

**The Corporation of the City of Pembroke**

**By-Law Number 2023-81**

**A by-law to adopt an Indemnification Policy for the Corporation of the City of Pembroke**

**Whereas**, the *Municipal Act, 2001*, as amended, provides that a municipality has the capacity, rights, powers, and privileges of a natural person for the purpose of exercising its authority under the Municipal Act or any other Act; and

**Whereas**, the *Municipal Act, 2001, as amended*, provides that powers of a municipal corporation are to be exercised by its council through the adoption of by-laws; and

**Whereas** the Council of the Corporation of the City of Pembroke deems it expedient to adopt an Indemnification Policy.

**Now Therefore** the Municipal Council of the Corporation of the City of Pembroke enacts as follows:

1. That the Indemnification Policy, attached hereto and marked as "Schedule "A", to this by-law be hereby adopted.
2. That this by-law shall come into force and take effect upon the date of the final passing thereof.

**Passed and enacted this 7<sup>th</sup> Day of November 2023**

Ron Gervais  
Mayor

Heidi Martin  
Clerk

## Indemnification Policy

### 1. Policy Statement and Purpose

The policy has been established to address indemnification needs of Council Members, Board Members, Employees and Volunteers of the City of Pembroke. It is the intention of Council that this Policy serve to supplement (and not to substitute or replace) the protection provided by the policies of insurance of the City of Pembroke.

### 2. Scope

To put in place and maintain appropriate protections against personal liability, and, subject to certain limitations, have the City act as an insurer and protect present and former members of Council, Board Members, Employees, Volunteers, and Officers from risks that may involve pecuniary loss or liability on the part of those individuals.

### 3. Definitions

**Action or Proceeding** means an action or proceeding referred to in Section 4.4, but does not include an action or proceeding referred to in Section 4.2.

**CAO** means the Chief Administrative Officer of the City of Pembroke or their designate.

**Clerk** means the Clerk of the City of Pembroke or their designate.

**Corporation** means the Corporation of the City of Pembroke.

**Council** means the Council of the Corporation of the City of Pembroke.

**Indemnified Person** means an employee, volunteer, or Member approved for indemnification under this Policy.

**Integrity Commissioner** means any person or corporation appointed by the City of Pembroke to perform the functions assigned by Section 223.3 of the *Municipal Act, 2001, S.O. 2001, c.25*, as amended, or by the Code of Conduct for Council, as amended from time to time, or any person acting under the instructions of the Integrity Commissioner.

**Member** means a Member of the Council of the City of Pembroke and a Member of any Statutory Board or Statutory Committee of the City of Pembroke and any former Member of Council or of any Statutory Board or Statutory Committee.

**Statutory Board or Statutory Committee** means any board or committee of Council established or required by any Act of the Province of Ontario or whose members are appointed by City By-law.

### 4. Policy Requirements

#### 4.1 Current and Former Employees, Volunteers, and Members

This policy applies to any person who is or was an employee, volunteer, or Member at the time the action or proceeding arose, and includes Indemnified Persons who prior to judgement or other settlement of the action or proceeding had ceased to be an employee or member.

## 4.2. Excluded Actions and Proceedings

### 4.2.1 This policy does not apply to:

- a. An action or 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, grossly negligent, malicious, willful or reckless violation of any law, duty, contract, or obligation, or any fraudulent or criminal act committed by the employee or Member;
- c. An action or proceeding resulting from an employee or Member gaining a personal profit or advantage to which he or she was not legally entitled;
- d. An action or proceeding involving sexual misconduct, where the employee or member was found guilty;
- 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 4.4.1(a) or 4.4.1(b) of this policy apply;
- f. An action or proceeding commenced by the Corporation against the employee, volunteer or Member;
- g. An action under the Council Code of Conduct where the Council Member has been found by the Integrity Commissioner to have been in breach of any provisions of the Council Code of Conduct;
- h. An action where adverse parties in civil proceedings would be entitled to funding for defense costs under this policy, it being the policy of the City that it shall not finance both sides of an Action or Proceeding and that neither party should receive indemnification in such circumstances.

4.2.2 Where Council has determined that a Member of Council is not entitled to indemnification, the Member of Council shall be responsible for all costs, damages, penalties, and legal fees in connection with representation in the Action or Proceeding.

## 4.3. If CAO is Employee

If the employee seeking relief is the current CAO, Council shall designate either the Clerk or Treasurer to carry out the duties under this Policy assigned to the CAO; however, any decisions that the CAO would make under this Policy are to be made by Council.

## 4.4 Manner and Extent of Indemnification

4.4.1 The Corporation shall indemnify an employee, volunteer, or Member, their heirs and legal representatives in the manner and to the extent provided in this Section, 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, volunteer's, or Member's authority or within the employee's employment or Members duties of office, including acting

in the performance of any statutory duty related to the City of Pembroke, if in the opinion of the CAO:

- a. They 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 the employee, volunteer, or Member had reasonable grounds for believing their conduct to have been lawful.

