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Report 2025-125

Report Title: Repeal and Replace of Legal Indemnification By-law

Committee Name: Corporate Support

Committee Meeting Date: June 3, 2025

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Municipal Solicitor

Reviewed by: Jennifer Moore
Chief Administrative Officer

Approved by: Jennifer Moore, CAO

Council Meeting Date: June 18, 2025

Strategic Plan Priorities: ☒ Innovate for Service Excellence
☐ Ignite Economic Opportunity
☐ Foster a Thriving Community
☐ Propel Sustainable Growth
☐ Champion a Vibrant Future

Recommendation

“**That** the Corporate Support Committee, having considered Report 2025-125 ‘Repeal and Replace of Legal Indemnification By-law’, recommend that County Council enact a by-law at the June 18, 2025 County Council meeting to provide for the indemnity and defence of councilors and employees of the County of Northumberland against liability incurred while acting on behalf of the County of Northumberland and to repeal By-law 55-08.”

Purpose

This report recommends that the Corporate Support Committee recommend that County Council adopt a new Legal Indemnification By-law and repeal By-law 55-08, in order to update the County’s process for indemnifying Members of Council, employees, and former members of Council and employees to bring that process into alignment with current law and previous Council direction.

Background

Council directed that staff review and update to the County's Legal Indemnification By-law based on legislative changes that have expanded potential personal liability of County employees, as well as changed or expanded County operations in certain areas. As the current Legal Indemnification By-law 55-08 was enacted in 2008, there have been significant changes to both legislation and operations which warranted this review.

Upon reviewing By-law 55-08, it was noted that there were significant gaps in that by-law, and numerous internal section references were not correct.

Consultations

No formal consultations were done. Recently updated by-laws in other municipalities were reviewed for best practices.

Legislative Authority / Risk Considerations

The authority to pass by-laws to provide for the indemnification of members of councils and boards, employees, and former members of councils and boards and employees, is generally set out at section 279 of the *Municipal Act, 2001*. This authority is subject to certain statutory exemptions including the exemptions in section 14 of the *Municipal Conflict of Interest Act*, RSO 1990, c. M.50, which limit the extent to which a municipality may indemnify a member or former member with respect to a proceeding pursuant to that Act.

The proposed By-law accounts for statutory exemptions and is intended to supplement and not supersede policies of insurance held by the County.

Discussion / Options

Due to the length of time since the adoption of By-law 55-08 and the number of changes proposed, staff are recommending a full repeal and replace of By-law 55-08 as opposed to amendment. However, for the purposes of consistency effort was made to preserve the language and intent of the current by-law, and to avoid expanding the scope of the matters which may be entitled to indemnification other than as a response to legislative changes or previous council direction.

Changes in the proposed By-law include:

- Updating authorities cited.
- Expanding and clarifying defined terms, including updating the definition of "action or proceeding" to account for the increased prevalence of administrative monetary penalties since the adoption of the current Legal Indemnification By-law, and expanding the definition of "member" to include a member of a local board of the County.
- Updating matters which may qualify for indemnification under the By-law to include administrative penalties, and clarify that a person may have reasonable grounds to believe conduct was lawful where there are reasonable grounds to conclude that any impugned conduct was necessary to meet other legal requirements, including compliance with the *Human Rights Code*, consistent with Council's previous direction.

- Clarifying that to be eligible for an indemnity under By-law, a person must have been an employee or member at the time the circumstances giving rise to the action or proceedings occurred.
- Adding explicit exclusions from the by-law for certain actions and proceedings that are not appropriately indemnified by the County, such as code of conduct complaints, matters in which the County itself is the complainant or an adverse party, labour disputes or actions or proceedings based on disciplinary action by the County as an employer, and matters determined to be outside the scope of a person's duties and authorities as a member or employee.
- Clarifying actions or proceedings presumed to arise from matters outside of the scope of a member or employee's duties and authorities on behalf of the County, including cases involving sexual misconduct, harassment or bullying, Criminal prosecutions involving serious injury or death resulting from intoxication, and cases of fraud, misfeasance or abuse of public office.
- Adding new provisions to provide the County with authority to refuse to indemnify a person in relation to discretionary steps in indemnified actions or proceedings which are deemed unnecessary or detrimental to the County's interests.
- Clarifying the process for the appointment of legal counsel.
- Clarifying reporting requirements for members, employees and former members and employees who are served with legal processes related to their duties and authorities.
- Adding a provision requiring indemnified parties to avail themselves of other sources of indemnification, and prohibit receiving payment from multiple sources for the same costs.
- Adding a specific provision for recovery of any amounts paid inappropriately or where a person fails to comply with the by-law, including a right to treat such overpayments as a debt.
- Providing additional clarity around delegated authority, including adding a provision to deal with the situation where the Chief Administrative Officer may themselves be entitled to indemnity, and cannot exercise authorities delegated due to that inherent conflict.
- Adding provisions to deem persons or classes of persons previously designated as employees for the purposes of By-law 55-08 as employees for the purposes of the proposed by-law.
- Reorganization of the by-law for clarity, and to eliminate incorrect section references in by-law 55-08.

Financial Impact

It is not expected that the proposed Legal Indemnification By-law would result in increased financial impacts compared to current By-law 55-08. Specific financial impacts depend on the frequency of actions or proceedings to which the proposed by-law may apply and the availability or applicability of insurance coverages. Historically, claims under the Legal indemnification By-law have been infrequent.

Member Municipality Impacts

N/A

Conclusion / Outcomes

Staff are recommending that the current Legal Indemnification By-law 55-08 be repealed and replaced by the proposed By-law.

Attachments

- 1) Report 2025-125 ATTACH 1 'A By-law to Provide for the Indemnity and Defence of Councillors and Employees of the County of Northumberland Against Liability Incurred While Acting on Behalf of the County of Northumberland, and to Repeal By-law 55-08