By-law Number 2020-003

A by-Law to Provide for the Protection, Defense and Indemnification of Employees and Council of The Corporation of the County of Bruce Incurred while Acting on behalf of the County

WHEREAS s. 279(1) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, states that despite the Insurance Act, a municipality may be or 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 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;

AND WHEREAS s. 448(1) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, states that no proceeding for damages or otherwise shall be commenced against a member of council or an officer, employee or agent of a municipality or a person acting under the instructions of the officer, employee or agent for any act done in good faith in the performance or intended performance of a duty or authority under this Act or a by-law passed under it or for any alleged neglect or default in the performance in good faith of the duty or authority;
AND WHEREAS s. 448(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, states that s. 448(1) does not relieve a municipality of liability to which it would otherwise be subject in respect of a tort committed by a member of council or an officer, employee or agent of the municipality or a person acting under the instructions of the officer, employee or agent.

NOW THEREFORE the Council of The Corporation of the County of Bruce enacts By-law 2020-003 as follows:

Definitions

1. For the purpose of this by-law:

“action or proceeding” means an action or proceeding referred to in s. 3 of this by-law;

“appointee” means:

(a) an Integrity Commissioner appointed by the County in accordance with s. 223.3 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

(b) an Ombudsman appointed by the County in accordance with s. 223.13 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended; and,

(c) an Auditor General appointed by the County in accordance with s. 223.19 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

“Council” means the Council of the County;

“Councillor” means a member of Council of the County, including the Mayor, and includes persons who were members of Council at the time that the cause of action or proceeding arose;

“County” means the Corporation of the County of Bruce and any of its committees, boards, commissions or corporations directly under its control, which are included in the County’s insurance program;

“employee” means:

(a) any salaried officer, clerk, worker, servant or other person:

(i) in the employ of the County; or,

(ii) who was an employee of the County at the time the cause of action or proceeding arose;

(b) for the purposes of this by-law only, all persons who:

(i) provide their services to the County without remuneration, except for reimbursement of expenses and honoraria, including volunteers as defined herein; or,

(ii) provided services to the County at the time the cause of action or proceeding arose,

but only with respect to, and notwithstanding sections 4, 5 and 6, to the maximum for which claims made against them are covered by the County’s insurance.

“volunteer” means a registered volunteer who has applied for and been accepted in writing as a volunteer and who participates in the delivery of service by the County, without remuneration (except for the reimbursement of expenses and honoraria) under the supervision of a County employee.
Application

2. This by-law does not apply to:

   (a) a legal proceeding related to a grievance filed under the provisions of a collective agreement, or to disciplinary action taken by the County as an employer except insofar as an employee is imposing a disciplinary sanction on the County's behalf; or,

   (b) the payment of any damages, fines or costs awarded by a Court or agreed to by settlement of an action or other proceeding for an employee or Councillor who is charged with a criminal offence under the Criminal Code, R.S., 1985, c. C-46, as amended, or an action or proceeding brought under the Municipal Conflict of Interest Act, R.S.O. 1990, c. M.50, as amended.

Conditions of Indemnification

3. Subject to s. 2 of this by-law, the County shall indemnify every employee, appointee and Councillor (and his or her estate in the case of a deceased employee, appointee and Councillor who otherwise qualified) in the manner and to the extent provided by s. 4 of this by-law in respect of any action or proceeding by a third party arising out of an act or omission done or made by such person in his or her capacity as or by reason of being or having been an employee, appointee or Councillor, including acting in the performance of any statutory duty imposed by any general or special Act, if:

   (a) he or she acted honestly and in good faith with a view to the best interests of the County;

   (b) he or she had reasonable grounds to believe he or she was acting in accordance with any applicable policies of the County;

   (c) he or she had reasonable grounds to believe that his or her conduct was lawful; and,

   (d) he or she cooperates with the County and its insurer in investigating and defending the claim(s).

Manner and Extent of Indemnification

4. The County shall indemnify a person referred to in s. 3 of this by-law by:

   (a) assuming the cost of defending such person in an action or proceeding;

   (b) paying any damages or costs, including a monetary penalty awarded against such person as a result of an action or proceeding;

   (c) paying, either by direct payment or by reimbursement, any expenses reasonable incurred by such person as a result of an action or proceeding, and,
(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 coverage.

