

County of Essex Policy and Procedures Manual

Indemnification Policy

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Policy Type:	Corporate Policy
Approval Authority:	Essex County Council
Office of Responsibility:	Legislative and Legal Services
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Replaces Policy:	N/A

1.0 Introduction

- 1.1 The Corporation of the County of Essex (the "**County**") wishes to establish a formal policy to address the indemnification of Members of Council, Members of Administration, Members of Boards of the County, and all other employees and volunteers of the County (each an "**Indemnified Party**" or collectively the "**Indemnified Parties**").
- 1.2 It is the intention of Council in adopting this Indemnification Policy (the "**Policy**") that this Policy serve to supplement, and not substitute or replace, the protection afforded by the policies of insurance the County has in place.

2.0 Scope

- 2.1 This Policy pertains to all present and former Indemnified Parties (to the extent that they are acting in their role with the County and are acting honestly and in good faith), and is intended to put in place and maintain appropriate protections against personal liability from risks that may involve claims against the Indemnified Parties, but subject to the limitations and specific exclusions provided for in this Policy.

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- 2.2 This Policy does not specifically pertain to a Member of Council or Administration that is acting on behalf of the Essex County Library Board or the Essex-Windsor Solid Waste Authority, which are entities that, although related to the County, are separate and distinct from the County.
- 2.3 Notwithstanding Section 2.2 above, Council may, on a case by case basis, determine whether this Policy should apply to a Member of Council or Administration that is acting on behalf of the Essex County Library Board or the Essex-Windsor Solid Waste Authority.

3.0 Definitions

- 3.1 In addition to any other term defined in the body of this Policy, the following is a list of defined terms:
- 3.1.1 **"Administration"** means an employee of the County who is a member of management.
- 3.1.2 **"CAO"** means the Chief Administrative Officer of the County.
- 3.1.3 **"Council"** means the Council of the County.
- 3.1.4 **"County"** means the Corporation of the County of Essex, and may be used interchangeably with the County as a legal municipal corporation and as the geographic region of the County of Essex.
- 3.1.5 **"County Clerk"** means the member of Administration appointed by Council as the Clerk, or, in the absence of the Clerk, one of the Deputy Clerks appointed by Council from time to time.
- 3.1.6 **"County Solicitor"** means the member of Administration appointed by Council as the County Solicitor, or, in the absence of the County Solicitor, the Deputy County Solicitor, or, as may be the case from time to time, the retained external legal counsel tasked with performing the tasks of the County Solicitor.
- 3.1.7 **"County Treasurer"** means the member of Administration appointed by Council as the Treasurer, or, in the absence of

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the Treasurer, one of the Deputy Treasurers appointed by Council from time to time.

- 3.1.8 **"ECAAC"** means the Essex County Accessibility Advisory Committee.
- 3.1.9 **"Employee"** means any individual who is a paid employee of the County, and includes Members of Administration as well as all other employees, including both full-time and part-time, as well as unionized and non-unionized employees, but does not include independent contractors.
- 3.1.10 **"Former Employee"** means any former member of Administration or former Employee as defined in Section 3.1.1 above.
- 3.1.11 **"Former Member"** means any former Member of Council, any former Member of the ECAAC, or any former Member of any other Board of the County that may be in place from time to time.
- 3.1.12 **"Former Volunteer"** means any former Volunteer as defined in Section 3.1.19 below.
- 3.1.13 **"Indemnified Party"** or **"Indemnified Parties"** means any either any individual member of Administration, Employee, Member, Volunteer, Former Employee, Former Member, or Former Volunteer, or any combination of them, as the context may imply.
- 3.1.14 **"Integrity Commissioner"** means any person or corporation appointed by the County to perform the functions outlined in Section 223.3 of the *Municipal Act*, as well as such further functions as may be required from time to time, and includes any person acting under the instructions of the Integrity Commissioner.
- 3.1.15 **"Legal Proceeding"** means a formal process commenced in any court, administrative tribunal, or other administrative, investigative, or quasi-judicial body.
- 3.1.16 **"Member"** means any Member of Council, any Member of the ECAAC, any Member of Administration, and any Member of any other Board of the County that may be in place from time to time.

