

THE CORPORATION OF THE
TOWNSHIP OF BONNECHERE VALLEY

BY-LAW NO. 2005-14

A By-Law to provide for the indemnity and defense of
Councillors and Employees of the Township of Bonnechere
Valley against liability incurred while acting on behalf of the
Township of Bonnechere Valley

WHEREAS Section 5(1) of the Municipal Act 2001, Chapter 25 and amendments thereto provides that the powers of a municipal corporation are to be exercised by its council;

AND WHEREAS Section 5(3) of the Municipal Act 2001 Chapter 25 and amendments thereto provides that the powers of every council shall be exercised by by-law;

AND WHEREAS Section 279 of the Municipal Act, SO 2001, Chap. 25, provides that the Council of 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 specific matters;

AND WHEREAS Section 279(4) the Insurance Act does not apply to a municipality acting as an insurer for the purpose of this section;

AND WHEREAS Section 280(1) of the Municipal Act, S.O. 2001, provides that the Council of a municipality may contract for insurance for, pay any part of the premiums for or pay for any part of the damages, risks or costs referred to in subsection 279(1) for any local board of the municipality or for any of the members, former members, employees or former employees of a local board of a municipality;

AND WHEREAS the Council of the Township of Bonnechere Valley will be responsible for paying any damages or costs awarded against the members of the Council or expenses incurred by them as a result of any action or other proceeding, except a proceeding brought under the Municipal Conflict of Interest Act, arising out of acts or omissions done or made by them in their capacity as members or officers of the municipality, 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 any such person in such an action or other proceeding;

NOW THEREFORE the Council of the Township of Bonnechere Valley hereby enacts as follows:

1. Definitions:
In this By-Law, unless a contrary intention appears:
 - (1) “action or proceeding” means an action or proceeding referred to in Section 4;
 - (2) “employee” means any salaried officer, or any other person in the employ of the Township and shall, for the purposes of this By-Law only, include volunteers and persons that provide services on behalf of the Township without remuneration, exclusive of reimbursement of expenses or honoraria, including all members of Council.
 - (3) “former employee” means a person who was formerly an employee of a municipality.

2. Former Employees
This By-Law applies to any person who was an employee at the time the cause of action or other proceeding arose but whom prior to judgment or other settlement of the action or proceeding has ceased to be an employee.

3. Excluded Actions and Proceedings
This By-Law does not apply to an action or proceeding:
 - (1) arising out of an act or omission that occurred prior to January 1, 1992;
 - (2) where the legal proceeding relates to a grievance filed under the provisions of a collective agreement or to disciplinary action taken by the Township as an employer.

4. Indemnification
The Township shall indemnify an employee and members of Council and their heirs and legal representatives in the manner and to the extent provided by Section 5, in respect of any civil, criminal or administrative action or proceeding by a third party for acts or omissions arising out of the scope of the employee’s authority or within the course of the employee’s employment or office, including acting in the performance of any statutory duty, if in the opinion of the Chief Administrative Officer/Clerk:
 - (1) the employee acted honestly and in good faith with a view to the best interest of the Township, and
 - (2) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the employee had reasonable grounds for believing that his or her conduct was lawful.
 - (3) in the event that the action is against the Chief Administrative Officer/Clerk the Administration Committee will make their recommendation regarding indemnification to Council, based on 4 (a) and (b) above.

5. Manner and Extent of Indemnification
The Township shall indemnify a person referred to in Section 4 by:
 - (1) assuming the cost of defending such person in an action or proceeding;
 - (2) paying any damages or costs, including a monetary penalty, awarded against such person as a result of an action or proceeding;
 - (3) paying, either by direct payment or by reimbursement, any expenses reasonably incurred by such person as a result of an action or proceeding; and
 - (4) 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 Township’s insurance program for the benefit and protection of such person against any liability incurred by him/her.

6. Persons Served with Process
Where an employee is served with any process issued out of or authorized by any court, administrative tribunal or other administrative, investigative or quasi-judicial body, other than a subpoena, in connection with any action or proceeding, the employee shall:
 - (1) unless he or she is the head of a department, forthwith deliver the process or a copy thereof to the head of the department for which the employee works or to a person

designated by the Department Head to receive such process, who in turn shall deliver a copy thereof to the Chief Administrative Officer/Clerk.

- (2) if he or she is the head of a department, forthwith deliver the process or a copy thereof to the Chief Administrative Officer/Clerk.

7. Lawyer Retained by Township Insurers

Notwithstanding any other provision of this By-law to the contrary any lawyer retained by the Township's insurers from time to time to defend the Township in any action or proceeding shall represent an employee with respect to that action or proceeding unless the Township instructs such person otherwise.

8. Township's Right to Select Lawyer

Subject to Section 12 hereof, the Township shall have the right to select and retain the lawyer to represent an employee and the Chief Administrative Officer/Clerk shall:

- (1) advise such person of the lawyer selected to represent the employee;
- (2) advise the Council of the final disposition of the matter; and
- (3) the Township shall have the right to approve the settlement of any action or proceeding.

9. Approval of Other Lawyer

- (1) An employee may request approval to be represented by the lawyer of his/her choice by writing to the Chief Administrative Officer/Clerk.
- (2) The Chief Administrative Officer/Clerk shall within 10 days from receiving the request, either approve the request or deny the request and nominate a lawyer of the Township's choice and, in either case, advise the employee in writing.
- (3) If, after 10 days from receiving the request, the Chief Administrative Officer/Clerk has not advised the employee in writing or the disposition of his or her request, the employee may retain his/her choice of lawyer to act on his/her behalf until the Township retains another lawyer.
- (4) If the Township retains another lawyer to act on behalf of an employee in place of the lawyer originally retained by him/her in accordance with Subsection (c), the Township shall, subject to the Solicitors Act, pay to the employee's lawyer all of the reasonable legal fees and disbursements for services rendered and work done in connection with the action or proceeding from the time that the employee retained the lawyer in accordance with Subsection (c), until replaced with the lawyer retained by the Township.

10. Duty to Cooperate

An employee involved in any action or proceeding shall co-operate fully with the Township and a lawyer retained by the Township to defend such action or proceeding, shall make available to such lawyer all information and documents relevant to the matter as are within his/her knowledge, possession or control, and shall attend at all proceedings when requested to do so by such lawyer.

11. Failure to Comply with By-Law

If an employee fails or refuses to comply with the provisions of this By-Law, the Township shall not be liable to assume or pay any of the costs, damages, expenses, or sums mentioned in Section 5 or Section 9 of this By-Law.

12. Conflict

The Township maintains different policies of insurance for both the Township and members of Council, officers and employees; and 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 or insurance in place from time to time, the terms of such policy or policies of insurance shall prevail.

13. Executive Acts Authorized

The Chief Administrative Officer/Clerk is hereby authorized and directed to do all the things necessary, including executing any necessary documents under the seal of the Township, to give effect to this By-Law according to its true intent and meaning.

14. Reimbursement

Where the employee has been indemnified by the Township, the amount of 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 Township up to the amount of the indemnification.

15. Title

The short title of this By-Law is the "*Legal Indemnification By-Law*".

THAT By-Law No. 2002-23 be hereby rescinded;

AND THAT This By-Law shall come into force and take effect on the passing thereof.

READ A FIRST & SECOND TIME THIS 25th DAY OF JULY, 2005.

READ A THIRD AND FINAL TIME THIS 25TH DAY OF JULY, 2005.

Mayor Zig Mintha

CAO Bryan Martin