

## COUNTY OF ELGIN

### By-Law No. 23-43

**“BEING A BY-LAW TO PROVIDE FOR THE INDEMNITY AND DEFENCE OF  
MEMBERS OF COUNCIL, MEMBERS OF LOCAL BOARDS, EMPLOYEES AND  
VOLUNTEERS OF THE COUNTY AGAINST LOSS OR LIABILITY INCURRED  
WHILE ACTING ON BEHALF OF THE COUNTY”**

WHEREAS Section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended, provides that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality’s ability to govern;

AND WHEREAS Section 223.3 of the *Municipal Act, 2001* provides that a municipality shall indemnify the Integrity Commissioner or any person acting under the instructions of that officer for costs reasonably incurred by either of them in connection with the defence of a proceeding if the proceeding relates to an act done in good faith in the performance or intended performance of a duty or authority under this Part or a by-law passed under it or an alleged neglect or default in the performance in good faith of the duty or authority;

AND WHEREAS s. 279(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, states that despite the *Insurance Act*, a municipality may be or act as an insurer and may exchange with other municipalities in Ontario reciprocal contracts of indemnity or inter-insurance in accordance with Part XIII of the *Insurance Act* with respect to the following matters:

1. Protection against risks that may involve pecuniary loss or liability on the part of the municipality or any local board of the municipality.
2. The protection of its employees or former employees or those of any local board of the municipality against risks that may involve pecuniary loss or liability on the part of those employees.
3. Subject to section 14 of the *Municipal Conflict of Interest Act*, the protection of the members or former members of the council or of any local board of the municipality or any class of those members against risks that may involve pecuniary loss or liability on the part of the members.
4. Subject to section 14 of the *Municipal Conflict of Interest Act*, the payment of any damages or costs awarded against any of its employees, members, former employees or former members or expenses incurred by them as a result of any action or other proceeding arising out of acts or omissions done or made by them in their capacity as employees or members, including while acting in the performance of any statutory duty.
5. Subject to section 14 of the *Municipal Conflict of Interest Act*, the payment of any sum required in connection with the settlement of an action or other proceeding referred to in paragraph 4 and for assuming the cost of defending the employees or members in the action or proceeding;

AND WHEREAS Section 283(1) of the *Municipal Act, 2001*, as amended, provides that municipalities may pay any part of the remuneration and expenses of the members of any local board of the municipality and the officers and employees of the local board;

AND WHEREAS Section 283(2) of the *Municipal Act, 2001* as amended, provides that a municipality may only pay the expenses of members of council, local boards, employees, and officers if the expenses are of those persons in their capacity as members, officers or employees, among other considerations;

AND WHEREAS s. 448(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, states that no proceeding for damages or otherwise shall be commenced against a member of council or an officer, employee or agent of a municipality or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this Act or a by-law passed under it or for any alleged neglect or default in the performance in good faith of the duty or authority;

AND WHEREAS s. 448(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, states that s. 448(1) does not relieve a municipality of liability to which it would otherwise be subject in respect of a tort committed by a member of council or an officer, employee or agent of the municipality or a person acting under the instructions of the officer, employee or agent;

AND WHEREAS Section 8 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M. 50, as amended, allows an elector, an Integrity Commissioner of a municipality or a person demonstrably acting in the public interest to apply to a judge for a determination of the question of whether a member, or former member, has contravened section 5, 5.1, 5.2, or 5.3 of the *Municipal Conflict of Interest Act*;

AND WHEREAS s. 14 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as amended, states that despite section 279 of the *Municipal Act, 2001*, the council of every municipality may at any time pass by-laws, despite the *Insurance Act*, to enable the municipality to act as an insurer to protect a member of the council or of any local board thereof who has been found not to have contravened section 5, 5.1, 5.2, or 5.3 against any costs or expenses incurred by the member as a result of a proceeding brought under the *Municipal Conflict of Interest Act*, and for paying on behalf of or reimbursing the member for any such costs or expenses;

AND WHEREAS the Council of The Corporation of the County of Elgin finds that it is in the public interest to ensure that Eligible Persons acting in good faith to perform their duties are indemnified against the costs of Legal Proceedings;

NOW THEREFORE the Council of the Corporation of the County of Elgin ENACTS AS FOLLOWS:

## **1. SHORT TITLE**

- 1.1 This by-law may be cited as the “Indemnification By-law” for the Corporation of the County of Elgin.