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- 3.1.17 "**Municipal Act**" means the *Municipal Act, 2001*, S.O. 2001, c.25, as amended from time to time.
- 3.1.18 "**Municipal Conflict of Interest Act**" means the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as amended from time to time.
- 3.1.19 "**Volunteer**" means any person volunteering on behalf of the County, and may include a person who is also a Member or Employee, and which person has been invited by the County to be a "volunteer" for the County, with that person freely providing services to the County, without remuneration while performing the role of "volunteer".

4.0 Purpose

The purpose of this Policy is to establish the framework for protecting Indemnified Parties against financial loss or damaged if they are named personally in a Legal Proceeding, which is afforded coverage under this Policy.

Notwithstanding the above, for clarity, the purpose of this Policy is not to protect an otherwise Indemnified Party or pay legal expenses for anyone who acts outside of their authority and is then named in a Legal Proceeding, and is not to protect an otherwise Indemnified Party for any of the exclusions outlined in Section 5.1 of this Policy below.

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5.1 Exclusions

- 5.1.1 This Policy does not apply to:
 - 5.1.1.1 a Legal Proceeding related to a grievance filed under the provisions of a collective agreement or to disciplinary action(s) taken by the County as an employer;
 - 5.1.1.2 a Legal Proceeding that involves charges laid under the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended from time to time, and/or the *Criminal Code*, R.S.C. 1985, c/ C-46, as amended from time to time, unless such Legal Proceeding arose as a

result of an Indemnified Party's good faith performance of their assigned duties;

5.1.1.3 a Legal Proceeding resulting from any dishonest, grossly negligent, malicious, willful and/or reckless violation of any law, duty, contract, or obligation, or any fraudulent or criminal act committed by an otherwise Indemnified Party;

5.1.1.4 a Legal Proceeding resulting from an otherwise Indemnified Party gaining a personal profit or advantage to which they were not legally entitled;

5.1.1.5 a Legal Proceeding involving harassment and/or sexual misconduct, where the otherwise Indemnified Party pleads guilty or is found guilty;

5.1.1.6 a Legal Proceeding commenced by the County against an otherwise Indemnified Party;

5.1.1.7 a Legal Proceeding related to Code of Conduct, where the Member is found to be in breach of any provisions of the Code of Conduct by the Integrity Commissioner;

5.1.1.8 a Legal Proceeding where Indemnified Parties are adverse to one another and both would be entitled to legal costs under this Policy, it being the position of the County that it shall not finance both sides in a Legal Proceeding, and that none of the Indemnified Parties should receive indemnification in such circumstances; and

5.1.1.9 any expenses incurred by an otherwise Indemnified Party seeking legal advice to determine whether they have a pecuniary interest and whether or not they should declare a conflict of interest.

5.1.2 Should it be decided that a Member or Former Member, or an Employee or Former Employee, or a Volunteer or Former Volunteer, as the case may be, is not entitled to indemnification, the affected party shall be solely responsible for all costs, damages, penalties, and legal fees related to that Legal Proceeding.

5.2 **CAO as Indemnified Party**

- 5.2.1 If the CAO is named in a Legal Proceeding, Council delegates the CAO's authority under this Policy to the Clerk and Treasurer acting together. However, nothing in this Policy prevents Council from deciding to itself make any decisions that the CAO would make under this Policy, should Council choose to do so.

5.3 **Manner and Extent of Indemnification**

- 5.3.1 The County shall indemnify an Indemnified Party, as well as their heirs and legal representatives, in the manner and to the extent provided for in this Policy, in respect of any Legal Proceeding related to alleged acts or omissions arising out of the Indemnified Party's authority, or within the Employee's employment, Former Employee's employment, Member's duties of office, or Former Member's duties of office, related to the County, if in the opinion of the CAO:

5.3.1.1 they acted honestly and in good faith with a view to the best interests of the County; and

5.3.1.2 in the case of a criminal or administrative action or proceeding, the Indemnified Party has reasonable grounds for believing their conduct to have been lawful.

