

THE CITY OF KENORA

BY-LAW NO. 4-2005

LEGAL INDEMNIFICATION BY-LAW

WHEREAS by Section 279 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, Council may pass By-laws for paying any damages or costs awarded against the members of the Council or of any local board thereof or expenses incurred by them as a result of any action or other proceeding, but subject to s. 14 of the *Municipal Conflict of Interest Act*, arising out of acts or omissions done or made by them in their capacity as members of Council or officers of the municipality or 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 person in such an action or other proceeding;

AND WHEREAS by Section 280 of the *Municipal Act*, 2001, as amended, Council may pass By-laws to protect employees of a municipality against risks that may involve liability on the part of the employee and for paying any damages or costs awarded against the employees or expense incurred by the employee as a result of any action or other proceeding arising out of acts or omissions done or made by the employee in their capacity as employee, 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 the employee in such an action or other proceeding;

NOW THEREFORE the Council of the City of Kenora enacts as follows:

DEFINITIONS

1. In this By-law, unless a contrary intention appears:
 - (a) “action or proceeding” means an action or proceeding referred to in Section 4:
 - (b) “City” means the City of Kenora”:
 - (c) “employee” means any salaried officer, or any other person in the employ of the City or any a local board thereof and shall, for the purpose of this By-law only, include persons that provide services on behalf of the City or a local board thereof without remuneration, exclusive or reimbursement of expenses or honoraria, all members of City Council, and includes the heirs and legal representatives of any such person. Further, “employee” also includes any of the above-noted persons who were employed by the former Town of Kenora, Town of Keewatin, and Town of Jaffray Melick.
 - (d) “local board” means a local board as defined in the *Municipal Affairs Act*, R.S.O. 1990 Chap. M.46, as amended, as far as applicable to the City.

FORMER EMPLOYEES

2. This By-law applies to any person who was an employee 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 an employee.

EXCLUDED ACTIONS AND PROCEEDINGS

3. This By-law does not apply to an action or proceeding:
 - (a) arising out of an act or omission done or made before December 15, 1978;
 - (b) where the legal proceeding relates to a grievance filed under the provisions of a collective agreement or to disciplinary action taken by the City as an employer;
 - (c) under the Municipal Conflict of Interest Act, if a member has been found to have contravened Section 5 of the Act, other than through inadvertence or by reason of a bona fide error in judgment;
 - (d) under the Municipal Elections Act, if the member has been found to have committed bribery or a corrupt practice or to have otherwise contravened any of the provisions of the Act;
 - (e) under the Criminal Code if the member has been found to have contravened Sections 122, 123, 124 or 125 of the Code, R.S.C. 1985, c. 46, as amended;
or
 - (f) for libel or slander if the defamation has been proven against the member and the member has been found to have used the occasion for some purpose other than that for which qualified privilege is accorded by law.

INDEMNIFICATION

4.
 - (1) The City shall indemnify an employee in the manner and to the extent provided by Section 5 in respect of any civil, criminal or administrative action or proceeding, including appeals, by a third party for acts or omissions arising out of the scope of the employee's authority or within the course of the employee's employment or office if
 - (a) the employee acted honestly and in good faith with a view to the best interests of the City: and
 - (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the employee had reasonable grounds for believing that his or her conduct was lawful.

- (2) In the event that any determination is required as to whether an employee meets the requirements of this Section, the Chief Administrative Officer, shall obtain the advice and assistance of a qualified and independent solicitor, including advice on any terms and conditions that may apply to the indemnification of an employee.

MANNER AND EXTENT OF INDEMNIFICATION

5. The City shall indemnify a person who meets the requirements of 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 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 City's insurance program for the benefit and protection of such person against any liability incurred by him or her.

