



## By-law ##-2025

---

### **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**

---

**Whereas** section 8 of the *Municipal Act, 2001*, SO 2001, c. 25, provides that the powers of a municipality under that Act 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 an integrity commissioner 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** subsection 279(1) of the *Municipal Act, 2001* states that despite the *Insurance Act*, RSO 1990, c. I.18 a municipality may be or may 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 (as defined in section 278 of the *Municipal Act, 2001*) 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

If you require this information in an alternate format, please contact the Accessibility Coordinator at [accessibility@northumberland.ca](mailto:accessibility@northumberland.ca) or 1-800-354-7050 ext. 2327

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; and

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** subsections 283(2) and (3) of the *Municipal Act, 2001* permits a municipality to pay the expenses of the members of its Council and the officers and employees of the municipality where those expenses are actually incurred, or are in the opinion of the Council reasonable estimates of expenses that would be incurred, and that are incurred or expected to be incurred in their capacity as members, officers or employees of the municipality;

**Now Therefore Be It Enacted** as a by-law of the Council of the Corporation of the County of Northumberland as follows:

## 1. Short Title

This by-law may be cited as the “Legal Indemnification By-law”.

## 2. Definitions

In this by-law, unless the contrary intention appears:

(a) “action or proceeding” means:

- i. a civil proceeding or any step therein, including but not limited to an action, application, motion, hearing, or trial;
- ii. a criminal proceeding in which a person is charged with an offence under the *Criminal Code of Canada*, RSC 1985, c. C.46 or any other offence prosecuted pursuant to that Act;
- iii. a provincial offences proceeding prosecuted pursuant to the *Provincial Offences Act*, RSO 1990, c. P.33;
- iv. an appeal or review of an order made pursuant to any statute or by-law, including any penalty for non-compliance with such order;
- v. an administrative proceeding, including an application for judicial review, an application or complaint to an administrative tribunal, an administrative penalty or similar process;
- vi. complaints to professional or licensing bodies;

If you require this information in an alternate format, please contact the Accessibility Coordinator at [accessibility@northumberland.ca](mailto:accessibility@northumberland.ca) or 1-800-354-7050 ext. 2327

and, subject to section 8 of this by-law, includes any step therein, including but not limited to motions, case management conferences, screenings, pre-trial hearings, mediation, arbitration, hearings, or trials, and further includes any appeal or review of a decision and requests for review or leave to appeal where such leave is required;

- (b) “board” means a Local Board as that term is defined in the *Municipal Act, 2001* established by or exercising power under any Act with respect to the affairs or purposes of the County, and for greater certainty does not include a school board, conservation authority, or advisory committee, or any corporation established by the County or for which the County is shareholder or member;
- (c) “code complaint” means a formal or informal complaint made to the County’s 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*.
- (d) “County” means the Corporation of the County of Northumberland, or the geographic County of Northumberland as the context may dictate;
- (e) “employee” means any salaried officer of the County or a board, or any other person in the employ of the County or a board, and includes persons that provide services on behalf of the County without remuneration if Council of the County has passed a by-law designating such persons as employees for the purposes of this By-law;
- (f) “former employee” means a person who was formerly an employee of the County;
- (g) “member” means a person who is a member of county council or of a board, and “former member” means a person who was formerly a member of the County Council or a board;
- (h) “third party” means any person other than the County or a board who is not acting on behalf of the County or a board, at the direction of the County or a board, or exercising a right of subrogation in place of the County or a board.

### **3. Indemnification:**

Subject to section 14 of the *Municipal Conflict of Interest Act*, any statutory exemptions or exclusions that may apply, and the exclusions set out in section 5 of this By-law, the County shall indemnify an employee, former employee, member or former member in the manner and to the extent provided for in section 4 of this By-law in respect of any action or proceeding initiated by a third party in respect of any act or omission arising out of the scope of the authority or duty in the course of employment of the member, former member, employee or former employee, provided that:

- a) The member, former member, employee or former employee acted honestly and in good faith and with a view to the best interests of the County;
- b) With respect to actions or proceedings relating to criminal or quasi-criminal offences, including provincial offences, or to an administrative penalty or similar

If you require this information in an alternate format, please contact the Accessibility Coordinator at [accessibility@northumberland.ca](mailto:accessibility@northumberland.ca) or 1-800-354-7050 ext. 2327

penalty, the member, former member, employee or former employee had reasonable grounds to believe their conduct was lawful, including where there were reasonable grounds to conclude that any impugned conduct was necessary to meet other legal requirements including but not limited to compliance with the *Human Rights Code*, RSO 1990, c. H.19 or similar statutory requirements; and

- c) In the case of a former member or former employee, that person was a member or employee at the time the circumstances giving rise to the action or proceeding occurred.