4.4.2 Where an employee, volunteer, or Member is entitled to indemnification under this Policy, in a covered action or proceeding, the City shall:

- a. Pay the costs of defending such employee, volunteer or Member;
- b. Pay any award of damages or costs, including any monetary penalty or award against such employee, volunteer or Member;
- c. Pay, either by direct payment or reimbursement, any expenses reasonably incurred by the employee, volunteer or Member; and
- d. Pay any sum required in connection with the settlement of a covered action or proceeding, provided that as a condition precedent, the CAO has approved the terms of settlement.

To the extent that such costs, damages, expenses, monetary penalty, other award or other sums related to the covered action or proceeding are not assumed, paid or reimbursed under any provision of the City's insurance program for the benefit and protection of such person against any liability incurred by him or her.

4.4.3 Notwithstanding any other provision of this Policy, the Council may, by resolution, choose not to indemnify an employee, volunteer or Member. Council by resolution, may also cease to indemnify an Indemnified Person if it has commenced to do so if:

- a. The Indemnified Person breaches any provision of this Policy or any agreement for indemnification or reimbursement entered into by the Indemnified Person, at any time;
- b. The Indemnified Person or their legal counsel took a step which was unnecessary or otherwise prejudicial to the conduct of the covered action or proceeding;
- c. The Indemnified Person initiated a counterclaim, cross claim, third party claim, appeal or other proceeding related to the covered action or proceeding for which the indemnity or reimbursement was sought, without first obtaining approval from the CAO.

#### 4.5 Agreement

4.5.1 Advise the employee, volunteer, or Member that they will need to enter into an agreement with the City to govern the terms of the retainer, disclosure, attendance, retainer limit, etc., and

4.5.2 Where the City has paid for the legal costs, or any portion thereof, to defend an employee, volunteer, or Member in an Action and the indemnification is subsequently terminated or rescinded the employee,

volunteer or Member in an Action and the indemnification is subsequently terminated or rescinded, the employee, volunteer or Member shall be responsible for all costs in connection with their defence of the Action and shall be responsible for the payment of the Damages or costs awarded against them in the Action. The employee, volunteer or member shall also be liable to repay to the City, upon written demand, all costs incurred by the City in the defence of the Action on behalf of the employee, volunteer or Member.

#### 4.6 Lawyer Retained by Corporation's Insurers

Notwithstanding any other provision of this Policy 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 an employee, volunteer, or Member with respect to that action or proceeding unless the Corporation advises such person otherwise.

#### 4.7 Corporation's Right to Select Lawyer

- 4.7.1 The Corporation shall have the right to select and retain the lawyer to represent an employee, volunteer or Member in a covered action or proceeding and the CAO shall:
- a. Advise such employee, volunteer or Member of the Lawyer representing him or her;
    - i. If the employee, volunteer, or Member wishes to retain their own lawyer, the City will have the right to govern the terms of the retainer as outlined in the agreement;
  - b. Advise the employee, volunteer or Member of the upset limit on costs, as identified by Council, being indemnified;
  - c. Advise the employee, volunteer, or Member that they will need to enter into an agreement with the City to govern the terms of the retainer, disclosure, attendance, etc.; and
  - d. Advise Council of the disposition of the matter.

#### 4.8 Duty to Co-Operate

- 4.8.1 An Indemnified Person shall co-operate fully with the Corporation in the management of any covered action or proceeding.
- 4.8.2 An Indemnified Person shall co-operate fully with any legal counsel retained by the Corporation to defend any covered action or proceeding and shall make available to such legal counsel all information and documentation relevant to the matter as are within his or her knowledge, possession, or control, and shall attend at all proceedings when requested to do so by such legal counsel.

#### 4.9 Failure to Comply

If an Indemnified Person fails to comply with the provisions of this Policy, or any agreement entered into by the Indemnified Person for indemnification or reimbursement, the Corporation shall not be liable to assume or pay any costs, damages, expenses, or sums mentioned in this policy.

#### 4.10 Appeal

Where an Indemnified Person who received indemnification as set out in this Policy 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 Indemnified Person 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, volunteer or Member will be indemnified for his or her legal costs.

#### 4.11 Conflict

The Corporation maintains various policies of insurance for both the City and its employees, volunteers, and Members. The provisions of this Policy are intended to supplement the protection provided by such policies of insurance. In the event of conflict between this Policy and the terms of any such policy of insurance in place from time to time, the terms of such policy of policies of insurance shall prevail.

#### 4.12 Reimbursement

Where the employee, volunteer or Member is to be indemnified by the City, the amount of the indemnity shall be reduced by the amount of any costs recovered by the employee, volunteer or Member and where the indemnity has been paid, any costs recovered by the employee, volunteer or Member shall be paid or assigned by the City up to the amount of the indemnity.

### 5. Authority

Section 279 of the *Municipal Act, 2001 S.O. 2001, c. 25*, as amended, provides that a municipality may, subject to certain limitations, act as an insurer and protect present and former members of Council, Board Members, Employees and Officers from risks that may involve pecuniary loss or liability on the part of those individuals.

### 6. Monitoring

The CAO will cause this policy to be periodically reviewed and updated as required.

### 7. Contact

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