

THE REGIONAL MUNICIPALITY OF PEEL

BY-LAW NUMBER XX-2020

**A by-law to provide for certain insurance, indemnification and reimbursement of members of Council and employees by The Regional Municipality of Peel, and to repeal By-laws 38-2005 and 24-2014.**

WHEREAS The Regional Municipality of Peel (the "Region") desires to be or to act as an insurer and to provide indemnification to:

- (a) protect members of Council and employees of the Region against certain risks that may involve pecuniary loss or liability on the part of members of Council and employees;
- (b) pay certain damages or costs awarded against or expenses incurred by a member of Council or an employee;
- (c) pay certain sums required in connection with the settlement of an action or other proceeding against a member of Council or an employee; and
- (d) assume the cost of defending the member of Council or employee in an action or other proceeding, arising out of acts or omissions done or made by the member of Council or employee in the attempted performance in good faith of their duties as a member of Council of the Region or as an employee of the Region including while acting in the performance of any statutory duty, subject to the limitations of the *Municipal Act, 2001*, S.O. 2001, c. 25 (the "*Municipal Act*") and of this by-law;

AND WHEREAS the *Municipal Act* provides the Region with authority to do so, pursuant to section 279 thereof;

AND WHEREAS the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (the "*Municipal Conflict of Interest Act*") provides the Region with authority to do so, pursuant to section 14 thereof;

AND WHEREAS the *Municipal Act* provides in section 283 that a municipality may pay in whole or in part such expenses of the members of Council and of the employees of the Region as are actually incurred as a result of their acting in their capacity as members of Council of the Region or employees of the Region;

NOW THEREFORE, the Council of the Regional Corporation enacts as follows:

**DEFINITIONS**

1. In this By-law,

- (a) “action or proceeding” includes all civil actions, prosecutions of non-criminal offences or administrative proceedings, except proceedings brought under the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended or any successor thereto (the “*Highway Traffic Act*”). For greater certainty and without limiting the generality of “non-criminal offences” an action or proceeding does not include prosecutions under the *Criminal Code*, R.S.C. 1985, c. C.46, as amended or any successor thereto (the “*Criminal Code*”), or the *Controlled Drugs and Substances Act*, S.C. 1996, c.19, as amended or any successor thereto (the “*Controlled Drugs and Substances Act*”), or prosecutions or collections related to municipal parking or and traffic infringements whether actual or alleged by-laws;
- (b) “Council” means the Council of The Regional Municipality of Peel;
- (c) “coverage” means coverage of the nature set out in this By-law;
- (d) “covered action or proceeding” means an action or proceeding commenced after the passing of this By-law or pending but not finally determined at the time of passing of this By-law, and arising out of acts or omissions done or made by a covered individual in the attempted performance in good faith of their duties as a member of Council or as an employee including while acting in the performance of any statutory duty;
- (e) “covered individual” means a person who was a member of Council or was an employee, as the case may be, at the time the cause of action or other proceeding arose or at the time that the act or omission occurred that gave rise to the action or proceeding, notwithstanding that prior to judgment or other settlement of the proceeding the person may have ceased to be a member of the Council or to be an employee;
- (f) “employee” means any salaried officer, or any other person in the employ of the Region and includes persons that provide their services on behalf of the Region without remuneration, exclusive of reimbursement of expenses or honoraria, and excludes uniformed and civilian members of the police service of the Region, employees of The Regional Municipality of Peel Police Services Board (the “Board”) and any other person holding an office or position that is appointed by the Board.
2. The Region shall not commence an action or proceeding against a covered individual arising out of acts or omissions done or made by the covered individual in the attempted performance of their duties as a member of Council of the Region or as an employee, where the covered individual acted honestly and in good faith with a view to the best interests of the Region and had reasonable grounds for believing that their conduct was lawful.