5. In the event of a conflict between this by-law and the terms of any of the County’s insurance policies in place from time to time, the terms of the insurance policy or policies shall prevail.

6. Where an employee, appointee or Councillor has been indemnified by the County, the amount of the indemnification shall be reduced by the amount of any costs or damages recovered, and where indemnification has been paid prior to any recovery, any costs or damages received shall first be paid to the County, up to the amount of the indemnification.

Selection of Legal Counsel

7. The County shall have the right to select and retain a lawyer to represent a person referred to in s. 3 of this by-law. The County shall advise such person of the lawyer representing him or her and shall advise Council of the disposition of the matter (in camera, if applicable).

8. A person referred to in s. 3 of this by-law may request approval from the County to retain a lawyer of his or her own choosing by submitting a request, in writing, to the County. The County shall, within ten (10) days, either approve or deny the request and inform such person in writing of its decision. If the person’s request is denied, the County shall select and retain a lawyer to represent them.

9. If the County does not either approve or deny the request outlined in s. 8 and inform such person in writing of its decision within the stipulated ten (10) day time period, such person may retain a lawyer to act on his or her behalf until such time as the County selects and retains another lawyer. If the County selects and retains another lawyer, the County shall pay all of his or her reasonable legal fees and disbursements in connection with services rendered and work done in connection with the action or proceeding up until that time.

10. Notwithstanding any provision of this by-law to the contrary, 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 referred to in s. 3 of this by-law with respect to that action or proceeding unless the County advises such person otherwise.

Settlements

11. The County shall have the right to approve any settlement for any action or proceeding. To the extent necessary, a person referred to in s.3 of this by-law shall cooperate and give any consent necessary to conclude a settlement that the County wishes to enter into.

Responsibility of Person Served

12. Where a person referred to in s. 3 of this by-law is served with any process issued out of or authorized by any Court, administrative tribunal or other administrative or investigative or quasi-judicial body, whether or not the person is named a party in connection with any action or proceeding, he or she shall forthwith deliver the process, or a copy thereof, to the County Clerk forthwith.
Duty to Cooperate
13. A person referred to in s. 3 of this by-law who is involved in any action or proceeding shall:

(a) cooperate fully with the County and any lawyer retained by the Town to defend such action or proceeding;

(b) make available to such lawyer all information and documentation relevant to the matter as are within their knowledge, possession or control; and,

(c) attend at all proceedings when requested to do so by such lawyer.

Failure to Comply with By-Law
14. If a person referred to in s. 3 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 sections 4 and 9 of this by-law.

Executive Acts Authorized
15. The Warden and Clerk of the County are hereby authorized and directed to do all the things necessary, including executing any necessary documents under the seal of the County, to give effect to this by-law according to its true intent and meaning.

Release and Hold Harmless
16. The County waives its rights to seek recovery from, and releases and holds harmless, every employee, appointee and Councillor and his or her heirs and legal representatives from any claim it may have arising out of an act or omission done or made by such person in his or her capacity as or by reason of being or having been an employee, appointee or Councillor, including acting in the performance of any statutory duty imposed by any general or special Act, if:

(a) he or she acted honestly and in good faith, with a view to the best interests of the County;

(b) he or she had reasonable grounds to believe that he or she was acting in accordance with any applicable policies of the County; and,

(c) he or she had reasonable grounds for believing his or her conduct was lawful

(d) he or she cooperates with the County and its insurer in investigating and defending the claim(s).

Right of Discipline, Removal or Termination
17. The provisions and protections contained in this by-law, including, without limitation, sections 3, 4, 5, 6 and 16, shall, in no way, limit the County’s rights respecting discipline, removal and/or termination of an employee.
Council Discretion to Extend Protection

18. The express provision of this by-law shall not limit or preclude Council from exercising its discretion to extend protection in appropriate circumstances and within legal and insurance limits.

Severability

19. If a Court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this by-law and it is hereby declared that the remainder of this by-law shall be valid and shall remain in full force and effect.

Effective Date

20. This by-law shall come into force on the date of its passage by Council.

Passed this 9th day of January, 2020

Mitch Twolan
Warden

Donna Van Wyck
Clerk