



REPORT TO COUNTY COUNCIL

FROM: Nicholas Loeb, Director of Legal Services

DATE: November 28, 2023

SUBJECT: Indemnification By-Law

RECOMMENDATIONS:

THAT Council receive and file the report entitled “Indemnification By-Law” from the Director of Legal Services dated November 28, 2023 for information;

THAT Council pass By-Law 23-43, the Indemnification By-Law;

INTRODUCTION:

The purpose of this report is to bring forward an indemnification by-law that sets out the eligibility criteria, exceptions, protocols and extent of indemnification of County employees, Members of Council, Members of Local Boards and volunteers.

BACKGROUND AND DISCUSSION:

The Director of Legal services is recommending the passage of By-Law No. 23-43. The proposed indemnification by-law before Council ensures that Members of Council, staff and volunteers are protected by the County in legal proceedings that are commenced against them by third-party entities, arising out of the good faith and honest performance of their employment duties. It also serves to protect the County by clarifying the extent of indemnification and the criteria upon which it occurs.

Indemnification by-laws are common among municipal corporations. The nature of the performance of certain municipal duties creates scenarios wherein a person could be named personally in a legal proceeding.

Without an indemnification by-law there is a lack of clarity for Members of Council and staff on what, if anything, is the responsibility of the County, as an employer, for claims made against an individual versus the responsibility of that individual. An absence of an indemnity by-law can lead to confusion and case-by-case requests to Council for indemnification when legal proceedings arise. Those decisions are then made under time limitations where a legal proceeding has already been commenced. A lack of

clarity can also lead to situations of litigation between those who would otherwise be indemnified under the by-law and the County as an employer.

The central benefits of a comprehensive indemnification by-law include that the by-law:

- Sets out the default position that Members of Council, staff and volunteers are indemnified, subject to the eligibility criteria and exclusions;
- Sets out clear criteria for eligibility for indemnification;
- Sets out clear protocols for processing legal proceedings where an indemnity is triggered;
- Sets out the limitation and extent of indemnification;
- Ensures Members of Council, staff and volunteers are protected for the good faith, honest performance of their duties;
- Protects the County by permitting it to select legal counsel, be provided with information on the proceeding, requiring cooperation by the indemnified individual and giving the County some flexibility in indemnification over the steps of a proceeding, including appeals.
- Protects the County by clearly defining exclusions and exceptions to the default position of indemnification.

Interaction with County Insurance

The indemnification by-law is meant to be read in conjunction with and supplement the County's liability insurance. In broad terms, the County's liability insurance covers its Members of Council, staff and volunteers. The by-law supplements the insurance portfolio to capture potential costs such as uninsurable proceedings, amounts below the deductible, or other costs not reimbursed by the municipal insurer. It does not replace any reimbursement or legal defence normally provided for by the insurer. It also limits the extent of indemnity to account for any recoveries by an eligible person from any other source (e.g., if there is some other responsive insurance that is not the County's insurer).

Default Indemnification

The by-law before Council contains a default position that Members of Council, staff and volunteers of the County are indemnified related to a defined type of legal proceeding provided that the individual was acting in the good faith, honest performance of their duties. Indemnification means that the County will pay the expenses associated with the legal proceeding. This includes the cost of legal counsel, damages, or settlement amounts.

There are a number of exclusions to the type of legal proceedings that are indemnified. Some of those exclusions arise out of statutory limitations – by way of example, there are exclusions for *Municipal Conflict of Interest Act* proceedings. There are also exclusions for types of causes of action such as where the individual is in litigation with the County itself.

There is no indemnification for acts arising out of criminality, acts that led to personal advantage or personal profit and acts of defamation, among others.

Eligibility Criteria

The indemnification covers Members of Council, employees, volunteers and former Members of Council, employees and volunteers for incidents that occurred at a time when they were with the County. In order to be eligible for indemnity, the claim has to arise out of the good faith and honest performance of the duties of the individual acting on behalf of the County.

Exercise of County Control

The proposed by-law contains provisions that permit the County to select the legal counsel, be advised of steps in the proceeding and to deny indemnity for steps taken in a proceeding that meet certain criteria. Similarly, there are controls on the extent of indemnification if there are appeals of the legal proceeding.

The County retains the right to approve any legal settlement unless it is one that is approved by the insurer by way of an insurance contract.

The by-law also requires eligible individuals to cooperate with the County during the proceeding.

Where there are discretionary questions about: whether a person is eligible for indemnification, or the extent of the steps necessary in a legal proceeding, there are mechanisms for dealing with those situations delegated to the Chief Administrative Officer and the Director of Legal Services.

Where the claim is covered by the Municipality's insurance, such claims will proceed in the 'normal course' where the claim is given to the insurer, who typically appoints an adjuster and legal counsel who then takes instructions from the insurer and the County. Nothing in this by-law changes the normal pattern of insurable claims handling.

FINANCIAL IMPLICATIONS:

There are no direct financial implications in passing this by-law.



ALIGNMENT WITH STRATEGIC PRIORITIES:

Serving Elgin	Growing Elgin	Investing in Elgin
<input type="checkbox"/> Ensuring alignment of current programs and services with community need. <input type="checkbox"/> Exploring different ways of addressing community need. <input type="checkbox"/> Engaging with our community and other stakeholders.	<input checked="" type="checkbox"/> Planning for and facilitating commercial, industrial, residential, and agricultural growth. <input type="checkbox"/> Fostering a healthy environment. <input type="checkbox"/> Enhancing quality of place.	<input checked="" type="checkbox"/> Ensuring we have the necessary tools, resources, and infrastructure to deliver programs and services now and in the future. <input checked="" type="checkbox"/> Delivering mandated programs and services efficiently and effectively.

Additional Comments:

LOCAL MUNICIPAL PARTNER IMPACT:

There is no local municipal partner impact.

COMMUNICATION REQUIREMENTS:

The Legal Services Department will deliver an overview of the by-law to Management Team at an upcoming meeting.

CONCLUSION:

The Legal Services Department recommends that Council pass By-Law No. 23-43, as outlined in this report and presented on the agenda for November 28, 2023.

All of which is Respectfully Submitted

Approved for Submission

Nicholas Loeb
Director of Legal Services

Don Shropshire
Chief Administrative Officer/Clerk