- 5.3.2 Where the CAO determines that an Indemnified Party is entitled to indemnification under this Policy, the County shall:

5.3.2.1 pay directly or reimburse the Member for, as the case may be, any deductible related to a policy of insurance

5.3.2.2 pay the costs of defending the Indemnified Party in the Legal Proceeding;

5.3.2.3 pay any award of damages or costs, including any monetary penalty or award against the Indemnified Party;

5.3.2.4 pay directly or reimburse the Indemnified Party, as the case may be, for any expense reasonably

incurred by the Indemnified Party related to the Legal Proceeding in question; and

5.3.2.5 pay any sum required in connection with the settlement of a Legal Proceeding, provided that the County Solicitor has approved the amount and terms of the settlement, or, in the case of settlements in excess of the County's insurance deductible, Council has approved the amount of the settlement.

5.3.3 Notwithstanding any other provision of this Policy, Council may, by resolution, decide not to indemnify an otherwise Indemnified Party, if:

5.3.3.1 the Indemnified Party breaches any provisions of this Policy or any agreement for indemnification or reimbursement entered into by the Indemnified Person;

5.3.3.2 the Indemnified Party or their lawyer took a step which was prejudicial to the County in the conduct of the Legal Proceeding; and/or

5.3.3.3 the Indemnified Party initiated a counterclaim, cross claim, third party claim, appeal, or any other legal proceeding related to the Legal Proceeding, without first obtaining approval from the CAO.

5.4 **Agreement**

5.4.1 An Indemnified Party is required to enter into an agreement with the County prior to the County indemnifying the Indemnified Party, and which agreement shall confirm the terms of this Policy and shall confirm that the County will not be required to indemnify the Indemnified Party if they do not co-operate with the County in the Legal Proceeding, if they do not make full disclosure of all relevant matters in the Legal Proceeding, or the Indemnified Party otherwise breaches this Policy or the related agreement.

5.4.2 Where the County has paid for legal costs to defend an Indemnified Party in a Legal Proceeding, and the decision of the CAO to indemnify the Indemnified Party is later

rescinded by the CAO or by Council, the Indemnified Party shall be responsible for all subsequent legal costs and/or any damages and/or costs awarded against the Indemnified Party. Further, the Indemnified Party shall also be liable to repay the County, upon written demand, all costs incurred by the County in defence of the Legal Proceeding to the date of the indemnity being rescinded.

5.5 **Lawyer of the County's Insurer**

5.5.1 At the discretion of the County Solicitor and the County's insurer, a lawyer retained by the County's insurer to defend the County in a Legal Proceeding, may also defend any Indemnified Party in the same Legal Proceeding, and, absent any clear and real conflict, the County and the Indemnified Party will waive any perceived conflict.

5.6 **County's Right to Approve Lawyer**

5.6.1 The County Solicitor shall select, approve, and retain the lawyer required to represent an Indemnified Party in a Legal Proceeding, and shall then:

5.6.1.1 advise the Indemnified Party of the lawyer retained to represent them;

5.6.1.2 advise the Indemnified Party of the requirement to enter into the formal agreement required by Section 5.4.1 of this Policy; and

5.6.1.3 advise Council, on an ongoing basis and as needed, of the progress and final disposition of the Legal Proceeding.

5.6.2 Should an Indemnified Party wish to retain their own lawyer, notwithstanding Section 5.6.1 above, the County may choose, at the discretion of the CAO, not to reimburse, or only partially reimburse, for legal costs incurred by the Indemnified Party, but shall otherwise indemnify the Indemnified Party.

