



Section:	By-laws		
Title:	By-Law No. 2/2021: Indemnification		
Resolution	#76/21	Approval Date:	June 23, 2021
Revisions			

A By-Law to provide protection against pecuniary loss or liability for Authority board members and employees,

WHEREAS the Authority is, pursuant to the *Conservation Authorities Act*, a body corporate;

AND WHEREAS the Authority is authorized under the *Conservation Authorities Act* to make by-laws, including by-laws respecting the financial affairs of the Authority, and to carry on in all aspects of the operation of a Conservation Authority;

AND WHEREAS sections 80 and 133 of the *Corporations Act* authorize an Authority to pass bylaws to indemnify and save harmless out of the Authority's funds directors and officers, which for the intent and purpose of this by-law includes employees, of the Authority;

AND WHEREAS clause 129(1) (h) of the *Corporations Act* authorizes the Authority to pass by-laws for the appointment and remuneration of employees of the Authority;

AND WHEREAS clause 23(1) (g) and subsection 133(1) of the *Corporations Act* authorize the Authority to make payments for insurance for employees or for similar objects;

AND WHEREAS clause 23(1) (v) and subsection 133(1) of the *Corporations Act* authorize the Authority to do all things incidental to the attainment of the objects set out in the instruments under which the Authority was incorporated;

AND WHEREAS the Lakehead Region Conservation Authority is a local board for the purposes of the *Municipal Conflict of Interest Act*;

AND WHEREAS section 14 of the *Municipal Conflict of Interest Act* provides that a local board may pass by-laws to enable the local board to act as an insurer to protect a member of the local

board 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 it is advisable to protect Members of the Board of Directors and Employees of the Authority that 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 BOARD OF DIRECTORS OF THE LAKEHEAD REGION CONSERVATION AUTHORITY ENACTS AS FOLLOWS:

1.0 Definitions

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

- 1.1 "Authority" means the Lakehead Region Conservation Authority;
- 1.2 "Authority Legal Counsel" means legal counsel employed or retained to represent the interests of the Authority, including their designates;
- 1.3 "Board of Directors" means the Board of Directors of the Authority;
- 1.4 "By-law" means this By-law, as it may be amended from time to time;
- 1.5 "CAO" means the person within the Authority's employ who holds the title of "Chief Administrative Officer," including their designates;
- 1.6 "Claimant" means a Member or Employee who claims coverage pursuant to this By-law;
- 1.7 "Employee" means a person who is a salaried officer, or any other person in the employ of the Authority and includes a former Employee;
- 1.8 "Member" means a person who is a Member of the Board of Directors of the Authority and includes a former Member;

1.9 “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 their capacity as a Member or Employee or as a result of the Claimant having status as a Member or Employee;

1.10 “Third Party” means any person including the Crown, except:

- a) a Member or Employee acting in their capacity as such; or
- b) the Authority;

2.0 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 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.

3.0 Statutes

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.

4.0 Indemnity for Members

4.1 The Authority shall, subject to the provisions of this By-law, indemnify a Member who was at all material times acting in good faith and within the scope of their duties in respect of the matter and to the extent provided herein in respect of any Proceeding brought against such Member by a Third Party arising out of acts or omissions done or made by such Member in their capacity as a Member or by reason of 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 Committee, Commission, Authority, Association or other body pursuant to the direction, request or other authority of the Authority.

4.2 Subject to the provisions of this By-law, the Authority shall indemnify a Member by:

4.2.1 assuming the cost of defending the Member in the Proceeding;

4.2.2 assuming the cost of representation where a Member is compelled to give evidence in a Proceeding by reason of being or having been a Member;

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

4.2.4 paying, either by direct payment or reimbursement, any expenses reasonably incurred by that Member as a result of the Proceeding; and

4.2.5 paying any sum required in connection with the settlement of the 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 shall be made or liability shall be assumed by the Authority unless and until the conditions in clause 4.3.2 hereof have been met.

