



# CITY POLICY

**POLICY NUMBER:** C482

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**REFERENCE:**

City Council – 2002 08 27

**ADOPTED BY:**

City Council

**SUPERSEDES:**

C425

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**PREPARED BY:** Corporate Services Department, Law Branch

**DATE:** 2002 07 04

**TITLE:** Legal Representation and Indemnification of City Employees, Agents and Members of Council

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**Policy Statement:**

1. Where any third party commences a civil action against any present or former Member of Council, employee or agent of the City, and it is determined in accordance with this policy and procedure that the conduct giving rise to the civil action was conduct by the Member of Council, employee or agent of the City, acting in good faith in the course and scope of the duties of his or her position, then subject to the other provisions of this policy and procedure, the city shall indemnify the Member of Council, Employee or Agent of the City in regard to any judgment awarded against them as a result of the civil action.
2. If the Member of Council, employee or agent of the City has insurance from some source other than the City which will provide them with a source of indemnification in regard to a civil action, the City shall only indemnify them to the extent that they are not already provided with indemnification by their insurer.
3. The City reserves the right to defend any such civil action in the name of and on behalf of the Member of Council, employee or agent of the City, and to make such investigation, negotiation and settlement of any such civil action as it may deem necessary or expedient and it shall be the obligation of the Member of Council, employee or agent of the City to co-operate with the City in the defence of the civil action.
4. Where any criminal or quasi-criminal prosecution is brought against any present or former Member of Council, employee or agent of the City, and it is determined in accordance with this policy and procedure:
  - A) That the conduct giving rise to the prosecution was conduct of the Member of Council, employee or agent of the City acting in good faith in the course and scope of the duties of his or her position;
  - B) That the Member of Council, employee or agent of the City had reasonable grounds to believe his or her conduct was lawful; and
  - C) That is in the interest of the City to assist in the defense of the prosecution,

The City may, in its discretion, provide legal representation for the Member of Council, employee or agent of the City, or pay on behalf of or reimburse the Member of Council, employee or agent of the City for all or part of legal fees and expenses he or she may incur in defence of the criminal or quasi-criminal charges and, where the city elects to provide legal representation, it shall be the obligation of the Member of Council, employee or agent of the City to co-operate with the City in the defence of the charges.

5. The City shall not be required to pay any fines or penalties levied or imposed against any Member of Council, employee or agent of the City by reason of any conviction arising from any criminal or quasi-criminal prosecution, but may, in its discretion, elect to pay such fines or penalties where it concludes it is appropriate to do so.

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**This policy is subject to any specific provisions of the Municipal Government Act or other relevant legislation or Union Agreement.**



# CITY POLICY

6. Where any complaint or inquiry pursuant to any enactment is brought against any present or former Member of Council, employee or agent of the City, and it is determined in accordance with this policy and procedure:
  - A) That the conduct giving rise to the complaint or inquiry is conduct of the Member of Council, employee or agent of the City acting in good faith in the course and scope of the duties of his or her position;
  - B) That the Member of Council, employee or agent of the City had reasonable grounds to believe his or her conduct was appropriate; and
  - C) It is in the interest of the City to assist the Member of Council, employee or agent of the City;

The City may, in its discretion, provide legal representation for the Member of Council, employee or agent of the city, or pay on behalf of or reimburse the Member of Council, employee or agent of the city for all or part of legal fees and expenses he or she may incur in their legal representation in regard to the complaint or inquiry and, where the City elects to provide legal representation, it shall be the obligation of the Member of Council, employee or agent of the city to co-operate with the city in the defence of the complaint or inquiry.

7. The City shall not be required to pay any penalties levied or imposed against any Member of Council, employee or agent of the city arising from any complaint or inquiry pursuant to any enactment, but may, in its discretion, indemnify the Member of Council, employee or agent of the city in regard to any compensatory damages ordered to be paid by the tribunal conducting the complaint or inquiry.
8. The City reserves the right to dispense whatever discipline it may deem appropriate if a city employee acts beyond the course and scope of his or her duties or while acting in the course and scopes of his or her duties goes beyond or short of or breaches what would be considered normal and prudent conduct.