### **LEGAL REPRESENTATION**

3. Subject to the provisions of this By-law, in a covered action or proceeding against a covered individual or in which the covered individual is a party and in which their conduct is called into question, the Region will, with the consent of the covered individual, defend or represent the covered individual in the covered action or proceeding in the name of, and on behalf of, the covered individual.
4. Notwithstanding Section 3, the Region shall not defend or represent a member of Council or employee in an action or proceeding against the member of Council or employee which is commenced by the Region.
  - 4.1 Notwithstanding Section 3, in lieu of defending or representing a member of Council in a proceeding under the *Municipal Conflict of Interest Act*, the Region shall, subject to Section 6.1, provide coverage to an individual who has retained their own legal counsel pursuant to Section 9.
5. Where the Region is defending or representing a covered individual in a covered action or proceeding, the Region may make such investigation, negotiation and settlement of any claim in the covered action or proceeding as may be deemed necessary or expedient by the Region. Should the covered individual not consent to any such settlement, the Region's obligation to defend or represent the covered individual or to indemnify the covered individual to an extent greater than would be the case under the proposed settlement to which the covered individual does not consent will end.

### **DAMAGES, COSTS AND FINES**

6. Subject to this By-law, in a covered action or proceeding, the Region will:
  - (a) pay all damages and legal costs, including interest, awarded against a covered individual;
  - (b) pay all sums required in connection with the settlement of the covered action or proceeding against a covered individual, provided that as a condition precedent the Region approves the terms of the settlement;
  - (c) pay any fines, monetary penalties or award of damages levied or imposed against a covered individual by reason of the covered individual being convicted of any violation except a violation of the *Highway Traffic Act*, ~~municipal~~ parking and traffic ~~infringements by-~~ laws, and offences under the *Criminal Code* and *Controlled Drugs and Substances Act*;

provided always that the legal liability for damages or for the imposition of a fine or monetary penalty arose out of acts or omissions done or made by the covered individual in their capacity as a member of Council or as an

employee including while acting in the performance or attempted performance of any statutory duty.

6.1 In the case of a proceeding against a member of Council pursuant to the *Municipal Conflict of Interest Act*, coverage shall be provided pursuant to this By-law only to a member of Council who has been found not to have contravened Section 5, 5.1 or 5.2 of that Act.

7. The Region shall indemnify a member of Council or employee in the manner and to the extent provided by this By-law, in respect of any covered action or proceeding only if, in the opinion of the Council expressed by resolution:
  - a. the member of Council or employee acted honestly and in good faith with a view to the best interests of the Region; and
  - b. the member of Council or employee had reasonable grounds for believing that their conduct was lawful.
8. As a condition precedent to the Region making any payment in respect of the costs associated with defence or representation of any covered individual in any covered action or proceeding or making any payment under this By-law, a covered individual shall:
  - a. cooperate fully with the Region in the defence, investigation, negotiation or settlement of the covered action or proceeding;
  - b. not have or engage in any contact, discussions or negotiations with any adverse person or party without the prior written consent of the Regional Solicitor;
  - c. promptly disclose to the Regional Solicitor all contact, discussions or negotiations with any adverse person or party;
  - d. apprise the Regional Solicitor on an ongoing basis of all matters relating to the covered action or proceeding; and
  - e. execute any documents required by the Region to enable the Region to subrogate as to the position and as to any rights or cause of action of the covered individual, or required by the Region to enable the Region to recover as an assignee of the covered individual of any right of entitlement of the covered individual under an award of costs or otherwise.

#### **RETAINING LEGAL COUNSEL**

9. A covered individual may retain their own legal counsel for their defence or representation in a covered action or proceeding in lieu of defence or representation by the Region, provided that the Region shall not reimburse the covered individual for their legal costs and shall not make payment under this By-law unless i) subject to Section 6.1, the defence or

representation is required in connection with a proceeding under the *Municipal Conflict of Interest Act*, or ii) the Region declines to provide or terminated defence or representation and determines instead to reimburse the covered individual for their legal costs of defence or representation in accordance with this By-law, either because:

- a. the covered individual has demonstrated to the satisfaction of the Region that there exists a clear legal conflict between the interests of the Region and of the covered individual; or
  - b. the Region has determined that it would be inappropriate for the Region to defend or continue to defend and represent the covered individual.
10. Notwithstanding the foregoing, in extending coverage under this By-law, the Region shall have the right to reasonably limit the amount which it shall pay a covered individual for legal costs and may:
- a. set a reasonable global upset limit for legal costs paid pursuant this By-law; and
  - b. establish reasonable hourly rates which it will pay legal counsel retained to defend or represent a covered individual.
11. Any requirement that the Region reimburse a covered individual for the costs of defence or representation in a covered action or proceeding shall take into account any pre-paid legal assistance plan or any defence cost insurance or funding that the covered individual has purchased or which is otherwise available to the covered individual, and in addition any such reimbursement shall be reduced or repaid to the Region by the covered individual to the extent of any costs received or recovered by or available to the covered individual, including costs awarded in the action or proceeding.
12. Notwithstanding the foregoing, the covered individual shall not retain legal counsel and the Region shall not be obligated to pay or reimburse the covered individual for defence costs where the covered individual is an insured under a policy of insurance **maintained by the Region** and the covered action or proceeding is defended on behalf of the covered individual by the insurers under that policy to the extent that the coverage under that policy will reimburse defence costs and will pay damages and costs assessed.

