

**THE CORPORATION OF THE TOWNSHIP OF EMO  
BY-LAW NO. 2021-21**

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**BEING A BY-LAW TO PROVIDE FOR INDEMNIFICATION**

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**WHEREAS** Section 279(1) of the *Municipal Act, 2001, as amended*, provides that a municipality may be or act as an insurer 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; and
- 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** Section 14(1) of the *Municipal Conflict of Interest Act* provides that councils may pass by-laws to enable the municipality to act as an insurer 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 of the *Municipal Conflict of Interest Act* against any costs or expenses incurred by the member as a result of a proceeding brought under that legislation, and for paying on behalf of or reimbursing the member for any such costs or expenses in that regard; and

**WHEREAS** paragraph 278(1)(b) of the *Municipal Act, 2001* defines "employee" and authorizes a municipal council to pass by-laws designating certain persons or classes of persons as employees for the purposes of insurance; and

**WHEREAS** it is advisable to protect Members of Council and Employees of the Corporation who are acting in good faith and within the scope of their duties against pecuniary losses, liabilities, risks, costs and expenses that relate to their offices or arise because of their being, or having been, Members or Employees;

**NOW THEREFORE** the Council of The Corporation of the Township of Emo hereby **ENACTS AS FOLLOWS:**

**1. DEFINITIONS**

In this By-Law, unless a contrary intention appears,

- 1.1 "Act" means the *Municipal Act, 2001, S.O. 2001, c.25, as amended*;
- 1.2 "By-Law" means this By-Law, as may be amended from time to time;
- 1.3 "CAO" means the person within the Corporation's employ who holds the title of "Chief Administrative Officer", including that person's designate;

- 1.4 "Claimant" means a Member or Employee who claims coverage pursuant to this By-Law;
- 1.5 "Corporation" means The Corporation of the Township of Emo;
- 1.6 "Corporation's Legal Counsel" means legal counsel employed or retained to represent the interests of the Corporation, including such counsel's designates;
- 1.7 "Council" means the elected Municipal Council for the Corporation;
- 1.8 "Employee" means a person who is a salaried officer, or any other person in the employ of the Corporation, and includes a Former Employee;
- 1.9 "Former Employee" means a person who was formerly an Employee of the Corporation;
- 1.10 "Former Member" means a person who was formerly a Member of Council of the Corporation;
- 1.11 "Local Board" means a local board as defined in subsection 278(1) of the *Municipal Act, 2001*;
- 1.12 "Member" means a person who is a Member of the Council of the Corporation and includes a Former Member;
- 1.13 "Proceeding" means any civil, criminal or administrative action or proceeding initiated, or claim made, by a Third Party arising out of acts or omissions done or made (or alleged to be done or made) by a Claimant acting in the Claimant's capacity as a Member or Employee or as a result of the Claimant having status as a Member or Employee;
- 1.14 "Third Party" means any person or authority, including the Crown, other than:
  - (i) the Corporation;
  - (ii) a Member or Employee when acting in the person's capacity as such;
  - (iii) a Local Board, person or authority in circumstances where the Corporation provides protection against risks related to the Proceeding in question or for whose acts or omissions the Corporation may be vicariously liable, as determined by the CAO.

## 2. INTERPRETATION RULES

In this By-Law,

- 2.1 wherever this By-Law refers to a person or thing with reference to gender or the gender neutral, the intention is to read the By-Law with the gender applicable to the circumstances;
- 2.2 references to items in the plural include the singular, as applicable;
- 2.3 the words "include", "including", "included" or "includes" are not to be read as limiting the phrases or descriptions that precede or follow them; and
- 2.4 headings are inserted for ease of reference only and are not to be used as interpretation aids.

### 3. STATUTES

- 3.1 Unless otherwise defined, specific references to statutes in this By-Law are printed in italic font and are meant to refer to the current statutes applicable within the Province of Ontario as at the time this By-Law was enacted, as they are amended and revised from time to time.

