

# **THE CORPORATION OF THE MUNICIPALITY OF LAMBTON SHORES**

## **BY-LAW NUMBER 20 OF 2022**

### **BEING A BY-LAW TO PROVIDE INDEMNIFICATION FOR MEMBERS OF COUNCIL, BOARDS AND EMPLOYEES WITH RESPECT TO CERTAIN ACTIONS OR PROCEEDINGS ARISING FROM THEIR DUTIES**

**WHEREAS** s. 279(1) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, states that despite the Insurance Act, a municipality may be or act as an insurer and may exchange with other municipalities in Ontario reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the Insurance Act with respect to the following matters:

1. Protection against risks that may involve pecuniary loss or liability on the part of the municipality or any local board of the municipality.
2. The protection of its employees or former employees or those of any local board of the municipality against risks that may involve pecuniary loss or liability on the part of those employees.
3. Subject to section 14 of the Municipal Conflict of Interest Act, the protection of the members or former members of the council or of any local board of the municipality or any class of those members against risks that may involve pecuniary loss or liability on the part of the members.
4. Subject to section 14 of the Municipal Conflict of Interest Act, the payment of any damages or costs awarded against any of its employees, members, former employees or former members 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 or members, including while acting in the performance of any statutory duty.
5. Subject to section 14 of the Municipal Conflict of Interest Act, the payment of any sum required in connection with the settlement of an action or other proceeding referred to in paragraph 4 and for assuming the cost of defending the employees or members in the action or proceeding.

**AND WHEREAS** s. 448(1) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, states that no proceeding for damages or otherwise shall be commenced against a member of council or an officer, employee or agent of a municipality or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this Act or a by-law passed under it or for any alleged neglect or default in the performance in good faith of the duty or authority.

**AND WHEREAS** s. 448(2) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, states that s. 448(1) does not relieve a municipality of liability to which it would otherwise

be subject in respect of a tort committed by a member of council or an officer, employee or agent of the municipality or a person acting under the instructions of the officer, employee or agent.

**AND WHEREAS** s. 14(1) of the Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50, as amended, states that despite section 279 of the Municipal Act, 2001, the council of every municipality may at any time pass by-laws, (a) for contracting of insurance; (b) despite the Insurance Act, to enable the municipality to act as an insurer; and (c) for exchanging with other municipalities in Ontario reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the Insurance Act; to protect a member of the council or of any local board thereof who has been found not to have contravened section 5, 5.1 or 5.2, against any costs or expenses incurred by the member as a result of a proceeding brought under the Municipal Conflict of Interest Act, and for paying on behalf of or reimbursing the member for any such costs or expenses.

**THEREFORE** the Council of the Municipality of Lambton Shores enacts as follows:

## **1. SHORT TITLE**

1.1 This by-law may be cited as the “Indemnification By-law” for the Municipality of Lambton Shores.

## **2. DEFINITIONS**

2.1 In this by-law:

- (a) “Act” means the Municipal Act, 2001, S.O. 2001, c. 25, as amended.
- (b) “Action or Proceeding” means an action or proceeding referred to in Section 4.1 of this by-law.
- (c) “Board” means a local board of the Municipality, as defined in the Act.
- (d) “Council” means the Council of the Municipality of Lambton Shores.
- (e) “Employee” means any salaried officer, or any other person in the employ of the Municipality, or of a Board, and includes persons that provide their services on behalf of the Municipality without remuneration, exclusive of reimbursement of expenses or honoraria, provided that such persons are appointees of the Municipality or volunteers acting under the direction of a person in the employ of the Municipality.
- (f) “Former Employee” means a person who was formerly an employee of the Municipality of Lambton Shores or a Board.
- (g) “Former Member” means a person who was formerly a Member.
- (h) “Individual” means an Employee, Former Employee, Member or Former Member who is subject to indemnification pursuant to the provisions of this by-law.

- (i) "Member" means a person who is a member of the Council or a Board.
- (k) "Municipality" means The Corporation of the Municipality of Lambton Shores.
- (j) "Solicitor" means the Solicitor for the Municipality.

