



Town of Whitby Policy

Policy Title:	Uninsured Claims and Legal Matters Policy
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Point of Contact:	Commissioner of Legal and By-law Services/Town Solicitor

Policy Statement

The Corporation of the Town of Whitby is committed to maintaining clear policies regarding how it effectively and efficiently addresses uninsured litigation and legal matters. These policies include when and how Council is involved in the legal process, and what responsibility is delegated to Town staff. In this way, the Town can respond quickly to legal issues within clear lines of authority, minimizing legal risk and cost to the Town.

Purpose

The purpose of this Policy is to establish a formal Uninsured Claims and Legal Matters Policy, which is necessary to ensure that all such matters are responded to in an efficient and formal manner, while recognizing the significance of their sensitivity and confidentiality. This Policy aids in protecting the Town against any further liability that may arise from these matters being handled without the benefit of legal guidance and advice, and also ensures that appropriate administrative tracking is adhered to.

This Policy also defines staff who have delegated authority to handle legal matters. In addition, this Policy establishes how external counsel should be retained, and the protocol for communications with external legal counsel. Legal Services is hereby appointed by Council to generally oversee the administration of uninsured legal matters and Claims involving the Town.

Scope

This Policy applies to all uninsured claims and legal matters involving the Town. This includes matters that are to be heard before administrative tribunals (e.g., Assessment Review Board, Ontario Municipal Board, etc.) for matters where the Town has no coverage under its insurance policy. Insured claims and legal matters will continue to

be handled by Risk Management and Insurance Services in the Financial Services Department, under the direction of the Durham Municipal Insurance Pool and its policies and procedures.

Where there is any conflict between the provisions of this Policy and other Town policies impacting the handling of legal matters, the CAO shall have the authority to resolve such conflict after consultation with the Town Solicitor and any other impacted Department Head.

Index

1	Definitions	3
2	Responsibilities	3
3	Communications Involving Claims or Legal Matters	4
4	Delegated Authority for Claims or Proceedings	5
5	Retainer of External Legal Counsel	7
6	Settlement of Claims	9
7	Reporting	9
8	General	10

1 Definitions

- 1.1 **Claim** or **Claims** means any and all uninsured claims, actions, applications, appeals, or lawsuits by or against the Town including, but not limited to: monetary claims for loss, damages or reimbursement; Statements of Claim, Crossclaims, Counterclaims, Third Party Claims, or any other such claims as permitted by law.
- 1.2 **CAO** means the Chief Administrative Officer of the Town.
- 1.3 **Commissioner of Planning** means the Town employee responsible for the management and operation of the Town's Planning and Development Department, or his/her designate.
- 1.4 **Council** means the Council of The Corporation of the Town of Whitby.
- 1.5 **Department Head** or **Department Heads** means those Town employees occupying the position of Commissioner, Head, or Chief responsible for a Town department from time to time, or his/her designate, including any person in a position as acting Department Head.
- 1.6 **HR Manager** means the Town employee responsible for the management and operation of the Town's Human Resources Division, or his/her designate.
- 1.7 **Legal Services** means the Legal Services Division of the Legal and By-law Services Department of the Town.
- 1.8 **Policy** means this Town of Whitby Policy No. XX: Uninsured Claims and Legal Matters Policy, as may be amended from time to time.
- 1.9 **Proceeding** or **Proceedings** means any uninsured proceeding, motion, hearing, trial, appeal, judicial review, administrative tribunal matter, court action, or any appearance before one or more judges, masters, members, or any other such persons authorized by law to hear and/or rule upon a Claim.
- 1.10 **Town** means The Corporation of the Town of Whitby.
- 1.11 **Town Clerk** means the Town employee occupying the position of Clerk for the Town in accordance with the Municipal Act, 2001, S.O. 2001, c. 25, as amended, or his/her designate or deputy.
- 1.12 **Town Solicitor** means the Town employee responsible for the management and operation of the Town's Legal Services Division, or his/her designate.
- 1.13 **Treasurer** means the Town employee occupying the position of Commissioner of Financial Services/Treasurer, or his/her designate.

2 Responsibilities

- 2.1 Council to:

- Authorize and direct the commencement of any Claim on behalf of the Town, and exercise such authority as required pursuant to this Policy.
- Ensure adherence to this Policy by relevant Town staff.

