



Administrative Report

To: Warden MacDonald and Members of Essex County Council

From: David Sundin, BA (Hons), LL.B., Director, Legislative and Legal Services/County Solicitor

Date: Wednesday, May 7, 2025

Subject: Indemnification Policy

Report #: 2025-0507-LLS-R21-DMS

Purpose

The purpose of this Administrative Report (the "**Report**") is to provide County Council with the necessary information for Council to determine whether it is appropriate to adopt a formal Indemnification Policy for the County.

A draft of the proposed Indemnification Policy is appended to this Report as **Appendix A**.

Background

The County has never had a formal Indemnification Policy, and it has been historically quite rare for a member of Administration or Council to be named personally in legal actions. However, it is increasingly common for municipalities to have Indemnification Policies in place. This is likely related to it being increasingly common for litigants to personally name municipal employees and councillors in legal proceedings.

Both the *Municipal Act, 2001*, S.O. 2001, c. 25 (the "**Municipal Act**") and the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 (the "**Municipal Conflict of Interest Act**") allow municipalities to indemnify both its employees and members of Council in certain situations. For ease of reference, the following are the relevant sections of the *Municipal Act* and the *Municipal Conflict of Interest Act*:

The Municipal Act

279(1) Despite the Insurance Act, a municipality may act as an insurer...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.*

The Municipal Conflict of Interest Act

14(1) Despite Section 279 of the Municipal Act, 2001...the council of every municipality may at any time pass by-laws,

- (a) for contracting for insurance;*
- (b) 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 this Act, and for paying on behalf of or reimbursing the member for any such costs or expenses.

Discussion

There have been no recent examples of an employee of the County or a member of Council having been personally named in a legal proceeding related to their work on behalf of the County. Further, it appears that it has been very rare for any employee of the County to be personally named in a legal proceeding related to their work on behalf of the County, and I have been unable to find any instances in which a member of Council was personally named.

However, it has become increasingly common for litigants to personally name employees and councillors of municipalities in legal proceedings. As such, it is recommended that County Council adopt a formal Indemnity Policy. Currently if an employee or member of Council was personally named in a legal proceeding, they would have to seek Council approval on a case by case basis in order to have the County indemnify them. By adopting a formal Indemnification Policy, Council will remove any uncertainty and both employees and members of Council can perform the tasks required by them on behalf of the County, with certainty that they will be protected as long as they are appropriately exercising their respective duties.

Financial Implications

As indemnification of employees and members of Council has historically not been an issue at the County, it is not anticipated that there will be any major or immediate financial implications to the adoption of a formal Indemnification Policy by the County.

Further, it is difficult to anticipate if or when an employee or member of Council may seek to be indemnified in accordance with the provisions of a formal Indemnity Policy.

Should Council approve the Indemnification Policy and should there be costs associated with the Indemnification Policy in 2025 same will be paid from either existing approved budget items for 2025 or from the County's reserves. For 2026 and beyond, County Administration will attempt, to the extent possible, to build the potential costs associated with the Indemnification Policy and any related insurance policies into the County's budget and in planning for its reserve funds.

Consultations

The CAO was consulted during the drafting of this Report and the related draft Indemnification Policy.

Strategic Plan Alignment

Working as Team Essex County	Growing as Leaders in Public Service Excellence	Building a Regional Powerhouse
<input type="checkbox"/> Scaling Sustainable Services through Innovation <input type="checkbox"/> Focusing “Team Essex County” for Results <input type="checkbox"/> Advocating for Essex County’s Fair Share	<input checked="" type="checkbox"/> Being an Employer with Impact <input type="checkbox"/> A Government Working for the People <input type="checkbox"/> Promoting Transparency and Awareness	<input type="checkbox"/> Providing Reliable Infrastructure for Partners <input type="checkbox"/> Supporting Dynamic and Thriving Communities Across the County <input type="checkbox"/> Harmonizing Action for Growth <input type="checkbox"/> Advancing Truth and Reconciliation

Recommendation

That Essex County Council receive this Report 2025-0507-LLS-R21-DMS – Indemnification Policy for information and approve the Indemnification Policy substantially in the form appended to this Report.

Approvals

Respectfully Submitted,
David M. Sundin

David Sundin, BA (Hons), LL.B., Director, Legislative and Legal Services/County Solicitor

Concurred With,
Sandra Zwiers

Sandra Zwiers, MAcc, CPA, CA, Chief Administrative Officer

Appendix	Title
A	Draft Indemnification Policy