#### **4. Manner and Extent of Indemnification**

The County shall indemnify a person entitled to such indemnification under section 3 by:

- a) assuming the cost of defending such person in an action or proceeding;
- b) paying any damages or costs, including a monetary penalty ordered against such person as a result of an action or proceeding;
- c) paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such person as a result of an action or proceeding;
- d) paying any sum required in connection with the settlement of an action or proceeding, to the extent that such costs, damages, expenses or sums are not assumed, paid or reimbursed under any provision of the County's insurance program for the benefit and protection of such person against any liability incurred by them.

#### **5. Exclusions**

This by-law does not apply to:

- a) An action or proceeding where the County is an adverse party to a person otherwise entitled to be indemnified under section 3, with respect to such person;
- b) An action or proceeding which results from a complaint made by the County or its Council;
- c) Any action or 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;
- d) A code complaint where a member or former member has been found by a person appointed as, or exercising the functions of, the County's integrity commissioner under section 223.3 of the *Municipal Act, 2001* to have been in breach of any provision of a Council Code of Conduct required under section 223.2 of that Act.
- e) An action or proceeding where the circumstances given rise to that action or proceeding are determined by the County to have been outside the scope and authority of the person otherwise entitled to be indemnified or where that person

If you require this information in an alternate format, please contact the Accessibility Coordinator at [accessibility@northumberland.ca](mailto:accessibility@northumberland.ca) or 1-800-354-7050 ext. 2327

is determined to have acted in bad faith, with malice, or for their own benefit and not in the best interests of the County.

#### **6. Actions and Proceedings presumed out of scope**

Without limiting sections 3 or 5 of this By-law, the following actions and proceedings are presumed to be outside of a person's scope of authority and duties as employees or members acting on behalf of the County for the purposes of section 3 of this by-law, unless Council specifically determines otherwise:

- a) Any action or proceeding arising from a Code of Conduct enacted pursuant to section 223.2 of the *Municipal Act, 2001*;
- b) Any action or proceeding brought by a third party alleging sexual misconduct, harassment or bullying.
- c) An action or proceeding under the *Criminal Code of Canada*, RSC 1985, c. C-46 or the *Highway Traffic Act*, RSO 1990, c. H.8 involving a serious injury to a person or the death of a person as a result of intoxication;
- d) An action or proceeding brought by a third party alleging fraud, malfeasance or abuse of office, except where there is reason to believe the person otherwise entitled to be indemnified did not participate in any such acts and had no constructive knowledge thereof.

#### **7. County's rights re: discretionary steps**

Notwithstanding anything to the contrary in this by-law, the County may refuse to pay any amount or cost set out in section 4 that relates to discretionary steps taken by or on behalf of a person entitled to be indemnified under section 3 in an action or proceeding which are, in the sole discretion of the County, unnecessary, inadvisable, or otherwise prejudicial to the conduct of that action or proceeding including but not limited to counterclaims, crossclaims, third party claims, settlement offers, demand letters, motions, applications, attempts at alternative dispute resolution, the retention of expert witnesses or consultants, or any appeal or request for review including a request for leave to take any such step.

#### **8. Request re: discretionary step**

A person entitled to be indemnified under section 3 or their lawyer may, prior to taking a discretionary step in an action or proceeding, seek approval by making a request in writing to the Chief Administrative Officer setting out:

- a) The discretionary step proposed to be taken in the action or proceeding;
- b) The benefits and any potential risks associated with the discretionary step proposed;
- c) An estimate of the cost to the County of taking the discretionary step proposed; and

If you require this information in an alternate format, please contact the Accessibility Coordinator at [accessibility@northumberland.ca](mailto:accessibility@northumberland.ca) or 1-800-354-7050 ext. 2327

- d) Other relevant details including the names of any parties to be added to an action or proceeding, proposed expert witnesses or consultants.

**9. Decision re: discretionary step**

The Chief Administrative Officer shall review a request to indemnify a person in relation to a discretionary step in an action or proceeding, having regard for any urgency or applicable limitation periods associated with the request. The Chief Administrative Officer may seek any advice they consider appropriate, and may:

- a) Approve or deny the request; or
- b) Refer the request to Council for a decision;

For greater certainty, nothing in this by-law is intended to limit the right of a person to take a discretionary step in an action or proceeding on their own behalf and at their own expense.

**10. Right of the County re: Settlement or Resolution**

The County shall have the right to approve or reject the settlement of any action or proceeding for which it has indemnified a person pursuant to this by-law.

**11. Lawyer Retained by County's Insurers**

Notwithstanding any other provision of this by-law, any lawyer retained by the County's insurers from time to time to defend the County in any action or proceeding shall represent a person entitled to indemnification under section 3 herein with respect to that action or proceeding, or any related action or proceeding, unless the County instructs such lawyer otherwise. A person otherwise entitled to be indemnified pursuant to section 3 of this by-law who does not comply with this section shall be deemed to have waived any right to such indemnification and the County shall not be liable to provide such indemnification or to pay any amount referred to in section 4.