2.2 CAO to:

- Where there is any conflict between the provisions of this Policy and other Town policies impacting the handling of legal matters, to resolve such conflict after consultation with the Town Solicitor and any other impacted Department Head.
- Ensure adherence to this Policy by relevant Town staff.

2.3 Town Solicitor to:

- Defend the Town from all Claims in accordance with the provisions and delegated authority contained in this Policy.
- Ensure adherence to this Policy by relevant Town staff.

2.4 Department Heads to:

- Ensure that all staff members within their department have been made aware of this Policy, and that they understand their obligations and responsibilities under this Policy.
- Due to the time sensitivity of all Claims, ensure that their staff members respond to any and all requests by Legal Services, the Town's external counsel, or the relevant Town personnel handling a legal matter for further information regarding any Claim within the timelines set out in the request.

2.5 Town staff to:

- If unsure on how to proceed with a matter that may give rise to a Claim, bring the matter to the attention of their Department Head and/or the Town Solicitor for proper guidance and/or legal advice.
- Respond fully, truthfully, and in a timely manner to all requests for information by Legal Services, the Town's external legal counsel, or the relevant Town personnel handling a legal matter.

3 Communications Involving Claims or Legal Matters

- 3.1** Town staff shall not, at any time, make any promises, commitments or comments to any person with respect to compensation for loss, damages, or reimbursement which may have resulted from any incident or accident. In addition, staff members shall never admit to any fault or liability on behalf of the Town, and shall not comment on any ongoing Claims or Proceedings,

other than as outlined in this Policy.

- 3.2** Members of Council should refer specific inquiries about ongoing Claims or Proceedings from claimants, appellants, the public, or the media to the Town Solicitor and the Manager of Corporate Communications for response, and such response shall be in accordance with any relevant Town policies or procedures regarding media and public relations. It is in the best interest of the Town that members of Council refrain from commenting on litigation matters.
- 3.3** Members of Council shall not communicate directly with the Town's external legal counsel regarding any Claim or potential Claim without first receiving the permission of the Town Solicitor, in order to avoid additional legal costs to the Town. Generally, all communications with external legal counsel retained by the Town involving Town legal matters, Claims, potential Claims, or that have the potential to require Town action, shall only be made by the Town Solicitor or other Legal Services staff members.
- 3.4** Should any member of Council, or Council as a whole, wish to ask questions or seek advice on behalf of the Town from the Town's external legal counsel, such questions shall only be directed to the Town Solicitor, who shall then communicate with the Town's external legal counsel and thereafter report back to Council with a response as soon as possible. Depending on the nature of the questions or the legal matter, external counsel may also be directed to appear before Council in closed session so that Council may receive legal advice regarding a Claim, Proceeding, or other legal matter.

4 Delegated Authority for Claims or Proceedings

- 4.1** Council has the authority to commence a Claim on behalf of the Town, subject to the provisions of this Policy.
- 4.2** The Town Solicitor shall prepare a confidential report to Council requesting authorization to commence any Claim. Where possible, and subject to closed session confidentiality, the Council resolution authorizing the commencement of the Claim shall specify: (a) the name of the defendant(s); (b) the general nature of the Claim; (c) the general amount of the Claim; and (d) the authority upon which the Town Solicitor may act to pursue the Claim. Where the Claim does not have a monetary amount and is for administrative matters (e.g., matters before the Ontario Municipal Board), the Council resolution need not have the above requirements.

Where an urgent situation occurs that does not allow the Town Solicitor to obtain Council authority prior to commencing a Claim, the Town Solicitor has the authority to commence a Claim in order to protect the Town's legal interests, and shall report to Council as soon as possible after the commencement of such a Claim to explain the nature of the urgency and actions taken. Without limiting the generality of the foregoing, an urgent situation includes: legal action that is necessary to address an emergency

situation (e.g., under the Building Code Act, 1992); the impending expiry of certain timeframes in order to file a Claim (e.g., Limitations Act, 2002 issues); and a cause of action that may arise during the election recess period.