## **2. DEFINITIONS**

In this by-law:

- 2.1 “Board” means a local board of the County, as defined in the Act.
- 2.2 “Chief Administrative Officer” means the Chief Administrative Officer of the County, the delegate thereof, or any person to whom the powers thereof are delegated by Council for the purposes of this by-law.
- 2.3 “Code Complaint” means a formal or informal complaint made to the Integrity Commissioner pursuant to the County’s Code of Conduct and includes an inquiry under section 223.4 or 223.4.1 of the *Municipal Act, 2001*.
- 2.4 “Council” means the Council of the County.
- 2.5 “County” means the Corporation of the County of Elgin.
- 2.6 “Eligible Person” means any of the following persons of the County:
  - 2.6.1 a current or former member of Council;
  - 2.6.2 a current or former member of a local board;
  - 2.6.3 the current or former Integrity Commissioner, including any person acting under the instructions of the Integrity Commissioner; and
  - 2.6.4 current or former employees.
- 2.7 “Employee” means any salaried officer or any other person in the employ of the County or of a Board, and includes persons that provide their services on behalf

of the County without remuneration, exclusive of the reimbursement of expenses or honoraria, provided that such persons are appointees of the County or volunteers acting under the direction of a person in the employ of the County.

2.8 “Former Employee” means a person who was formerly an employee of the County or a Board.

2.9 “Former Member” means a person who was formerly a Member.

2.10 “Legal Proceeding”

2.10.1 means:

2.10.1.1 a civil proceeding or administrative action, including but not limited to an action, application, motion, hearing, trial;

2.10.1.2 a proceeding wherein a person is charged with an offence under the *Criminal Code*, R.S.C. 1985, c. C. 46 or the *Highway Traffic Act*, R.S.O. 1990, s. H.8; or

2.10.1.3 a proceeding brought under section 8 of the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M. 50, as amended (the “MCIA”); or

2.10.1.4 a Code Complaint; or

2.10.1.5 a complaint to a professional association;

2.10.2 But excludes:

2.10.2.1 any proceeding commenced by the County;

2.10.2.2 any proceeding in which the County is a party adverse in interest, including municipal parking and traffic by-laws. For greater certainty, this section does not prevent indemnification of Members of Council and Local Boards in the context of a proceeding brought under the *MCIA*, subject to the restrictions at s. 14 of the *MCIA*; or

2.10.2.3 any proceeding under the *Municipal Elections Act*, 1996, S.O. 1996, c. 32, Sched., as amended.

2.11 “Member” means a person who is a member of the Council or of a Board.

### 3. EXCLUSIONS

3.1 This by-law does not apply to:

3.1.1 any Legal Proceeding in which the County is an adverse party to the otherwise Eligible Person;

3.1.2 any Legal Proceeding in which the interests of the otherwise Eligible Person are adverse to the County’s interests;

3.1.3 any Legal Proceeding that relates to a grievance filed under the provisions of a collective agreement or to disciplinary action taken by the County as an employer;

3.1.4 any Legal Proceeding arising from a Code of Conduct enacted pursuant to section 223.2 of the *Municipal Act*, 2001;

3.1.5 any Legal Proceeding resulting from any dishonest, bad faith, fraudulent or criminal act committed by an individual, including an otherwise Eligible Person, including abuse of public office. For clarity, this exclusion does not apply to an Eligible Person who did not participate in such act and who did not have personal or constructive knowledge thereof;

3.1.6 any Legal Proceeding resulting from an individual, including an otherwise Eligible Person, gaining a personal profit or advantage to which he or she was not legally entitled, or the return by the Eligible Person of any money paid to him or her, if payment of such money is held to be in violation of law;