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## **The purpose of this policy is to:**

Provide administrative direction to all concerned on the wishes of City Council on the title subject.



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## 1. DEFINITIONS

- 1.01 "City employee or agent" includes any person who was a City employee or agent at the time of the conduct giving rise to the Civil Action, Complaint or inquiry, or Criminal or quasi-criminal prosecution.
- 1.02 "civil action" means any civil action commenced in any Court seeking compensatory damages or any other civil remedy.
- 1.03 "criminal or quasi-criminal prosecution" includes alleged violation of any federal or provincial statute or regulation or municipal bylaw punishable by fine or imprisonment or both, including, without restricting the generality of the foregoing, prosecution under environmental protection statutes.
- 1.04 "complaint or inquiry" means any complaint or inquiry brought pursuant to any enactment and includes any complaint under the Human Rights Citizenship and Multiculturalism Act, and any professional disciplinary proceedings pursuant to an enactment regulating conduct of any profession.
- 1.05 "member of Council" includes any person who was a member of Council at the time of the conduct giving rise to the Civil Action, Complaint or inquiry, or Criminal or quasi-criminal prosecution.
- 1.06 "Review Committee" means a committee comprised of the City Solicitor (or his or her designate), the Director of Risk Management (or his or her designate), the General Manager (or his or her designate) of the department whose employee or agent has been named as a defendant in a civil action or who is the subject of a complaint or inquiry pursuant to any enactment or who is the subject of any criminal or quasi-criminal prosecution. In the case of complaint or inquiry the Manager of the Human Resources Branch of the Corporate Services Department (or his or her designate) shall sit on the review committee in the place of the Director of Risk Management).

## 2. RESPONSIBILITIES

- 2.01 City Council to:
  - a) approve this policy and any amendments hereto;
- 2.02 Executive Committee of City Council to:
  - a) recommend amendments to this policy to City Council.
- 2.03. City Manager to:
  - a) approve amendments to this procedure, and advise the Executive Committee of any such change;
  - b) recommend to Executive Committee any amendments to this policy; and,
  - c) on the request of the General Manager of an affected Department to identify a source of funding for reimbursement of approved legal fees and expenses in connection with the defence of employees or agents with that department in regard to any complaint or inquiry or criminal or quasi-criminal charges and to identify a source of funding for any amounts to be expended to indemnify employees or agents where such losses are not covered by the City's insurance



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**2.04** City Solicitor (or his or her designate) to:

- a) sit as chair of the Review Committee;
- b) review and approve or tax any accounts rendered for legal services provided in defence of members of Council, City employees, or agents of the City in respect to criminal or quasi-criminal charges or legal representation in regard to any complaint or inquiry in cases where it has been determined that the City will pay for or provide reimbursement for all or part of such legal fees and expenses;
- c) approve indemnification of members of Council, City employees and agents of the City in respect to any civil action unless:
  - i) he or she has some reasonable doubt as to whether the conduct giving rise to the civil action arose in good faith and in the course and scope of the member of Council's, City employee's or agent's duties; or
  - ii) where, when dealing with persons who claim to be agents of the City, the City Solicitor does not believe or has some reasonable doubt as to whether that person is an agent of the City; or
  - iii) where there is alternate insurance coverage available to provide indemnification;
- d) convene a meeting of the Review Committee as soon as practical if he or she does not approve indemnification for a City employee or agent in respect to civil matters; and
- e) where any question exists as to whether indemnification should be provided to a member of Council in respect to civil matters, consult with the Director of Risk Management, and approve or deny indemnification of members of Council
- f) convene a meeting of the Review Committee as soon as practical upon being advised by a City Employee or agent, of a request for legal representation or for payment of or reimbursement of legal fees and expenses in connection with a criminal or quasi-criminal matter or in connection with any complaint or inquiry.
- g) upon being advised by a member of Council of a request for legal representation or for payment of or reimbursement of legal fees and expenses in connection with a criminal or quasi-criminal matter or in connection with any complaint or inquiry, consult with the Director of Risk Management, and approve or deny reimbursement, in whole or in part, of legal fees and expenses incurred by any member of Council .