- 4.3** Subject to subsections 4.4, 4.5, and 4.6 of this Policy, the Town Solicitor has the authority to take any and all steps necessary to: (a) defend the Town against any and all Claims; or (b) represent the Town in any and all Proceedings where the Town is considered a defendant or respondent, including the retainer of external counsel pursuant to this Policy.
- 4.4** Subject to the provisions of any collective agreement between the Town and any union representing a group of Town employees, the HR Manager has the authority to take any and all steps necessary to: (a) defend the Town against any and all Claims involving human resource matters or labour relations issues with Town employees; or (b) represent the Town in any and all employee/labour Proceedings where the Town is considered a defendant or respondent, including the retainer of external counsel pursuant to this Policy.
- 4.5** With regards to planning matters involving the Town that is intended to be heard by the Ontario Municipal Board (or any successor thereto) or a court:
- (a) Where the Town is named as a respondent by an appellant and Council rendered a decision regarding the planning matter that was consistent with Town staff's recommendations, then the Town Solicitor has the authority to take any and all steps necessary to defend the Town's position, including the retainer of external counsel and experts pursuant to this Policy.
 - (b) Where the Town is named as a respondent by an appellant and Council rendered a decision regarding the planning matter that was inconsistent with Town staff's recommendations, then the Town Solicitor shall seek the direction of Council regarding the defense of Council's position, including the need to retain external legal counsel and external experts.
 - (c) Where the Town is named as a respondent by an appellant and Council has not yet rendered a decision regarding the planning matter being appealed, then the Town Solicitor and the Commissioner of Planning shall seek the direction of Council prior to the full hearing of the planning matter. The Town Solicitor, however, shall be authorized to take such procedural actions in the meantime (including representing the Town at any pre-hearing conference) in order to protect the interests of the Town.
 - (d) Where the Town is named as a respondent by an appellant and the planning matter being appealed was considered by the Town's Committee of Adjustment or the Region of Durham's Land Division Committee, then if both the Town Solicitor and the Commissioner of Planning agree that the matter under appeal is of sufficient importance

or impact to the planning principles of the Town, the Town Solicitor has the authority to take any and all steps necessary to defend the Town's position, including the retainer of external counsel pursuant to this Policy. Otherwise, should the matter under appeal be determined by the Town Solicitor and the Commissioner of Planning not to be of sufficient importance or impact to the planning principles of the Town, they jointly have the authority not to have the Town represented or appear before the Ontario Municipal Board or court regarding the planning matter.

- (e) Where the Town is not named as a respondent in a planning matter being appealed, but the Commissioner of Planning believes that the matter is of sufficient interest or importance to the Town such that the Town should be represented as a party or participant in such matter, then the Commissioner of Planning shall seek the direction of Council regarding the Town's participation in the appeal.

4.6 With regards to property tax and assessment matters involving the Town that is intended to be heard by the Assessment Review Board (or any successor thereto) or a court:

- (a) Pursuant to section 40 of the Assessment Act, R.S.O. 1990, c. A.31, as amended, the Treasurer or his/her designate has the authority to file a Notice of Complaint, on behalf of the Town, to appeal the determination of the Municipal Property Assessment Corporation regarding certain properties within the Town of Whitby that the Treasurer or his/her designate believes in their professional opinion to be incorrectly assessed, incorrectly classified, incorrectly apportioned between different classes of assessed property, or wrongly placed on or omitted from the assessment roll. In support of this delegated authority to the Treasurer, the Town Solicitor has the authority to take any and all steps necessary to advance the Town's position, including the retainer of external counsel pursuant to this Policy.
- (b) In consultation with the Treasurer or his/her designate, the Town Solicitor has the authority to take any and all steps necessary to defend the Town's position regarding any taxpayer's appeal of their property assessment or other property tax matter before the Assessment Review Board, including the retainer of external counsel pursuant to this Policy.

5 Retainer of External Legal Counsel

- 5.1** Where, in the opinion of the Town Solicitor, external legal counsel is required to be retained for the purpose of defending the Town against a Claim or representing the Town in a Proceeding pursuant to this Policy, the Town Solicitor is authorized to execute any and all such documents or agreement necessary to retain the services of such external counsel.