3.1.7 any Legal Proceeding relating to conduct which falls outside the scope of the Eligible Person’s duty or authority, unless the Eligible Person was acting in good faith and held an honest and reasonable belief that the conduct was within his or her duty or authority and was in the best interest of the County;

3.1.8 any Legal Proceeding involving sexual misconduct, harassment, or bullying. For clarity, this exclusion does not apply to an Eligible Person who did not participate in such act and who did not have personal or

- constructive knowledge thereof, nor to an Eligible Person who is a victim of such act;
- 3.1.9 any Legal Proceeding that relates to defamation. For clarity, this exclusion does not apply to an Eligible Person who is the victim of defamation;
- 3.1.10 any Legal Proceeding that relates to section 5, 5.1, 5.2 or 5.3 of the *MCIA*, except where the Eligible Person has been found not to have contravened sections 5, 5.1, 5.2 and 5.3 of the *MCIA*; and,
- 3.1.11 any expenses incurred by a Member in obtaining personal legal advice to determine whether the Member has a pecuniary interest in a matter which is the subject of a determination or consideration by Council or a Board as defined herein;

#### **4. INDEMNIFICATION**

Subject to the exclusions, exceptions, and other terms set out in this by-law, the County shall indemnify an Eligible Person in the manner and to the extent provided by this by-law in respect of any legal proceeding, including appeals, initiated by a third party for:

- 4.1 Acts, errors or omissions arising out of the scope of the Eligible Person's authority or duty or within the course of an Individual's employment or office if:
  - 4.1.1 the Eligible Person was acting within the individual's scope of authority or duty;
  - 4.1.2 the Eligible Person acted honestly and in good faith; and
  - 4.1.3 in the case of administrative action or proceeding that is enforced by a monetary penalty, the Eligible Person had reasonable grounds for believing that his or her conduct was lawful;
- 4.2 acts or omissions relating to the conduct which falls outside of the Eligible Person's duty or authority, provided that:
  - 4.2.1 the Eligible Person was acting in good faith and held an honest and reasonable belief that the conduct was within his or her duty or authority and was in the best interest of the County; and
  - 4.2.2 in the case of administrative action or proceeding enforced by a monetary penalty, the Eligible Person had reasonable grounds for believing that his or her conduct was lawful.
- 4.3 In the event that any determination is required as to whether an Eligible Person meets the requirements of this section, the Director of Legal Services shall provide a legal opinion in that regard, which shall include advice on any terms and conditions that should apply to the indemnification of an Eligible Person. In circumstances where the Director of Legal Services is unable to provide such an opinion, in the Director's own discretion, then the Director of Legal Services may obtain such an opinion from external legal counsel.
- 4.4 For clarity, services provided by an Eligible Person to a third party pursuant to a shared services agreement between the County and the third party are intended to be indemnified by the County under this by-law, subject to the same conditions and limitations expressed herein.

#### **5. MANNER AND EXTENT OF INDEMNIFICATION**

- 5.1 Subject to Section 5.2, the County shall indemnify an Eligible Person who meets the requirements of Section 4 of this by-law by:
  - 5.1.1 assuming the reasonable cost of defending such Eligible Person in a Legal Proceeding;
  - 5.1.2 paying any damages or costs, including a monetary penalty, awarded against such Eligible Person as a result of a Legal Proceeding;
  - 5.1.3 paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such Eligible Person as a result of a Legal Proceeding; and
  - 5.1.4 paying any sum required in connection with the settlement of a Legal Proceeding;
- 5.2 Notwithstanding any other provision in this by-law, the County will only indemnify an Eligible Person to the extent that costs, damages, expenses, or sums are not assumed, paid, or reimbursed under any provision of the County's Insurance program or any other insurance program for the benefit and

protection of such Individual against liability. The provisions of this by-law are intended to supplement the protection provided by such policies of insurance; accordingly, in the event of conflict between this by-law and the terms of such a policy of insurance, the terms of the policy of insurance shall prevail.

- 5.3 Except where an applicable policy of insurance requires otherwise, Council shall have the right to approve or reject the settlement of any indemnified Legal Proceeding.

