

VILLAGE OF PEMBERTON

BYLAW No. 689, 2012

A bylaw to provide for the indemnification of officers, employees, members of Council and other officials of the Village of Pemberton.

WHEREAS the Village Council pursuant Section 287.2 of the Local Government Act may, by bylaw, provide that the Village will indemnify its officers, employees, members of Council and other specified representatives of the Village against any claim for damages and the costs incurred in a legal proceeding arising out of such claim pursuant to the performance of their duties and conduct of municipal business;

NOW THEREFORE Village of Pemberton Council, in open meeting assembled, enacts as follows:

1. **TITLE**

This Bylaw may be cited for all purposes as "Village of Pemberton Indemnification Bylaw No. 689, 2012".

2. **DEFINITIONS**

"Council" represents the Council of the Village of Pemberton;

"Village" represents the Village of Pemberton;

"Municipal Official" includes:

- (a) a council member;
- (b) a municipal officer or employee;
- (c) members of a commission established by the Village;
- (d) members of a select or standing committee of Council who are not members of Council;
- (e) members of an advisory body of Council;
- (f) a member of the Board of Variance;
- (g) volunteers who participate in the delivery of services by the Village under the supervision of an officer or employee of the Village referred to in Section 287.1 (n);
- (h) a person who is or was a person referred to in Section 287 (1) of the Local Government Act, but only in relation to the exercise of powers or the performance of duties or functions for or on behalf of the Village.

3. **INDEMNIFICATION**

(a) The Village shall indemnify its municipal officials against any claim for damages against such municipal officials arising out of the performance of their duties and, in addition, pay legal costs incurred in a court proceeding arising out of any such claim.

(b) The Village shall not seek indemnity against any of its municipal officials where the actions of those individuals result in a claim for damages against the Village by a third party, unless the municipal official has been found guilty of dishonesty, gross negligence or malicious or wilful misconduct.

4. **FORMER MUNICIPAL OFFICIALS**

The term "Municipal Officials" include persons who are former "Municipal Officials", as applicable, but only in relation to the exercise of powers or the performance of duties or functions for or on behalf of the Village.

5. **EXCLUSION FROM INDEMNIFICATION**

(a) Further, Section 3 and 4 above do not apply in any case where the Municipal Official:

- i. Has not acted within the scope of his or her duties;
- ii. Has been grossly negligent or dishonest, or engage in wilful or malicious misconduct; or
- iii. In the case of an officer or employee, has acted contrary to the terms and conditions of his or her employment, or contrary to law, or has acted contrary to an order given by a person in authority over him or her; or
- iv. In the case of a Council Member, has acted in a conflict of interest with the Village or otherwise not in accordance with his or her duties.

(b) If a court or tribunal makes a finding listed in subsections 5 (a) (i) to (iv) 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.

6. **INDEMNIFICATION PROCESS**

- (a) Where indemnity is or may be claimed under this bylaw by a Municipal Official, the Municipal Official shall, as soon as reasonably possible, forward to the Corporate Officer appointed by the Members of Council under section 148 of the Community Charter, every statement of claim, writ of summons, information, or other Court document relating to the claim or prosecution in respect of which the indemnity is or may be claimed.
- (b) Where the indemnity is or may be claimed under this bylaw by a Municipal Official, the Municipal Official shall not:
 - i. Voluntary assume any liability, to settle any claim, or enter any plea except at his or her own cost, and no indemnification shall be paid in relation to any such assumption of liability, settlement or plea; nor
 - ii. Interfere with the Village in any negotiation or settlement in any legal proceedings with respect to the claim or prosecution.
- (c) The Village or its insurer will have sole discretion to appoint legal counsel to defend the claim or prosecution.
- (d) It is a condition precedent to the Village's liability to indemnify a Municipal Official, as provided in this bylaw, that the Municipal Official shall comply with the provisions of subsections 6 (a), (b), and (c) of this bylaw.

7. **SPECIFIC CASE**

Nothing in this bylaw precludes a Municipal Official from applying for indemnification pursuant to Council's jurisdiction under section 287.2 (2) (b) of the Local Government Act for a resolution indemnifying the Municipal Official in a specific case.

8. **ENACTMENT**

- (a) If any section, subsection, sentence, clause or phrase of this Bylaw is for any reason held to be invalid by the decision of any court of competent jurisdiction, the invalid portion shall be severed and the part that is invalid shall not affect the validity of the remainder.
- (b) This bylaw shall come into full force and effect on final adoption.

9. **REPEAL**

The following bylaw is hereby repealed:

“The Corporation of the Village of Pemberton Officers and Employees Indemnification Bylaw No. 226, 1987”

READ A FIRST TIME this 24th day of January, 2012.

READ A SECOND TIME this 24th day of January, 2012.

READ A THIRD TIME this 24th day of January, 2012.

ADOPTED this 7th day of February, 2012.

MAYOR

CORPORATE OFFICER