### 4. INDEMNITY FOR MEMBERS

- 4.1 The Corporation shall, subject to the provisions of this By-Law, indemnify a Member who was acting in good faith and within the scope of such Member's duties at all material times, in the manner and to the extent provided herein in respect of any Proceeding brought against such Member by a Third Party and arising out of acts or omissions done or made (or alleged to have been done or made) by such Member in such Member's capacity as a Member or by reason of such person being a Member, including, without limitation:
- 4.1.1 while acting in the performance of any statutory duty; and
  - 4.1.2 while being or acting as an appointee, nominee, delegate, Member, officer or in any other capacity on a Local Board, Committee, Corporation, Association or other body pursuant to the direction, request or other authority of the Corporation.
- 4.2 Subject to the provisions of this By-law, the Corporation shall indemnify a Member by:
- 4.2.1 assuming the cost of defending the Member in the Proceeding;
  - 4.2.2 paying any fines, monetary penalties, damages or costs imposed on or awarded against that Member as a result of a Proceeding;
  - 4.2.3 paying, either by direct payment or reimbursement, any expenses reasonably incurred by that Member as a result of the Proceeding;
  - 4.2.4 paying any sum required in connection with the settlement of a Proceeding.
- 4.3 In the case of a Proceeding under the *Municipal Conflict of Interest Act*, the following shall apply:
- 4.3.1 the indemnity is limited to the costs and expenses reasonably incurred by the Member as a result of the Proceeding brought under that statute;
  - 4.3.2 the Member is not entitled to any indemnity unless such Member is found not to have contravened section 5, 5.1 or 5.2 of that statute;
  - 4.3.3 legal counsel approved by the CAO shall be retained by the Member directly; and
  - 4.3.4 no payment or liability shall be made or assumed by the Corporation unless and until the condition in clause 4.3.2 hereof has been met.

### 5. INDEMNITY FOR EMPLOYEES

- 5.1 The Corporation shall, subject to the provisions of this By-Law, indemnify an Employee who was acting in good faith and within the scope of such

Employee's duties at all material times, in the manner and to the extent provided herein, in respect of a Proceeding brought against such Employee by a Third Party and arising out of acts or omissions done or made (or alleged to have been done or made) by such person as an Employee or by reason of such Employee being or having been an Employee, including while acting in the performance of a statutory duty.

5.2 Subject to the provisions hereof, the Corporation shall indemnify an Employee by:

5.2.1 assuming the cost of defending the Employee in the Proceeding;

5.2.2 paying any fines, monetary penalties, damages or costs imposed on or awarded against the Employee as a result of the Proceeding;

5.2.3 paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such Employee as a result of the Proceeding;

5.2.4 paying any sum required in connection with the settlement of the Proceeding.

## 6. INDEMNITY – OTHER

6.1 In addition to the persons covered in sections 4 and 5 of this By-law, the Corporation may:

a) on a case by case basis;

b) in the Corporation's sole and absolute discretion;

provide indemnity to any person to whom the Corporation is authorized under sections 278 to 280 of the *Municipal Act, 2001* to provide indemnity and to do so in accordance with the provisions of this By-law or as otherwise stipulated by the Corporation.

6.2 With respect to a proceeding that is brought against a Member or Employee by a person who is not a Third Party, the Corporation may:

a) on a case by case basis; and

b) in the Corporation's sole and absolute discretion;

provide indemnity to such Member or Employee in accordance with the provisions of this By-law or as otherwise stipulated by the Corporation.

