

THE CORPORATION OF HALDIMAND COUNTY

By-law No. 235/02

Being a By-law to provide for the legal indemnification of Employees, Councillors or Members of Local Boards of Haldimand County

WHEREAS Section 252 of the *Municipal Act*, R.S.O. 1990, Chapter M.45, as amended, gives Council the authority to pass by-laws allowing for the County to contract for insurance, or, despite the *Insurance Act*, to enable the municipality to act as an insurer for the purpose of protecting Members of Council or of any Local Board thereof against risks that may involve Liability on the part of the Members, and for paying premiums therefor or for paying any damages or costs awarded against any such 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 Members or Officers of the municipality or Local Board including while acting in the performance of any statutory duty or for paying any sum required in connection with the settlement of an action or other Proceeding and for assuming the cost of defending the Member in such an action or other Proceeding;

AND WHEREAS Section 50 of the said *Municipal Act*, as amended, gives Council the authority to pass by-laws allowing for the municipality to contract for insurance, or, despite the *Insurance Act*, to enable the municipality to act as an insurer for the purpose of protecting Employees of the municipality, or any such class of Employees thereof against risks that may involve Liability on the part of the Members, and for paying premiums therefor or for paying any damages or costs awarded against any such Employees, 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 of the municipality including while acting the performance of any statutory duty or for paying any sum required in connection with the settlement of an action or other Proceeding and for assuming the cost of defending the Employee in such an action or other Proceeding;

NOW THEREFORE the Council of the Corporation of Haldimand County hereby enacts the following:

1. Definitions

- Council** Means the Council of the Corporation of Haldimand County, and Councillor has a corresponding meaning.
- County** Means the Corporation of Haldimand County.
- Employee** Means any salaried officer, or any other person in the employ of the municipality or of a Local Board and includes:
- (1) Persons that provide their services on behalf of the municipality without remuneration, exclusive of reimbursement of expenses or honouraria, if Council of the municipality has passed a by-law designating such persons or classes of persons as Employees for the purposes of this paragraph, and
 - (2) Any other person or class of person designated as an Employee by the Minister.
- Indemnification** Means assuming the cost of defending an Employee, Councillor or Member of a Local Board as the case may be, paying any damages or costs, including monetary penalties, awarded against such person as a result of a Proceeding, paying personal expenses of such person incurred as a result of such Proceeding or paying any sum required in connection with the settlement of such 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 Liability incurred by him or her, and Indemnify or Indemnity have corresponding meanings.
- Liability** Means actual and potential legal costs, personal expenses and damages incurred, or to be incurred, in connection with any Proceeding commenced or threatened to be commenced arising out of any act or omission done or made in good faith by any Employee, Councillor or Member of a Local Board in the course of their employment, or in the course of their duties as a Member or Officer of the County or a Local Board thereof, and including acts or omissions done or made while acting in the performance of a statutory duty.

Local Board Means a Local Board of the County as defined in the *Municipal Affairs Act*.

Proceeding Means a civil, administrative, Provincial Offences or criminal matter brought or intended to be brought before a court or tribunal of competent jurisdiction.

2. **Effective Date**

This by-law applies to any act or omission alleged to have occurred on or after January 1, 2001.

3. **Application of By-law**

- (a) This by-law applies to any Employee in respect of acts or omissions done or made by the Employee, in good faith, in his or her capacity as an Employee, including while acting in the performance of any statutory duty on behalf of the County.
- (b) This by-law applies to any Councillor or Member of any Local Boards, in respect of acts or omissions done or made, in good faith, by the Member in his or her capacity as an Member, including while acting in the performance of any statutory duty on behalf of the County.
- (c) This by-law applies to any person who was an Employee, Councillor or Member of a Local Board at the time a cause of action arose notwithstanding that that person has ceased to be an Employee, Councillor or Member of a Local Board at the time that the Indemnity is sought.

4. **Exclusions**

This by-law does not apply to:

- (a) Grievances or complaints filed by any Employee under any relevant Collective Agreement;
- (b) Disciplinary matters relating to non-union Employees;
- (c) Proceedings under the *Municipal Conflict of Interest Act*.

5. **Indemnification**

- (a) The County shall Indemnify and save harmless every Employee from all Liability as defined in this by-law in the circumstances described in Section 3 above.
- (b) The County shall Indemnify and save harmless every Councillor and Member of a Local Board from all Liability as defined in this by-law in the circumstances described in Section 3 above;
- (c) The obligation of the County to Indemnify Employees, Councillors and Members of Local Boards shall be subject to the following conditions:
 - (i) If County insurance coverage is available in respect of the issue for which the Indemnity is sought, the insurers' lawyers shall defend the Proceeding;
 - (ii) If County insurance coverage is not available, the choice of a lawyer to be retained in respect of the matter shall be subject to the approval of Council, which approval shall not be unreasonably withheld;
 - (iii) If more than one Employee, Councillor or Member of a Local Board requires legal representation, one lawyer shall be retained to represent all interests unless, in the opinion of Council, on the advice of the County Solicitor, a conflict of interest exists.
 - (iv) In respect of legal Indemnification approved relating to Provincial Offences matters or criminal Proceedings, Council may require an Employee, Councillor or Member of a Local Board to reimburse the County in respect of any Indemnification paid in the event that the Employee, Councillor or Member of a Local Board is found guilty of the Provincial Offence or Criminal Code Offence, as the case may be.
- (d) Any application for Indemnity pursuant to this by-law must be made prior to or immediately after a lawyer is retained in respect of the matter for which Indemnity is sought, and such application for Indemnity shall include the nature of the Proceeding, the name of the lawyer proposed to be retained, a fee schedule for the lawyer and, where applicable an estimate from the lawyer as to the fees and disbursements to be incurred in respect of the matter.

- (e) In the case of a request for Indemnification by an Employee, the request shall be made to Council through the Manager of Support Services and the CAO.
- (f) In the case of a request for Indemnification by a Councillor or a Member of a Local Board, the request shall be made in writing by such Councillor or Member to Council.
- (g) Any Employee, Councillor or Member of a Local Board for whom Indemnification is provided shall co-operate fully with the County, and its solicitors, where applicable in defending any Proceeding for which Indemnification is sought.
- (h) When an Employee, Councillor or Member of a Local Board has been indemnified in respect of legal costs or damages, any recovery by the Employee, Councillor or Member of a Local Board on account of legal costs or damages shall be assigned and paid to the County to the extent of such Indemnification provided by the County, save and except damages awarded to an Employee, Councillor or Member of a Local Board in his or her personal capacity.

6. **Validity**

Should any section, clause or provision of this By-law be held by a court of competent jurisdiction to be invalid, the validity of the remainder of this By-law shall not be vitiated.

READ a first and second time this 24th day of June, 2002.

READ a third time and finally passed this 24th day of June 2002.

MAYOR

CLERK