**12. County's Right to Select Lawyer**

Subject to section 11, the County shall have the right to select and retain the lawyer to represent a person entitled to an indemnity under section 3 of this by-law. This authority is hereby delegated to the Chief Administrative Officer who shall:

- (a) in selecting the lawyer to represent the person, consider the subject matter of the action or proceeding and be reasonably satisfied that the lawyer selected has the requisite qualifications and expertise with respect to such action or proceeding;
- (b) advise the person of the lawyer selected to represent the person;

If you require this information in an alternate format, please contact the Accessibility Coordinator at [accessibility@northumberland.ca](mailto:accessibility@northumberland.ca) or 1-800-354-7050 ext. 2327

### **13. Request for specific lawyer**

Subject to section 11 and notwithstanding section 12 of this By-law, a person entitled to be indemnified pursuant to section 3 may request to be represented by a lawyer of their choice by submitting that request in writing to the Chief Administrative Officer. Where such a request is made:

- a) The Chief Administrative Officer shall review the request and may within 10 days from the receipt of such request, either approve the request or deny the request and select and retain a lawyer in accordance with section 9, above, and advise the person of the decision in writing.
- b) In making a determination pursuant to paragraph a, above, the Chief Administrative Officer or their designate may make a request to contact the lawyer requested by the person to discuss or clarify specific terms of any proposed retainer.
- c) If the Chief Administrative Officer has not advised the person in writing of a decision within 10 days of their receipt of the person's request, the person may, provided they have complied with any request under paragraph b, above, retain the lawyer of choice specified in their request to act on their behalf until the County retains another lawyer.
- d) If the County retains another lawyer to act on behalf of the person in place of another lawyer retained by that person pursuant to paragraph c, above, the County shall, subject to the *Solicitors Act*, RSO 1990, c. S.15, pay to the lawyer retained by the person all reasonable legal fees and disbursements for services rendered and work done in connection with the action or proceeding from the time the person retained that lawyer in accordance with paragraph c, above, up until they are replaced by another lawyer retained by the County, and such reasonable fees and disbursements related to the transfer of the file or the lawyer's removal from the record in the action or proceeding, or shall reimburse the person for those reasonable legal fees and disbursements where the County is satisfied they have been actually paid by that person.

### **14. County's Right to Reimbursement**

Where a person has been indemnified by the County pursuant to this by-law, the amount of the indemnification shall be reduced by the amount of any costs or damages recovered by that person. Where any amounts have been paid by the County on behalf of or to the person with respect to an action or proceeding pursuant to this by-law, any amounts recovered and any award of costs or damages received shall first be paid to the County up to the amount of the indemnification provided.

### **15. Person Served with Process**

Where a member, former member, employee or former employee is served with any process issued out of or authorized by any court, administrative tribunal or other

If you require this information in an alternate format, please contact the Accessibility Coordinator at [accessibility@northumberland.ca](mailto:accessibility@northumberland.ca) or 1-800-354-7050 ext. 2327

administrative, investigative or quasi-judicial body, other than a subpoena or summons to witness, in connection with any action or proceeding brought by a third party with respect to any act or omission or alleged act or omission related to the scope of their employment with the County or the exercise of any authority or duty on behalf of the County or a board, that person shall:

- (a) in the case of an employee who is not the head of a department, forthwith deliver the process or a copy thereof to the head of the department for which the person works or to a person designated by head of that department to receive such process, who shall, in turn, deliver a copy to the Chief Administrative Officer, Municipal Solicitor, and the Director of Corporate Services;
- (b) in the case of an employee who is the head of a department, forthwith deliver the process or a copy thereof to the Chief Administrative Officer, the Municipal Solicitor, and the Director of Corporate Services;
- (c) in the case of a member or former member, forthwith deliver the process or a copy thereof to the Clerk, who shall, in turn, deliver a copy to the Chief Administrative Officer, the Municipal Solicitor, and the Director of Corporate Services;
- (d) in the case of a former employee, forthwith cause a copy of the process to be provided to the County to the attention of the Clerk through expedient means, which may include serving it personally, leaving a copy at the service counter at the County's head office, leaving a copy in the overnight mail drop off box at the County's head office, or sending a copy by electronic mail. Upon receipt of such process, the Clerk shall, in turn, deliver a copy of the process to the Chief Administrative Officer, Municipal Solicitor and Director of Corporate Services.