PERSONS SERVED WITH PROCESS

6. Where an employee 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 employee shall:
 - (a) unless he or she is the head of a department, forthwith deliver the process or a copy thereof to the head of the department for which the employee works or to a person designated by the department head to receive such process, who in turn shall deliver a copy thereof to the Chief Administrative Officer; or
 - (b) if he or she is the head of a department or a member of City Council, forthwith deliver the process or a copy thereof to the Chief Administrative Officer.

LAWYER RETAINED BY CITY'S INSURERS

7. Notwithstanding any other provision of this By-law to the contrary, any lawyer retained by the City's insurers from time to time to defend the City in any action or proceeding shall represent an employee with respect to that action or proceeding unless the City instructs such person otherwise.

CITY'S RIGHT TO SELECT LAWYER

8.

- (1) Subject to Section 12 and to Subsection (2) hereof, the City shall have the right to select and retain the lawyer to represent an employee and the Chief Administrative Officer shall:
 - (a) advise such person of the lawyer selected to represent the employee; and
 - (b) advise the Council of the final disposition of the matter.
- (2) The City shall have the right to approve the settlement of any action or proceeding in accordance with the provisions of the City's Purchasing Policies.

APPROVAL OF OTHER LAWYER

9.

- (1) Subject to the provisions of this section, an employee may request approval to be represented by the lawyer of his or her choice by writing to the Chief Administrative Officer.
- (2) The Chief Administrative Officer shall within 10 days from receiving the request, either approve the request or deny the request and nominate a lawyer of the City's choice and, in either case, advise the employee in writing of such decision.
- (3) If, after 10 days from receiving the request, the Chief Administrative Officer has not advised the employee in writing of the disposition of his or her request, the employee may retain his or her choice of lawyer to act on his or her behalf until the City retains another lawyer to represent the employee, and shall forthwith so advise the Chief Administrative Officer in writing of any such retainer.

- (4) If the City retains another lawyer to act on behalf of an employee in place of the lawyer originally retained by him or her in accordance with subsection (3), the City shall, subject to the *Solicitors Act*, pay to the employee's lawyer all of the reasonable legal fees and disbursements for services rendered and work done in connection with the action or proceeding from the time that the employee retained the lawyer in accordance with Subsection (3), until replaced by the lawyer retained by the City.

DUTY TO CO-OPERATE

10. An employee involved in any action or proceeding shall co-operate fully with the City and any lawyer retained by the City to defend such action or proceeding, shall make available to 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 such lawyer.

FAILURE TO COMPLY WITH BY-LAW

11. If an employee fails or refuses to comply with the provision of this By-law, the City shall not be liable to assume or pay any of the costs, damages, expenses or sums mentioned in Section 5 or Section 9 of this By-law.

CONFLICT

12. The City maintains many different policies of insurance for both the City and members of Council, officers 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 any such policy of insurance in place from time to time, the terms of such policy or policies of insurance shall prevail.

EXECUTIVE ACTS AUTHORIZED

13. The Mayor, Chief Administrative Officer, and Municipal Clerk are hereby authorized and directed to do all the things necessary, including executing any necessary documents under the seal of the City, to give effect to this By-law according to its true intent and meaning.

REIMBURSEMENT

14. Where the employee has been indemnified by the City, the amount of the indemnification shall be reduced by the amount of any costs or damages recovered, and where indemnification has been paid, prior to any recovery by the employee, any costs or damages received shall first be paid to the City up to the amount of the indemnification.

REPEAL

15. By-law 80-94 (Kenora) be repealed in its entirety.

COMMENCEMENT

16. This By-law shall come into force and effect from and after the final passing thereof.

PASSED AND ENACTED this 10th day of January 2005.

**BY-LAW READ A FIRST & SECOND TIME THIS 10TH DAY OF JANUARY 2005.
BY-LAW READ A THIRD & FINAL TIME THIS 10TH DAY OF JANUARY 2005.**

THE CORPORATION OF THE CITY OF KENORA

.....**MAYOR**
David Canfield

.....**CLERK**
Joanne McMillin