### **3. EXCLUSIONS**

3.1 This by-law does not apply to:

- (a) an Action or Proceeding where the legal proceeding relates to a grievance filed under the provisions of a collective agreement or to disciplinary action taken by the Municipality as an employer ;
- (b) an Action or Proceeding arising from a Code of Conduct enacted pursuant to section 223.2 of the Act;
- (c) an Action or Proceeding resulting from any dishonest, bad faith, fraudulent or criminal act committed by an Individual, including abuse of public office, but this exclusion does not apply to any other individual who did not participate in such act or who did not have personal knowledge thereof;
- (d) an Action or Proceeding resulting from an Individual gaining a personal profit or advantage to which he or she was not legally entitled, or the return by the Individual of any money paid to him or her, if payment of such money is held to be in violation of law;
- (e) an Action or Proceeding relating to conduct which falls outside the scope of the Individual's duty or authority, unless the individual was acting in good faith and held an honest and reasonable belief that the conduct was within his or her duty or authority and was in the best interest of the Municipality;
- (f) an Action or Proceeding involving sexual misconduct;
- (g) any expenses incurred by a Member in obtaining legal advice to determine whether the Member has a pecuniary interest in a matter which is the subject of a determination or consideration by Council or a Board as defined herein; and
- (h) any indemnification which is otherwise covered by insurance provided to the Municipality or the individual by any policy of insurance. Where partial coverage is provided, the indemnification pursuant to this by-law shall only extend to that portion not covered by insurance.

### **4. INDEMNIFICATION**

4.1 Subject to the exclusions set out in Section 3 of this by-law, the Municipality shall indemnify an Individual in the manner and to the extent provided by Section 5 of

this by-law in respect of any civil or administrative action or proceeding, including appeals, by a third party for:

- (a) acts or omissions arising out of the scope of the Individual's authority or duty or within the course of an Individual's employment or office if:
  - (i) the Individual was acting within the individual's scope of authority or duty;
  - (ii) the Individual acted honestly and in good faith; and
  - (iii) in the case of administrative action or proceeding, that is enforced by a monetary penalty, the Individual had reasonable grounds for believing that his or her conduct was lawful;
- (b) acts or omissions relating to the conduct which falls outside of the Individual's duty or authority, provided that:
  - (i) the Individual was acting in good faith and held an honest and reasonable belief that the conduct was within his or her duty or authority and was in the best interest of the Municipality; and
  - (ii) in the case of administrative action or proceeding, that is enforced by a monetary penalty, the Individual had reasonable grounds for believing that his or her conduct was lawful.

4.2 In the event that any determination is required as to whether an Individual meets the requirements of this section, the Solicitor shall provide a legal opinion in that regard, including advice on any terms and conditions that should apply to the indemnification of an Individual.

## **5. MANNER AND EXTENT OF INDEMNIFICATION**

5.1 The Municipality shall indemnify an Individual who meets the requirements of Section 4.1 of this by-law by:

- (a) assuming the cost of defending such Individual in an Action or Proceeding;
- (b) paying any damages or costs, including a monetary penalty, awarded against such Individual as a result of an Action or Proceeding;
- (c) paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such Individual 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 Municipality's Insurance program for the benefit and protection of such Individual against any liability incurred by such Individual.

## **6. PERSONS SERVED WITH PROCESS**

- 6.1 Where an Individual is served with any process issued out of or authorized by any court, administrative tribunal or other administrative, investigative or quasi-judicial body, other than a subpoena, in connection with any Action or Proceeding the Individual shall forthwith deliver the process or a copy thereof to the Chief Administrative Officer, who in turn shall deliver a copy thereof to the Solicitor.

## **7. LAWYERS RETAINED BY MUNICIPALITY'S INSURERS**

- 7.1 Notwithstanding any other provision of this by-law to the contrary, any lawyer retained by the Municipality's insurers from time to time to defend the Municipality in any Action or Proceeding shall represent an Individual with respect to that Action or Proceeding unless the Municipality instructs such Individual otherwise.

## **8. MUNICIPALITY'S RIGHT TO SELECT LAWYER**

- 8.1 Subject to Section 12 of this by-law, the Municipality shall have the right to select and retain the lawyer to represent an Individual and the Chief Administrative Officer shall:
- (a) advise such Individual of the lawyer selected to represent them; and
  - (b) advise the Council of the final disposition of the matter.