## **16. Duty To Cooperate**

Any person involved in any action or proceeding for which they are entitled to be indemnified pursuant to this by-law shall cooperate fully with the County and a lawyer retained by the County to defend such action or proceeding, shall make available to such lawyer all information and documents 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 such lawyer.

The cooperation required by this section includes, where the County is also a party to an action or proceeding and not adverse in interest to a person entitled to be indemnified under section 3, agreeing to a joint retainer to defend both parties, where permitted by law, in the County's sole discretion, with the County primarily instructing any lawyer so retained while the parties remain aligned in interest.

Where a person entitled to be indemnified under this by-law has any right or claim for indemnity from another source, they shall take all reasonable steps to claim such indemnity from the other source so as to offset the County's costs under this by-law,



If you require this information in an alternate format, please contact the Accessibility Coordinator at [accessibility@northumberland.ca](mailto:accessibility@northumberland.ca) or 1-800-354-7050 ext. 2327

and shall not in any case be entitled to claim indemnity or recover for the same costs from multiple sources.

As a condition of receiving an indemnity pursuant to this by-law, a person entitled to such indemnity shall execute any document or agreement required to give effect to this by-law or such indemnity as the County may reasonably require.

#### **17. Failure to Comply with By-law**

If a person otherwise entitled to any indemnity pursuant to this by-law 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 mentioned in Section 4 or Section 13 of this by-law.

Where any payment has been made under this by-law in error, where the person otherwise entitled to any indemnity pursuant to this by-law fails to comply with the terms of this by-law, or where such person is otherwise determined by the County to have received such payment or the benefit thereof improperly, the County shall be entitled to recover any amounts paid pursuant to this by-law against that person, and such amounts shall constitute a debt to the County.

#### **18. Conflicts with Insurance Policies, statutory indemnity etc.**

The County maintains many different policies of insurance for both the County and members of Council, officers and employees and the provisions of this By-law are intended to supplement the protection provided by such policies of insurance. In the event of conflict between this By-law and the terms of any such policy of insurance in place from time to time, the terms of such policy or policies of insurance shall prevail.

Nothing in this by-law shall be interpreted in a manner that is inconsistent with any statute that may entitle a person appointed or exercising authority under that statute to indemnification including, without limitation, the *Building Code Act, 1992* and the *Municipal Act, 2001*.

#### **19. Executive Acts Authorized**

The Chief Executive Officer is hereby authorized and directed to do all the things necessary, including executing any necessary documents necessary to give effect to this By-law according to its true intent and meaning, and may further delegate any decision or duty under this by-law to another employee of the County, except where this by-law specifically requires an action or decision of Council. Despite this delegation, Council retains the authority to make decisions or exercise authorities under this by-law, and the Chief Administrative Officer may refer any matter under this By-law to Council for a decision.

The Chief Administrative Officer or their delegate shall report to Council on the outcome of any action or proceeding for which a person is indemnified pursuant to this by-law.

If you require this information in an alternate format, please contact the Accessibility Coordinator at [accessibility@northumberland.ca](mailto:accessibility@northumberland.ca) or 1-800-354-7050 ext. 2327

Where an action or proceeding names the Chief Administrative Officer themselves, any decision or action under this by-law shall be made or done by Council, or by a person designated by Council for that purpose.

## **20. Severability**

If any 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.

## **21. Repeal of previous by-law**

By-law 55-08 is hereby repealed.

## **22. Effect of Repeal**

Notwithstanding section 21, any by-law passed for the purposes of designating a person or class of persons as an employee for the purposes of by-law 55-08 shall be deemed to designate that person or class of persons as an employee for the purposes of this by-law. Nothing in this by-law is intended to impact an indemnity paid or claimed pursuant to by-law 55-08, but this by-law shall apply to any claim for indemnity made after the date on which this by-law comes into force notwithstanding that any part of the circumstances which give rise to that claim, or to any action or proceeding, occurred prior to that date.

## **23. Interpretation**

In this by-law words in the singular shall be interpreted to include the plural and vice-versa. The words he, her, or they or similar words shall be interpreted to include all genders. References in this by-law to any statute, by-law, or policy shall include references to that statute, by-law, or policy as amended, or as they may be further amended from time to time, or to any successor statute, by-law or policy thereto. Headings in this by-law are for reference purposes only and shall not in any way affect the meaning or interpretation of the provisions of this by-law.

If you require this information in an alternate format, please contact the Accessibility Coordinator at [accessibility@northumberland.ca](mailto:accessibility@northumberland.ca) or 1-800-354-7050 ext. 2327

#### **24. Coming into Force**

This by-law comes into force on the day it is passed.

**That** By-law ##-2025 be introduced and be deemed to be read a first, second and third time, passed, signed and sealed this 18<sup>th</sup> day of June, 2025.

---

**Brian Ostrander, Warden**

---

**Maddison Mather, Clerk**