5.7 **Duty to Co-operate**

5.7.1 An Indemnified Party is obligated to fully co-operate with the County in response to the Legal Proceeding.

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5.7.2 An Indemnified Party shall co-operate fully with the lawyer retained by the County to defend any Legal Proceeding and shall make available to such lawyer all information and documentation relevant to the Legal Proceeding that are within the Indemnified Party's knowledge, possession, or control, and shall attend at all times necessary to respond to the Legal Proceeding.

5.7.3 The failure of an Indemnified Party to comply with this Section 5.7 shall, at the discretion of the CAO, be sufficient for the CAO to rescind the decision to indemnify the Indemnified Party.

5.8 Failure to Comply

5.8.1 Should an Indemnified Party fail to comply with the provisions of this Policy and/or the related agreement with the County, the County shall not be liable to assume or pay any insurance deductible, costs, damages, expenses, or any other amounts related to a Legal Proceeding, in accordance with the terms of this Policy, the related agreement, or otherwise.

5.9 Appeal

5.9.1 Should an Indemnified Party be successful in a Legal Proceeding, and should the outcome of that Legal Proceeding be appealed, indemnification under the provisions of this Policy shall be extended to the Indemnified Party by the County for the purposes of that appeal.

5.9.2 Should an Indemnified Party be unsuccessful in a Legal Proceeding and wish to appeal the outcome of the Legal Proceeding, the Indemnified Party must first obtain the approval of the CAO to determine whether indemnification shall be extended by the County for the purposes of an appeal.

5.9.3 Should an Indemnified Party pursue an appeal of a Legal Proceeding without indemnification and is unsuccessful, the Indemnified Party shall bear all the costs and risks with respect to that appeal.

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5.9.4 Should an Indemnified Party pursue an appeal of a Legal Proceeding without indemnification and is successful, the Indemnified Party shall have their reasonable legal fees in advancing the appeal reimbursed.

5.10 Settlement

5.10.1 For any amounts that are required to settle a Legal Proceeding under this Policy, that are not covered by a policy of insurance, Council shall provide any required approval and/or direction to Administration.

5.11 Insurance

5.11.1 The County maintains various policies of insurance for the County and its Administration, Employees, Members, and Volunteers. The provisions of this Policy are intended to supplement the protection provided by such policies of insurance that are in place from time to time. Should there be a conflict between the terms of this Policy and the terms of an applicable policy of insurance, the terms of the policy of insurance shall prevail.

5.12 Reimbursement by Indemnified Party

5.12.1 Should an Indemnified Party recover any costs, damages, or any other amounts from a Legal Proceeding, the Indemnified Party shall reimburse the County for same, as an offset against the amounts paid by the County for the benefit of the Indemnified Party.

6.0 Responsibility

6.1 Council is responsible for carrying out the duties assigned to Council by this Policy.

6.2 The CAO is responsible for carrying out the duties assigned to the CAO by this Policy and for ensuring that this Policy is reviewed at least once every 4 years.

6.3 The County Clerk and County Treasurer are responsible for carrying out the duties assigned to them should the CAO be the "Indemnified Party".

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- 6.4 The County Solicitor is responsible for carrying out the duties assigned to the County Solicitor by this Policy, and specifically for ensuring that Council is updated regularly on Legal Proceedings for which there are Indemnified Parties being indemnified pursuant to this Policy.
- 6.5 The Treasurer is responsible for making recommendations to Council to ensure that there is either sufficient insurance in place for the benefit of the Indemnified Parties or ensuring that there are sufficient reserves in place for the County to act as the "insurer" for the Indemnified Parties.
- 6.6 The Indemnified Parties are responsible for ensuring their own compliance with this Policy.

7.0 Related Legislation

The following legislative provisions are applicable to this Policy:

- The *Municipal Act*, and specifically Sections 279 and 283; and
- The *Municipal Conflict of Interest Act*, and specifically Section 14.

8.0 Summary of Amendments

Date	Amendments
May 7, 2025	Indemnification Policy Proposed to Council for adoption on May 7, 2025.

Appendices

- None.