- 5.2** Where, in the opinion of the Town Solicitor, external legal counsel is required to provide the Town with specific legal opinions as may be necessary to manage workflow within Legal Services, or where specific legal expertise is required for a particular matter, the Town Solicitor and the Treasurer or CAO are jointly authorized to retain the services of such external legal counsel so long as the amount of the retainer does not exceed \$50,000.00. Where the retainer of external legal counsel will exceed the amount in this subsection for the purposes outlined herein, the Town Solicitor shall prepare a confidential report to Council to request authorization for the retainer of external legal counsel, or continue the retainer of external legal counsel, under this subsection.
- 5.3** Upon the agreement of the Town Solicitor the relevant Department Head, and external legal counsel (if retained), the Town Solicitor is also authorized to retain the necessary consultants and expert witnesses (other than staff) as required to advise and represent the Town regarding any Claim or Proceeding.
- 5.4** The retainer of external legal counsel is exempt from the Town's Procurement Policy, as may be amended from time to time. However, where possible prior to the retainer of external legal counsel for uninsured legal matters, the Town Solicitor shall obtain at least two quotes from qualified external legal counsel prior to any retainer. The Town Solicitor shall choose the quote that provides the best monetary value, expertise, knowledge, and representation for the Town.
- 5.5** Where external legal counsel is not required, the Town Solicitor is authorized to delegate to a qualified Legal Services staff member any of the authority given to the Town Solicitor herein.
- 5.6** The Town shall not retain the services of any lawyer or law firm that has provided advice to any individual member of Council regarding the same matter for which the Town requires external legal assistance, in order to avoid any conflict of interest. Furthermore, at the discretion of the Town Solicitor, the Town's retainer shall require that the external lawyer and law firm not provide legal advice to any individual member of Council regarding the same matter for which they are being retained by the Town, in order to avoid any conflict of interest.
- 5.7** The Town shall not retain the services of any lawyer or law firm who is currently engaged in litigation against the Town on behalf of third parties.
- 5.8** In order to avoid using Town funds to pay for a third party's lawyer, the Town shall not retain the services of any lawyer or law firm for a matter where the lawyer or law firm is representing any third party in the same matter, regardless of whether the position of any third party and the position of the Town is the same or similar.

6 Settlement of Claims

- 6.1** Subject to subsections 6.2 to 6.5 of this Policy, the Town Solicitor is authorized to settle all Claims by and against the Town in an amount not to exceed \$50,000.00. The Town Solicitor shall also be authorized to execute any Full and Final Release and/or other settlement documents as required under this subsection. Immediately after such settlement is made in accordance with this subsection, the Town Solicitor shall prepare a confidential memorandum or report to Council to advise of the settlement.
- 6.2** The Town Solicitor and the Commissioner of Planning are jointly authorized to settle any planning matter under paragraphs 4.5 (a) and (d) of this Policy without further Council approval, provided that, in the professional opinion of such staff, the settlement terms maintain the intent of the planning policies and principles of the Town. Such authority includes the authority to execute any such documents necessary to give effect to such settlement.
- 6.3** Any planning matter where the Town is represented pursuant to paragraphs 4.5 (b), (c), and (e) of this Policy, or where Council has directed staff to appear as an appellant or defendant/respondent, shall only be settled with the prior approval of Council.
- 6.4** The Treasurer or his/her designate are authorized to settle any property tax or assessment matters under subsection 4.6 of this Policy without further Council approval, provided that, in the professional opinion of such staff, the settlement terms are fair and equitable to the property assessment tax base of the Town. Such authority includes the authority to execute any such documents necessary to give effect to such settlement.
- 6.5** The HR Manager or his/her designate is authorized to settle any Claims or Proceedings involving human resource matters or labour relations issues with Town employees under subsection 4.4 of this Policy without further Council approval. Such authority includes the authority to execute any such documents necessary to give effect to such settlement.
- 6.6** Where possible, all Full and Final Releases or Minutes of Settlement must be reviewed and approved by the Town Solicitor or external counsel prior to execution.

7 Reporting

- 7.1** The Town Solicitor shall annually report to Council outlining the status of outstanding and resolved Claims and Proceedings, other than those listed in subsections 4.4 and 4.6 of this Policy.
- 7.2** The Treasurer shall annually report to Council outlining the status of outstanding and resolved Claims or Proceedings under subsection 4.6 of this Policy.

8 General

- 8.1** The Town's external prosecutor, on the advice and direction of the Manager of By-law and Animal Services and the Town Solicitor (and any other relevant Department Head), shall have full carriage, control, and authority of all Town by-law and statutory prosecution matters on behalf of the Town, including (without limiting the generality of the foregoing): (a) prosecuting all charges on behalf of the Town; (b) representing the Town in court to facilitate the prosecution of such charges; (c) seeking fines, costs, or other remediation in response to a successful prosecution; and (d) the settlement of any prosecution that is determined to be in the best interests of the Town.

This Policy is hereby approved by Council Resolution #25-18 on this 29th day of January, 2018.