### **APPEALS**

13. Where a covered individual seeks to appeal a judgment in a covered action or proceeding, the Region shall have sole discretion to determine whether coverage shall be extended by the Region for the purposes of the appeal. If a covered individual pursues an appeal without representation or an extension of coverage by the Region and is successful in that appeal, the Region shall have sole discretion to determine whether having regard for

their success on the appeal the covered individual will be indemnified for their legal costs.

14. In exercising discretion under Section 13, the Region shall consider the factors set out in Section 7.

**EXCLUDED ACTIONS OR PROCEEDINGS**

15. Notwithstanding the foregoing, in respect of any action or proceeding where:

- a. the action or proceeding is against the Region and was commenced by or on behalf of the covered individual ~~is opposed in interest with the Region in such action or proceeding;~~
- b. a covered individual has acted in bad faith or intentionally outside the scope of their authority;
- c. the action or proceeding arises out of conduct of the member of Council or employee which constitutes wanton or malicious wrongful conduct;
- d. the covered individual fails or refuses to comply with the provisions of this By-law; or
- e. coverage is otherwise precluded under the provisions of this By-law;

the member of Council or employee shall not be entitled to coverage under this By-law, and the Region shall not be liable to pay any of the damages, costs awarded, expenses incurred, sums required in connection with settlement or the cost of defending any such member of Council or employee, except where such payments (if any) may otherwise be required by law.

16. Where the Region has determined that an individual is not entitled to coverage, that individual shall:
- a. be responsible for all costs in connection with representation in the action or proceeding;
  - b. reimburse the Region for all costs paid by the Region;
  - c. not be entitled to coverage under this By-law or to have the Region make any payments under this By-law; and
  - d. be responsible for payment of any penalty or damages or costs awarded or imposed against the individual in the action or proceeding.
17. This By-law does not apply to grievance and arbitration procedures that relate to a grievance filed under the provisions of a collective agreement.

~~This By-law also does not apply to applications or proceedings in relation to human rights, pay equity or labour relations matters, except in so far as the covered individual was acting within the course and scope of their employment at the time of the acts or omissions that gave rise to such applications or proceedings. [~~

18. This By-law does not apply to employees covered by provisions in or policies pursuant to a collective agreement which provide for indemnity of employees for acts done in the course of employment.
19. Notwithstanding anything in this By-law, the Region shall have the right to discipline or terminate the employment of employees as it may deem appropriate, having regard to any applicable collective agreement-, and such employees shall not be entitled to coverage under this By-law arising out of any such discipline or termination of employment.

#### **COUNCIL DISCRETION TO EXTEND COVERAGE**

20. The express provisions of this By-law shall not limit or preclude Council from exercising its otherwise existing discretion to extend coverage of the nature set out in this By-law beyond the coverage provided to a member of Council or employee as of right under this By-law in circumstances deemed appropriate by the Council.
21. A member of Council or employee, may make a request in writing that Council extend coverage under the discretion reserved to Council under section 20 and Council upon receipt of such a request shall direct the Regional Solicitor to report to Council with a recommendation respecting the request. The report of the Regional Solicitor shall have regard for and describe the outcome, if any, of proceedings related to the request, including any withdrawal of charges or verdict arrived at in any proceedings under the *Criminal Code* related to the request.

#### **COMMENCEMENT**

22. By-laws 38-2005 and 24-2014 are hereby repealed.
23. This By-law takes effect on the day that it is passed.

READ THREE TIMES AND PASSED IN OPEN COUNCIL this \_\_\_\_ day of October, 2020.

---

Regional Clerk

---

Regional Chair