter 25, as amended, Council may pass By-Laws for paying any damages or costs awarded against any members of the Council or expenses incurred by them as a result of any action or other proceeding, except a proceeding brought under the *Municipal Conflict of Interest Act*, R.S.O. 1990, c M.50, as amended, arising out of acts or omissions done or made by them in their capacity as members or officers of the municipality or the local board, 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 member 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 4, 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) “Member of Council” means an elected member of Council or an appointed member of Council pursuant to Section 263 (1) (a) of the *Municipal Act*, 2001, S.O. 2001, c 25, as amended.

### **FORMER MEMBERS OF COUNCIL**

2. This By-Law applies to a person who was a Member of Council 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 a Member of Council.

### **EXCLUDED ACTIONS AND PROCEEDINGS**

3. This By-Law does not apply to an action or proceeding:
- (a) under the *Municipal Conflict of Interest Act*, as amended;
  - (b) under the *Municipal Elections Act*, as amended, if the Member of Council has been found to have committed bribery or a corrupt practice;
  - (c) under the *Criminal Code* if the Member of Council has been found to have contravened Sections 122, 123, 124, or 125 of the Code R.S.C. 1985, c. 46, as amended;
  - (d) for libel or slander if the defamation has been proven against the Member of Council and the Member of Council has been found to have used the occasion for some purpose other than that for which qualified privilege is accorded by law;
  - (e) 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 Member of Council;
  - (f) involving sexual misconduct;
  - (g) an action or proceeding commenced under the *Highway Traffic Act*, R.S.O. 1990, c H.8, the *Controlled Drugs and Substances Act*, S.C. 1996, as amended, or municipal parking and traffic by-laws.
  - (h) an action or proceeding commenced by the Corporation against the Member of Council.

## **INDEMNIFICATION**

4. The Corporation shall indemnify a Member of Council and their heirs and legal representatives in the manner and to the extent provided by Section 5, 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 Member of Council's authority or within the course of the Member of Council's employment or office, including acting in the performance of any statutory duty, if:
  - (a) the Member of Council acted honestly and in good faith with a view to the best interests of the Council or the Corporation; and
  - (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Member of Council had reasonable grounds for believing their conduct was lawful;
  - (c) a request for indemnification is made to the CAO or Clerk in writing; and
  - (d) the request is made in a timely fashion, typically less than 30 days.

## **MANNER OF INDEMINIFCATION**

5. The Corporation shall indemnify a person referred to in Section 4 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 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 them.

## **APPEALS**

6. Where a Member of Council who received indemnification as set out in Section 4 of this By-Law seeks to appeal a judgement in an action or proceeding, the Council shall have sole discretion to determine whether indemnification shall be extended by the Corporation for the purposes of the appeal. If a Member of Council pursues an appeal without indemnification by the Corporation and is successful in that appeal, the Council shall have the sole discretion to determine whether the Member of Council will be indemnified for his or her legal costs.
7. In exercising discretion under Section 6, the Council shall consider the factors set out in Section 4.

## **PERSONS SERVED WITH PROCESS**

8. Where a person referred to in Section 4 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 Member of Council is named a party, in connection with any action or proceeding, the Member of Council shall deliver the process or a copy thereof to the CAO and/or Clerk.

## **LAWYER RETAINED BY CORPORATION'S INSURERS**

9. 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 4 with respect to that action or proceeding unless the Corporation advises such person otherwise.

### **TOWN'S RIGHT TO SELECT LAWYER**

10. The Corporation shall have the right to select and retain the lawyer to represent a person referred to in Section 4 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.
11. Council shall have the right to approve any settlement of any Action or Proceeding.

### **DUTY TO CO-OPERATE**

12. A person referred to in Section 4 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**

13. If a person referred to in Section 4 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 5 or 6 of this By-Law.

### **CONFLICT**

14. 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.

### **COUNCIL DISCRETION TO EXTEND COVERAGE**

15. The express provisions of this By-law shall not limit or preclude Council from exercising its otherwise existing discretion to extend indemnification of the nature set out in Sections 4 in circumstances deemed appropriate by the Council.

### **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 Member of Council 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 "Council 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

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Mayor, Marvin Junkin

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Nancy J. Bozzato, Town Clerk