5.0 Indemnity for Employees

- 5.1 The Authority shall, subject to the provisions of this By-law, indemnify an Employee who was at all material times acting in good faith and within the scope of their duties in the manner and to the extent provided herein in respect of a Proceeding brought against such Employee by a Third Party arising out of acts or omissions done or made by such Employee as an Employee or by reason of their being or having been an Employee, including while acting in the performance of a statutory duty.
- 5.2 Subject to the provisions of this By-law, the Authority shall indemnify an Employee by:
- 5.2.1 assuming the cost of defending the Employee in the Proceeding;
 - 5.2.2 assuming the cost of representation where an Employee is compelled to give evidence in a Proceeding by reason of being or having been an Employee;
 - 5.2.3 paying any fines, monetary penalties, damages or costs imposed on or awarded against the Employee as a result of the Proceeding;
 - 5.2.4 paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such Employee as a result of the Proceeding; and

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

6.0 Indemnity - Other

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

- a) on a case by case basis; and
- b) in the Authority's sole and absolute discretion;

provide indemnity to any person that the Authority is authorized by law to provide indemnity to and do so in accordance with the provisions of this by-law or as otherwise stipulated by the Authority.

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 Board of Directors may:

- a) on a case by case basis; and
- b) in its 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 Authority.

7.0 Exclusions

7.1 The obligations of the Authority 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 Authority;
- 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 Board of Directors;

- 7.1.4 to the extent by which the Authority is prejudiced, where the claim is of a nature covered by an insurance policy or indemnity, whether placed or provided by the Authority, the Claimant 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; and
- 7.1.5 to any Claimant in respect of whom the Authority 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 the Claimant 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 kinds of indemnities or other protections provided for in this By-law.
- 7.2 The liability of the Authority 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 of this By-law and, at the reasonable request of the Authority, the Claimant shall assign to the Authority the Claimant's rights pursuant to that insurance policy or indemnity and to any amount payable under it.
- 7.3 Notwithstanding that the Authority may have assumed the defence of a 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 Authority may waive the reservation of rights referred to in Section 7.3, subject to such conditions as the Authority 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 Authority, the Claimant 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.

8.0 Limit of Coverage

- 8.1 Subject to Section 14.3, the maximum amount for which the Authority may be liable hereunder (inclusive of claims, costs, expenses and any other amounts) shall not exceed \$1,000,00.00 in respect of any claim or combination of claims arising under the same circumstances, made against a Claimant.

9.0 If CAO is Claimant

If the Claimant is the current CAO, the Board of Directors shall designate the Finance Manager of the Authority, or, in the alternative, such other person as approved by the Board of Directors, to carry out the duties under this By-law assigned to the CAO; however, any decisions that the CAO would make under the By-law shall be made by the Board of Directors.

10.0 Notice to Authority

- 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 a true copy of the document to the CAO.
- 10.2 A Claimant shall, concurrently with giving notice under section 10.1 of this By-law, provide the CAO 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, deliver such document, or provide such full written particulars to the CAO within 30 days of receipt of such notice or such document by the Claimant, the Claimant shall not be entitled to indemnity under this By-law.

11.0 Determination of Coverage

- 11.1 Subject to sections 7.1.3 and 9, 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 the receipt of the determination made by the Authority regarding the Claimant's coverage request.