## **6. PROVISION OF LEGAL COUNSEL**

- 6.1 The County shall have the right to select and retain the lawyer to represent an Eligible Person, having regard to whether the lawyer has the expertise and can provide the commitment of time and resources required, and the Chief Administrative Officer shall:
- 6.1.1 advise such Eligible Person of the lawyer selected to represent them;  
and
- 6.1.2 advise Council of the final disposition of the matter.
- 6.2 Subject to the provisions of this Section, an Eligible Person may request approval to be represented by the lawyer of the person's choice by writing to the Chief Administrative Officer. The Chief Administrative Officer shall, in consultation with the Director of Legal Services, within ten (10) days of receipt of the request, either approve or deny the request and advise the person in writing of such decision.
- 6.3 The County shall be provided with copies of the lawyer's statements of account on a monthly basis. Statements of account shall outline all fees and disbursements and shall be provided with information relating to these accounts, as may be requested from time to time, in order to determine reasonableness of the account before any payment is made.
- 6.4 The County may, through a decision of Council, require that an account for reimbursement be assessed by a Court Assessment Officer, where applicable.
- 6.5 Notwithstanding any other provision of this by-law to the contrary, any lawyer retained by the County's insurers from time to time to defend the County in any Legal Proceeding shall represent an Eligible Person with respect to that Proceeding unless the County instructs otherwise.

## **7. RIGHTS OF THE COUNTY**

- 7.1 Decision-making authority under this by-law, including the authority to execute necessary documents on behalf of the County in order to give effect to this by-law, is designated to the Chief Administrative Officer, except where otherwise specified. When exercising delegated authority, the Chief Administrative Officer shall have regard to the potential costs to the County of a decision and shall seek Council's approval for decisions with financial implications in excess of the Approval Authority of the Chief Administrative Officer under the County's by-law Respecting the Procurement of Goods and Services, as amended from time to time.
- 7.2 Nothing in this by-law shall prevent the Chief Administrative Officer from bringing a report to Council to seek direction on any matter related to indemnification under this by-law.
- 7.3 The County may refuse to indemnify an Eligible Person or his or her lawyer for steps taken in a Legal Proceeding that are, in the sole discretion of the County, deemed unnecessary, inadvisable, or otherwise prejudicial to the conduct of the Legal Proceeding.
- 7.3.1 For clarity, "steps taken in a Legal Proceeding" in this section includes, but is not limited to, counterclaims, crossclaims, third party claims, settlement offers, demand letters, motions, applications, and alternative dispute resolution.
- 7.3.2 An Eligible Person or his or her lawyer may seek the approval of the County prior to taking discretionary steps in a Legal Proceeding by making a request in writing to the Chief Administrative Officer. Such request must:

- 7.3.2.1 be provided with reasonable notice;
- 7.3.2.2 state the potential benefit of said step; and
- 7.3.2.3 estimate the cost to the County of said step.

Upon receipt of such a request, the Chief Administrative Officer shall either:

- 7.3.2.4 approve or deny the request; or
- 7.3.2.5 determine a decision-making process that must be followed to approve or deny the request, which may include presenting the issue to Council or seeking a further legal opinion.

The Chief Administrative Officer shall convey their decision to the Eligible Person or their lawyer in writing within ten (10) days of the receipt of the request, having regard to any urgency associated with the request. The Chief Administrative Officer shall, in the event that further steps must be taken:

- 7.3.2.6 communicate the decision-making process to be followed;
- 7.3.2.7 list the reasonable steps that the County will take to ensure that the rights of the Eligible Person are not prejudiced by the decision-making process, and
- 7.3.2.8 provide a timeline for the final determination of the request.

7.4 Notwithstanding any other provision of this By-Law, Council may, at any time:

7.4.1 determine that a person is ineligible for indemnification under this by-law; or

7.4.2 set a cap on the indemnification to be provided under this by-law.