## 7. EXCLUSIONS

7.1 The obligations of the Corporation in this By-Law shall not apply:

7.1.1 where the proceeding has arisen out of the dishonest, fraudulent or malicious act of the Claimant, or the Claimant's willful or reckless violation of any law, duty, contract or obligation;

7.1.2 where the Claimant is acting or proceeding in a manner that is contrary to a decision or position of the Corporation;

7.1.3 where the Claimant has failed to comply with the provisions of this By-Law, unless strict compliance has been waived by a Resolution of the Council;

- 7.1.4 to the extent by which the Corporation is prejudiced, where the claim is of a nature covered by an insurance policy or indemnity, whether placed or provided by the Corporation, the Claimant, a Local Board or otherwise, and there has been a policy violation or other act on the part of the Claimant prejudicing the right of indemnity under that policy or other right of indemnity;
- 7.1.5 to any Claimant in respect of whom the Corporation has agreed to provide indemnity under a collective agreement or employment agreement and the rights of such persons and any union, association or other organization representing them shall be governed solely by such agreement and not by any of the provisions of this By-Law, whether or not such agreement extends to any or all of the indemnities or other protections provided for in this By-Law.
- 7.1.6 to any Claimant in respect of whom any person, including but not limited to, any body referred to in Section 4.1.2 of this By-law, has provided indemnity under an insurance policy, directly or otherwise to the extent of the indemnity or coverage so provided.
- 7.2 The liability of the Corporation under this By-Law shall be reduced by the amount of indemnity paid pursuant to an insurance policy or indemnity as referred to in section 7.1.4 or 7.1.6 of this By-Law and, at the reasonable request of the Corporation, the Claimant shall assign to the Corporation such person's rights pursuant to that insurance policy or indemnity and to any amount payable under it.
- 7.3 Notwithstanding that the Corporation may have assumed the defence of any proceeding or the cost thereof, it shall be deemed to have reserved its rights with respect to the applicability of any exclusion under this By-Law.
- 7.4 The Corporation may waive the reservation of rights referred to in Section 7.3, subject to such conditions as the Corporation deems appropriate in the circumstances.
- 7.5 The provisions of this By-Law are intended to supplement the protection provided by policies of insurance. For purposes of clarity, there is no entitlement to any coverage under this By-law when the Claimant has or had insurance coverage pursuant to an insurance policy, whether placed or provided by the Corporation, the Claimant, a Local Board or otherwise, with respect to the proceeding and coverage under any policies of insurance that the Claimant may have in respect of such proceeding must first be exhausted before any right to indemnity under this By-law may be triggered.

## **8. LIMIT OF COVERAGE**

- 8.1 Subject to Section 14.3, the maximum amount for which the Corporation may be liable hereunder (inclusive of claims, costs, expenses and any other amount) shall not exceed \$100,000 in respect of any claim or combination of claims arising under the same circumstances, made against a Claimant.

## **9. IF CAO IS CLAIMANT**

- 9.1 If the current CAO is:

- (i) the Claimant, or
- (ii) directly or indirectly affected by any matter governed by this By-law, including, without limitation, as a party, witness, officer or employee of the Corporation, or in his or her personal capacity, to a material

extent as determined by Council in its sole and absolute discretion;

Council may designate another person to carry out the relevant duties under this By-Law assigned to the CAO, however, any decisions that the CAO would otherwise make under this By-Law relating to such claim or matter shall be made by Council.

## **10. NOTICE TO CORPORATION**

- 10.1 A Claimant shall promptly give written notice to the CAO of any threatened or actual Proceeding. Where a Claimant is served with any process or notice with respect to a Proceeding, the Claimant shall immediately deliver the original or a true copy of the document to the CAO. If the Claimant is the CAO, delivery shall be made by the CAO to the Deputy Clerk who shall forthwith advise the Council.
- 10.2 A Claimant shall, concurrently with giving notice under section 10.1 of this By-Law, provide the CAO or, in the case of the CAO being the Claimant, the Deputy Clerk, with full written particulars of any other insurance or indemnity providing coverage to the Claimant.
- 10.3 In the event that a Claimant fails to give such notice or deliver such document or provide such full written particulars as provided in Subsections 10.1 and 10.2 within 30 days of the receipt of such notice or document by the Claimant, no indemnity will be provided to a Claimant pursuant to this By-Law.