12.0 Legal Counsel

- 12.1 The Authority's Legal Counsel may, in appropriate cases, provide representation to a Claimant at the cost of the Authority and the Authority may take general carriage of any Proceeding where the Authority and the Claimant are both parties to the Proceeding, and it is in the interest of the Authority to do so.
- 12.2 The Authority may apply for party, intervener or other status in any Proceeding in which a Claimant is or may be involved if to do so is in the interests of the Authority, and the Authority's Legal Counsel may, in proper cases, also represent the Claimant, or take general carriage of the Proceeding, at the cost of the Authority.
- 12.3 Despite any other provision of this By-law, any Legal Counsel retained by the Authority's Insurer to defend any Proceeding shall also represent the Claimant with respect to that Proceeding unless the Authority requires or consents, in writing, to the retainer of different Legal Counsel.
- 12.4 Except as otherwise provided in this By-law, the Authority 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 that the Authority has determined is entitled to coverage under this By-law may request, in writing, approval of the CAO of Legal Counsel of the Claimant's own choice, to represent the Claimant in the 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 charged and experience.
- 12.6 The CAO of the Authority 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 Authority's choice and, in either case, advise the Claimant in writing.
- 12.7 If a Claimant's request to use Legal Counsel of the Claimant's choice is denied, and the Claimant still wishes to use that Legal Counsel, such costs shall be the responsibility of the Claimant. For purposes of clarity, the Claimant has no authority to retain legal counsel to represent the Authority. The Authority may, at all times, retain legal counsel of its own choosing to protect its interests.

- 12.8 If, after 10 working days from receiving the request, the CAO has not advised the Claimant in writing of the disposition of the Claimant's request, the Claimant may retain their choice of Legal Counsel to act on their behalf until the Authority retains Legal Counsel.
- 12.9 If the Authority retains other Legal Counsel to act on behalf of the Claimant in place of Legal Counsel originally retained by the Claimant in accordance with Sections 12.5 and 12.8, the Authority shall, subject to the *Solicitors Act*, pay to the Claimant's Legal Counsel all of their reasonable legal fees and disbursements from the time that the Claimant retained such Legal Counsel, until replaced by Legal Counsel retained by the Authority.
- 12.10 Subject to the requirements of the Law Society of Upper Canada, all Claimant Legal Counsel in any Proceeding shall co-operate fully with, and provide all relevant information to, the Authority's Legal Counsel.
- 12.11 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 Authority shall pay such accounts. Legal accounts may, at the request of the Authority or the Claimant, be submitted for assessment in accordance with the *Solicitors Act* and the Authority 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.

13.0 Costs

- 13.1 No costs, expenses or other liability shall be incurred or assumed on behalf of the Authority under any circumstances without the prior written approval of the CAO.
- 13.2 Where the Authority 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 Authority.

14.0 Settlements

- 14.1 The Authority, 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 Authority 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 Authority may be exposed, but which would have been released by such settlement. In that case, the Authority has the right to settle the claim to the extent required to obtain a release of the Authority 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 Authority.
- 14.2 If the Claimant's consent is required and the Claimant refuses to consent to any settlement recommended by the Authority, 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, the Authority'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 Authority's consent up to the date of the refusal of the Claimant to settle.
- 14.3 In the event that the Authority elects to reject a formal written settlement offer 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 Section 8.1 of this By-law, the Authority shall be liable for any amount awarded against the Claimant in excess of the maximum otherwise applicable.

15.0 Cooperation

A Claimant shall at all times co-operate fully with the Authority and the Authority's Legal Counsel and shall make available to the Authority'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 Authority 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 Authority's Legal Counsel or CAO.

16.0 Rights to Terminate or Amend

16.1 The Authority shall, in its sole and absolute discretion, be entitled to terminate or change its obligations under this By-law by repealing or amending this By-law or, on a case by case basis, increasing the limit of coverage otherwise available, provided that the repeal or amendment of this By-law shall not prejudice the rights of a Claimant in respect of a Proceeding that was commenced prior to such repeal or amendment.

17.0 By-Law not to have Retroactive Effect

This By-law only applies to claims for indemnity respecting any Proceedings 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.

18.0 Appeals

Where an individual seeks to appeal a judgment in a covered proceeding, the Authority 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 Authority and is successful in that appeal, the Authority may, in its sole and absolute discretion, indemnify the Claimant for the Claimant's legal fees or a part thereof.

19.0 Short Title

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

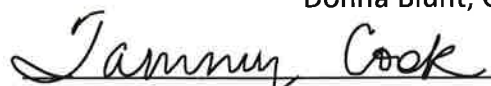
20.0 Effective Date

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

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS 23 DAY of June, 2021.



Donna Blunt, Chair



Tammy Cook, Chief Administrative Officer