

VILLAGE OF QUEEN CHARLOTTE

BYLAW NO. 35-2009

A BYLAW TO INDEMNIFY MUNICIPAL OFFICIALS AGAINST DAMAGES AND THE COSTS OF LEGAL PROCEEDINGS ARISING OUT OF THE PERFORMANCE OF THEIR DUTIES AND FUNCTIONS AND THE CONDUCT OF MUNICIPAL BUSINESS

WHEREAS Section 287.2 of the *Local Government Act* authorizes a municipality to provide by bylaw for the indemnification of its municipal officials against claims for damages and the costs incurred in a legal proceeding arising out of such claim pursuant to the performance of their duties and functions and the conduct of municipal business;

NOW THEREFORE the Council of the Village of Queen Charlotte, in open meeting assembled, enacts as follows:

Title

1. This bylaw may be cited as “VILLAGE OF QUEEN CHARLOTTE INDEMNIFICATION BYLAW NO. 35-2009”.

Definitions

2. In this bylaw:

“Municipal Official” means a person defined as such in section 287.2 of the *Local Government Act*.

“Village” means the Village of Queen Charlotte.

Indemnification

3. The Village will indemnify a Municipal Official for any:
 - (a) costs reasonably required or incurred to defend an action or prosecution brought against the Municipal Official in connection with the exercise or intended exercise of his or her powers or the performance or intended performance of his or her duties or functions, including amounts required to satisfy a judgment, award or penalty imposed in such an action or prosecution;
 - (b) legal costs required or incurred in relation to a proceeding that involves the services of the municipality or the conduct of municipal business.

Exclusions from Indemnification

4. (a) Despite Section 3 above, the Village will not pay or indemnify a Municipal Official for any fine or penalty imposed as a result of the Municipal Official's conviction for an offense that is not a strict or absolute liability offence.
- (b) Further, Section 3 above does not apply if the Municipal Official:
 - (i) has not acted within the scope of his or her duties;
 - (ii) has been grossly negligent or dishonest, or engaged in willful or malicious misconduct; or
- (c) If a court or tribunal makes a finding listed in subsection 4(b) 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.

5. Indemnification Process

- (a) Where indemnity is or may be claimed under this bylaw by a Municipal Official, the Municipal Official shall, within 7 days of receipt, 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, letter, document or advice relating to the claim or prosecution in respect of which the indemnity is or may be claimed.
- (b) Upon receipt of all information available under section 5(a), the Corporate Officer must make a determination as to whether the Municipal Official is entitled to indemnification pursuant to this bylaw, and in order to make this determination, may request additional information from the Municipal Official, which must be provided to the best of the Municipal Official's knowledge and ability.
- (c) If the Corporate Officer determines that the Municipal Official is entitled to indemnity, under this bylaw, the Corporate Officer shall proceed to provide the indemnity to the Municipal Official, and report the provision of the indemnity to Council at its next regular meeting or, if necessary, at a special Council meeting.
- (d) Where indemnity is or may be claimed under this bylaw by a Municipal Official, the Municipal Official shall not:
 - (i) voluntarily assume any liability, 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.
- (e) Whenever requested by the Village or its legal counsel, a Municipal Official shall:
- (i) assist in securing information and evidence and the attendance of witnesses;
 - (ii) give evidence himself or herself; and
 - (iii) co-operate with the Village in the defence of any action or proceeding or in the prosecution of any appeal taken by the Village on behalf of the Municipal Official.
- (f) The Village or its insurer will have sole discretion to appoint legal counsel to defend the claim or prosecution.
- (g) 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 5(a), (b), (d), (e) and (f) of this bylaw.

Specific Case

6. 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.
7. Bylaw No. 33-2009, cited as "A Bylaw To Indemnify Municipal Officials Against Damages And The Costs Of Legal Proceedings Arising Out Of The Performance Of Their Duties And The Conduct Of Municipal Business" is hereby repealed.

READ A FIRST TIME this 21st day of December, 2009.

READ A SECOND TIME this 21st day of December, 2009.

READ A THIRD TIME this 11th day of January, 2010.

ADOPTED by the Council on the 11th day of January, 2010.

MAYOR

CHIEF ADMINISTRATIVE OFFICER