## **11. DETERMINATION OF COVERAGE**

- 11.1 Subject to sections 6, 7.1.3 and 9 of this By-law, the CAO shall determine, in the CAO's sole and absolute discretion, whether or not a Claimant is covered under the provisions of this By-law.
- 11.2 In the event that a Claimant commences a legal proceeding to enforce a claim for indemnity under this By-Law, such legal proceeding must be commenced within 90 days of receipt of the final decision made by the CAO or Council, as the case may be, pursuant to this By-Law and if not commenced within such period any such claim shall be forever barred.

## **12. LEGAL COUNSEL**

- 12.1 The Corporation's Legal Counsel may, in appropriate cases, provide representation to a Claimant at the cost of the Corporation and the Corporation may take general carriage of the proceeding where the Corporation and the Claimant are both parties to the Proceeding and it is in the interests of the Corporation to do so.
- 12.2 The Corporation may apply for party, intervenor or other status in any proceeding with which a Claimant is or may be involved if to do so is in the interests of the Corporation, and the Corporation's Legal Counsel may, in proper cases, also represent the Claimant, or take general carriage of any such proceeding, at the cost of the Corporation.
- 12.3 Despite any other provision of this By-Law, any Legal Counsel retained by the Corporation's Insurer to defend a proceeding shall also represent the Claimant with respect to that proceeding unless the Corporation requires or consents, in writing, to the retainer of different Legal Counsel.
- 12.4 Except as otherwise provided in this By-Law, the Corporation shall have the right to select and retain Legal Counsel to represent the Claimant in any proceeding.

- 12.5 Notwithstanding section 12.4, a Claimant for whom the Corporation has decided to provide coverage under this By-law may request, in writing, approval of the CAO of Legal Counsel of the Claimant's own choice to represent such Claimant in a Proceeding, and such a request shall include the name and contact information of such Legal Counsel, together with a statement of such Legal Counsel's rates, fees, charges and experience.
- 12.6 The CAO of the Corporation shall, within 10 working days from receiving the request under section 12.5, in the CAO's sole and absolute discretion, approve the request or deny the request and appoint Legal Counsel of the Corporation's choice and, in either case, advise the Claimant in writing.
- 12.7 If, after 10 days from receiving the request, the CAO has not advised the Claimant in writing of the disposition of the request, the Claimant may retain Legal Counsel to act on such Claimant's behalf until the Corporation retains other Legal Counsel.
- 12.8 Subject to the requirements of the Law Society of Ontario, all Claimant Legal Counsel in any Proceeding shall cooperate fully with, and provide all relevant information to, the Corporation's Legal Counsel.
- 12.9 Unless otherwise agreed to by the CAO, Legal Counsel retained by the Claimant shall render detailed accounts to the Claimant on a monthly basis for all services rendered in the immediately preceding month, and shall deliver such statements of account to both the Claimant and the CAO. Upon approval of such accounts by the Claimant and the CAO, the Corporation shall pay such accounts. Legal accounts may, at the request of the Corporation or the Claimant, be submitted for assessment in accordance with the *Solicitors Act* and the Corporation shall not be liable for payment of an account which has been assessed, unless it has been given notice of and the full opportunity to participate in the assessment process.
- 12.10 If the Corporation retains other Legal Counsel to act on behalf of the Claimant in place of the Legal Counsel originally retained by the Claimant in accordance with the provisions of this By-Law, the Corporation shall, subject to the *Solicitors Act*, pay to the Claimant's Legal Counsel all of such Legal Counsel's reasonable legal fees and disbursements from the time that the Claimant retained the Legal Counsel until replaced by Legal Counsel retained by the Corporation.

### 13. COSTS

- 13.1 No costs, expenses or other liability shall be incurred or assumed on behalf of the Corporation under any circumstances without the prior written approval of the CAO, or pursuant to a by-law or resolution of Council, as the case may be.
- 13.2 Where the Corporation has provided indemnity to a Claimant pursuant to this By-Law and costs are awarded in favour of that Claimant in the Proceeding, the Claimant shall assign the amount of the costs award and the right to collect it to the Corporation.

