

**VILLAGE OF PORT CLEMENTS
BYLAW #472, 2022**

A BYLAW FOR THE INDEMNIFICATION OF MUNICIPAL OFFICIALS

WHEREAS the Council for the Village of Port Clements may, pursuant to section 187 of the *Community Charter* and section 740 of the *Local Government Act*, provide by bylaw for the indemnification of its municipal officials to defend against an action or prosecution brought against them pursuant with the exercise or intended performance of their duties or functions in the conduct of Village business;

NOW THEREFORE, the Council for the Village of Port Clements, in open meeting assembled, enacts as follows:

1. CITATION

- 1.1 This bylaw shall be cited for all purposes as "Municipal Officials Indemnification Bylaw #472, 2022"

2. DEFINITONS

- 2.1 "**Council**" refers to the Council of the Village of Port Clements
- 2.2 "**Village**" or "**Municipality**" means the Village of Port Clements.
- 2.3 "**Municipal Official**" means a person defined as such in section 740.1 of the *Local Government Act*.
- 2.3.1 A current or former council member
- 2.3.2 A current or former municipal officer or employee, or
- 2.3.3 A person who is or was a person referred to in section 738(1) of the *Local Government Act* [immunity for individual municipal local public officers], but only in relation to the exercise of powers or the performance of duties or functions for or on behalf of the municipality.
- 2.3.4 But does not include an independent service provider, professional advisor or contractor engaged by the Village from time to time on a fee for service basis.
- 2.4 "**CAO**" means the Chief Administrative Officer of the Village as appointed by Council under the *Community Charter* or the person Acting in this position.
- 2.5 "**Indemnify**" has the meaning under section 740 of the *Local Government Act*, which is the payment of amounts required or incurred:
- 2.5.1 To defend an action or prosecution brought against a person in connection with the exercise or intended exercise of the person's powers or the performance or intended performance of the person's duties or functions.
- 2.5.2 To satisfy a judgement, award or penalty imposed in action or prosecution referred to in 2.5.1, or

2.5.3 In relation to an inquiry under the Public Inquiry Act, or to another proceeding, that involves the administration of the municipality or the conduct of municipal business.

2.6 “malicious or willful misconduct” in relation to a municipal official, includes, without limitation, willfully or maliciously acting contrary to the terms and conditions of his or her employment or to a lawful direction or order of a superior.

2.7 Words importing the singular include the plural and vice versa, and words importing a male person include a female person and vice versa.

3. INDEMNITY

3.1 The Village will indemnify its Municipal Officials for any costs reasonably required or incurred:

3.1.1 To defend an action or prosecution brought against a person in connection with the exercise or intended exercise of the person’s powers or the performance or intended performance of the person’s duties or functions.

3.1.2 To satisfy a judgement, award or penalty imposed in action or prosecution referred to in 3.1.1, or

3.1.3 In relation to an inquiry under the Public Inquiry Act, or to another proceeding, that involves the administration of the municipality or the conduct of municipal business.

4. EXCLUSIONS FROM INDEMNITY

4.1 Despite Section 3 above, the Village will not pay or indemnify a Municipal Official for any fine or penalty imposed as a result of the Municipal Official's conviction for an offense that is not a strict or absolute liability offence.

4.2 Further, Section 3 does not apply if the Municipal Official:

4.2.1 Has acted dishonestly or has been grossly negligent; or

4.2.2 Has been guilty of malicious or willful misconduct.

4.3 If a court or tribunal makes a finding listed in subsection 4.2 of this bylaw, and the Village has already paid the costs or damages of the Municipal Official, the Municipal Official must repay those costs or damages to the Village.

5. INDEMNIFICATION PROCESS

5.1 The Village will indemnify its municipal officials against an action or prosecution brought against a municipal official, including, for certainty, reasonable legal costs incurred in relation to the proceeding, if the person to be indemnified:

5.1.1 Promptly, within 7 days of receipt, after being served with a document initiating an action or prosecution delivers a copy of the same to the CAO;

- 5.1.2 Does not admit or assume liability, enter into a settlement, or enter a guilty plea except with the approval of Council;
- 5.1.3 Consents in writing to the Village having sole discretion to appoint and instruct legal counsel, conduct all necessary investigations, to negotiate and settle the action or prosecution, provided that if the person believes they have an interest that is in conflict with the interest of the Village the person is entitled to independent legal counsel; and
- 5.1.4 Assists in providing and securing information, evidence, and witnesses, and cooperates with the Village and their legal counsel in the defence of the action or prosecution.

5.2 If the Municipal Official is entitled to indemnity, under this bylaw, the CAO shall report the provision of the indemnity to Council at its next in-camera meeting or, if necessary, at a special in-camera Council Meeting.

6. SPECIFIC CASE

6.1 Nothing in this bylaw precludes a Municipal Official from applying for indemnification pursuant to Council's jurisdiction under section 740.2.a of the *Local Government Act* for a resolution indemnifying the Municipal Official in a specific case.

7. REPEAL

7.1 Bylaw No. 310, 2000 cited as "Council Members, Officers and Employees Indemnification Bylaw #310, 2000" is hereby repealed.

READ A FIRST TIME THIS 17 DAY OF JANUARY 2022

READ A SECOND TIME THIS 17 DAY OF JANUARY 2022

READ A THIRD TIME THIS 17 DAY OF JANUARY 2022

FINALLY PASSED AND ADOPTED THIS 7 DAY OF FEBRUARY 2022

Elizabeth
 on behalf of
 Elsie Lemke
 Chief Administrative Officer
 as Acting CAO.

Doug L. R. Dargatzis
 Doug Dargatzis
 Mayor

D
 CERTIFIED A TRUE COPY OF
 "Municipal Officials Indemnification Bylaw #472, 2022"