## **8. APPLICATION FOR INDEMNIFICATION AND DUTY TO CO-OPERATE**

- 8.1 Where an Eligible Person is served with any process issued out of or authorized by any court, administrative tribunal or other administrative, investigative or quasi-judicial body, other than a subpoena, in connection with any Legal Proceeding the person shall forthwith deliver the process or a copy thereof to the Chief Administrative Officer.
- 8.2 An Eligible Person involved in any Legal Proceeding shall co-operate fully with the County, the Chief Administrative Officer and any lawyer retained by the County to defend such Legal Proceeding, shall make available to the Chief Administrative Officer or such lawyer all information and documentation relevant to the matter as are within his or her knowledge, possession or control, and shall attend at all proceedings when requested to do so by the Chief Administrative Officer or such lawyer.
- 8.3 Notwithstanding any other provision of this by-law to the contrary, if a person fails or refuses to comply with the provisions of this by-law, the County shall not be liable to assume or pay any of the costs, damages, expenses or sums arising from the Legal Proceeding and shall not be subject to the obligations of this by-law.

## **9. REIMBURSEMENT**

- 9.1 Where an Eligible Person is indemnified pursuant to the provisions of this by-law, the amount of the indemnity shall be reduced by the amount of any costs recovered by the Eligible Person and, where the indemnity has been paid, any costs recovered by the Eligible Person shall be paid or assigned to the County up to the amount of the indemnity.

## **10. APPEALS**

- 10.1 Where an Eligible Person seeks to appeal a judgment in a Legal Proceeding and wishes the County to indemnify the costs of that appeal, the County shall have the sole discretion to determine whether that appeal should be pursued and to what extent the costs of the appeal will be indemnified.
- 10.2 If an Individual pursues an appeal without representation by the County and is successful in that appeal:

- 10.2.1 the County shall have the sole discretion to determine whether the Individual shall be retroactively indemnified for his or her legal fees;
- 10.2.2 the County shall have the right to recoup legal fees paid in any costs awards for indemnified Legal Proceedings that were appealed; and
- 10.2.3 the County shall have the right to recoup any costs awards for legal fees in indemnified proceedings awarded by the body hearing the appeal.

## **11. EXCEPTION: DUTY TO THIRD PARTY UNDER SHARED SERVICES AGREEMENT**

- 11.1 In the event that a proceeding arises against an Eligible Person:
  - 11.1.1 concerning an action or omission that occurred in the course of the Eligible Person's work for a third party under a shared services agreement; and
  - 11.1.2 a term, condition, or limitation of this by-law, including conditions expressed at Section 6.5 and 8 herein, would violate the confidentiality conditions of the work for the third party, including but not limited to conditions of the shared services agreement; any professional obligation of the Eligible Person to the third party imposed by a regulatory body; or the Solicitor-Client privilege of the third party; then, the term, condition, or limitation that would constitute or impose a violation is of no force and effect and:
  - 11.1.3 The Chief Administrative Officer of the County or their delegate shall, in consultation with the Eligible Person, the third party, and, as applicable, the legal counsel for the County, the Eligible Person, and/or the third party, propose alternate terms, conditions, or limitations that conform with the stated intent of this by-law as well as the intent(s) of the void terms, conditions, or limitations; and
    - 11.1.3.1 Said alternate terms, conditions, or limitations shall be presented to Council for approval prior to any disbursement of an indemnification.
- 11.2 The County may, pursuant to s. 279 of the *Municipal Act*, exchange with other municipalities in Ontario reciprocal contracts of indemnity or inter-insurance. In the event that such a reciprocal contract contains provisions that indemnify an Eligible Person under this by-law, the terms of that reciprocal contract supersede those of this by-law to the extent that a conflict exists.

## **12. SEVERABILITY**

- 12.1 If any sections, section or part of a section of this by-law are found by any Court to be illegal or beyond the power of Council to enact, such sections or section or part of a section shall be deemed to be severable and all other sections or parts of sections of this by-law shall be deemed to separate and independent and shall continue in full force and effect.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2023.

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Don Shropshire,  
Chief Administrative Officer/Clerk.

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Ed Ketchabaw,  
Warden.