### 14. SETTLEMENTS

- 14.1 The Corporation, at its option, shall have the right at its own expense to investigate any claim and may negotiate the settlement of any claim, or any aspect of any claim, including any non-monetary terms of settlement, as it deems expedient but the Corporation shall not commit the Claimant to any settlement without the Claimant's consent, unless the failure to settle results or may result in any continuing liability, including but not limited to vicarious liability, to which the Corporation may be exposed, but

which would have been released by such settlement. In that case, the Corporation has the right to settle the claim to the extent required to obtain a release of the Corporation and any other person to whom the Corporation provides indemnity from liability and to decline indemnity of the Claimant if the Claimant fails to join in the implementation of the settlement as may be required by the Corporation.

- 14.2 If the Claimant's consent is required and the Claimant refuses to consent to any settlement recommended by the Corporation, and the Claimant elects to contest the claim or continues to defend the Proceeding in connection with such claim, then, subject to the provisions of this By-Law, including, without limitation section 14.1, the Corporation's limit of liability for the claim or for indemnity of the Claimant shall not exceed the amount for which the claim could have been settled, including costs, charges and expenses incurred with the Corporation's consent up to the date of the refusal of the Claimant to settle.
- 14.3 In the event that the Corporation elects to reject a settlement and elects to contest the claim or continue any Proceeding in connection with such claim and the rejected settlement was within the maximum limit of liability provided for in this By-Law, the Corporation shall be liable for any amount awarded against the Claimant in excess of the maximum otherwise applicable.

## **15. COOPERATION**

- 15.1 A Claimant shall at all times cooperate fully with the Corporation and the Corporation's Legal Counsel and shall make available to the Corporation's Legal Counsel all information and documents relevant to the matter as are within the Claimant's knowledge, possession or control. A Claimant shall not do anything to compromise or prejudice the position of the Corporation in the Proceeding. A Claimant shall attend at all Proceedings, and all meetings related to the Proceedings, when required to do so by operation of law or when requested to do so by the Corporation's Legal Counsel or CAO.

## **16. RIGHTS TO TERMINATE OR AMEND**

- 16.1 The Corporation shall be entitled to terminate or change its obligations under this By-Law by repealing or amending the By-Law or, on a case by case basis, increasing the limit of coverage otherwise available or providing coverage hereunder or as otherwise stipulated by the Corporation in a circumstance where a Claimant would not otherwise be entitled to coverage under the provisions of this By-law, provided that the repeal or amendment of this By-Law shall not prejudice the rights of a Claimant in respect of any Proceeding that was commenced prior to the repeal or amendment.

## **17. BY-LAW NOT TO HAVE RETROACTIVE EFFECT**

- 17.1 This By-Law only applies to claims for indemnity respecting Proceedings which are commenced after the effective date of this By-Law. It does not apply to Proceedings that were commenced, continued or concluded prior to its coming into effect.

## **18. APPEALS**

- 18.1 Where an individual seeks to appeal a judgment in a covered proceeding, the Corporation shall have the sole and absolute discretion to determine whether an appeal should be pursued, and whether the cost of the appeal will be covered by this By-Law. If a Claimant pursues an appeal without



representation by the Corporation and is successful in that appeal, the Corporation may in its sole and absolute discretion, indemnify the Claimant for the Claimant's legal costs.


**19. SHORT TITLE**

19.1 This By-law shall be known as the "Indemnification By-law".

**20. EFFECTIVE DATE**

20.1 This By-Law shall come into force and take effect on the date of its final passing.

**THIS BY-LAW READ A FIRST, SECOND AND THIRD TIME IN OPEN COUNCIL AND FINALLY PASSED THIS 18<sup>TH</sup> DAY OF NOVEMBER, 2021**

  
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Mayor

  
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CAO/Clerk-Treasurer