## **9. CONDUCT OF DEFENSE**

- 9.1 Where possible, the Municipality's Solicitor shall conduct the defence of such Actions or Proceedings. In exceptional circumstances the use of the Solicitor may not be possible, and subject to Sections 7, 8 and 13 of this by-law, outside legal counsel may be retained having regard to:
- (a) whether the Solicitor has the required expertise;
  - (b) whether the Solicitor can provide the commitment of time and resources which is required; and
  - (c) whether the Solicitor is (are) or may be in a conflict of interest situation by virtue of conducting the defence of the Individual.

## **10. SETTLEMENT**

- 10.1 Council shall have the right to approve the settlement of any Action or Proceeding.

## **11. APPROVAL OF OTHER LAWYER**

- 11.1 Subject to the provisions of this Section, an Individual may request approval to be represented by the lawyer of the Individual's choice by writing to the Chief Administrative Officer.
- 11.2 The Chief Administrative Officer shall, within ten (10) days from receiving the request, either approve the request or deny the request and nominate a lawyer of the Municipality's choice as determined by the Chief Administrative Officer and, in either case, advise the Individual in writing of such decision.
- 11.3 If, after ten (10) days from receiving the request, the Chief Administrative Officer has not advised the Individual in writing of the disposition of his or her request, the Individual may retain his or her choice of lawyer to act on his or her behalf until the Municipality retains another lawyer to represent the Individual, and shall forthwith so advise the Chief Administrative Officer in writing of any such retainer.
- 11.4 If the Municipality retains another lawyer to act on behalf of an Individual in place of the lawyer originally retained by him or her in accordance with Section 11.3 of this by-law, the Municipality shall, subject to the *Solicitors Act*, pay to the Individual's lawyer originally retained pursuant to Section 11.3 of this by-law, all of the reasonable legal fees and disbursements for services rendered and work done in connection with the Action or Proceeding from the time they were retained by the Individual, until replaced by the lawyer retained by the Municipality.

## **12. DUTY TO CO-OPERATE**

- 12.1 An Individual involved in any Action or Proceeding shall co-operate fully with the Municipality, the Chief Administrative Officer and any lawyer retained by the Municipality to defend such Action or Proceeding, shall make available to the Chief Administrative Officer or such lawyer 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 the Chief Administrative Officer or such lawyer.

## **13. FAILURE TO COMPLY WITH BY-LAW**

- 13.1 If an Individual fails or refuses to comply with the provisions of this by-law, the Municipality shall not be liable to assume or pay any of the costs, damages, expenses or sums arising from the Action or Proceeding and shall not be subject to the requirements of Sections 4 or 5 of this by-law.

## **14. CONFLICT**

- 14.1 The Municipality maintains many different policies of insurance for both the Municipality, Members and Employees. 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 such policy of insurance in place

from time to time, the terms of such policy or policies of insurance shall prevail.

## **15. APPEALS**

- 15.1 Where an Individual seeks to appeal a judgment in a covered Action or Proceeding, the Municipality shall have the sole discretion to determine whether an appeal should be pursued, and whether the cost of the appeal will be covered by this by-law. If an Individual pursues an appeal without representation by the Municipality and is successful in that appeal, the Municipality shall have the sole discretion to determine whether the Individual shall be indemnified for his or her legal fees.

## **16. REIMBURSEMENT**

- 16.1 Where an Individual is indemnified pursuant to the provisions of this by-law, the amount of the indemnity shall be reduced by the amount of any costs recovered by the Individual and where the indemnity has been paid, any costs recovered by the Individual shall be paid or assigned to the Municipality up to the amount of the indemnity.

## **17. SEVERABILITY**

- 17.1 If any sections, section or part of a section of this by-law are found by any Court to be illegal or beyond the power of Council to enact, such sections or section or part of a section shall be deemed to be severable and all other sections or parts of sections of this by-law shall be deemed to separate and independent and shall continue in full force and effect.

## **18. FORCE AND EFFECT**

- 18.1 This by-law shall come into full force and effect upon the final passing thereof.

**READ A FIRST, SECOND AND THIRD TIME, AND FINALLY PASSED** this 5<sup>th</sup> day of April, 2022.

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Mayor

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Clerk