**2.05** Director of Risk Management (or his or her designate) to:

- a) sit as a member of the Review Committee, except in the case of complaint or inquiry.
- b) consult with the City Solicitor regarding indemnification of members of council and requests for reimbursement of legal fees and expenses incurred by members of Council

**2.06** Manager of the Human Resources Branch of the Corporate Services Department (or his or her designate) to:

- a) sit as a member of the Review Committee in the case of a complaint or inquiry against a City Employee or Agent.

**2.07** General Managers (or their designates) to:



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- a) sit as a member of the Review Committee for those cases in which the City employee or agent affected was in his or her department at the time of the action giving rise to the complaint, inquiry, civil action or prosecution; and
- b) identify (alone or with assistance of the City Manager) a source of funding for reimbursement of approved legal fees and expenses in connection with the defence of employees or agents with his or her department in regard to any complaint or inquiry or criminal or quasi-criminal charges and to identify a source of funding for any amounts to be expended to indemnify employees or agents where such losses are not covered by the City's insurance.

2.08 Any past or current member of City Council, employee or agent of the City to:

- a) notify the City Solicitor immediately upon being notified that any civil action is being commenced against him or her, arising out of his or her duties in the aforementioned capacities;
- b) notify the City Solicitor immediately upon being charged with any criminal or quasi-criminal offence or being made party to any complaint or inquiry which he or she believes arises out of the course and scope of his or her office or employment with the City and in respect to which he or she wishes legal representation to be provided by the City or wishes civic payment of or reimbursement of legal fees and expenses or indemnification in respect of any fines or penalties imposed; and,
- c) co-operate with the City and legal counsel appointed by the City in regard to the defence of any civil action, criminal or quasi-criminal charges, complaint or inquiry.

2.09 The Review Committee to:

- a) meet as soon as practical after being convened;
- b) determine whether the employee or agent was acting in good faith in the course and scope of his or her employment, and,
  - i) in the case of criminal or quasi-criminal prosecutions or complaints or inquiries, to further determine whether that person had reasonable grounds for believing his or her conduct was lawful or appropriate, or
  - ii) whether it is otherwise appropriate that the City approve provision for legal representation, reimbursement of legal fees or indemnification, and if so, to approve reimbursement and indemnification in accordance with this policy; and
- c) In dealing with a person claiming to be agents of the City, the Review Committee may also determine whether the relationship between that person and the City is such that the person should be considered an agent of the City so as to be eligible for indemnification or reimbursement.

## 3. PROCEDURES

3.01 Claims for indemnification in regard to civil actions

- a) upon being advised by a member of Council that a civil action has been commenced against him or her arising out of his or her duties as a member of Council, the City Solicitor shall determine whether the provisions of paragraph 1 of this policy have been met, and if so, shall approve indemnification in accordance with this policy; and
- b) upon being advised that a civil action has been commenced against a City employee or agent the City Solicitor (or his or her designate) shall consider whether the provisions section 1 of this policy



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have been met, and if so approve indemnification in accordance with this policy;

- c) if the City Solicitor is of the view that there is some doubt as to whether the provisions of paragraph 1 of the policy have been met, the City Solicitor shall convene a meeting of the Review Committee.
- d) the Review Committee may meet in person, by telephone or may communicate in writing, and may hear from or receive submissions from the employee or agent and such other persons as it feels appropriate and shall determine whether in the opinion of the Review Committee provisions of paragraph 1 of this policy have been met, and if so, the Review Committee shall approve indemnification in accordance with this policy.

**3.02** Claims for reimbursement of legal fees and expenses or indemnification in connection with the defence of criminal and quasi-criminal charges and complaints or inquiries

- a) upon being advised by a member of Council that he or she has been charged with a criminal or quasi-criminal offence or is the subject of any complaint or inquiry arising out of actions carried out in good faith in the course and scope of his or her duties as members of Council, if the City Solicitor is of the opinion that the requirements of paragraphs 3 or 6 of this policy (as may be applicable) have been met, the City Solicitor may approve legal representation or reimbursement of legal fees and expenses, or indemnification, in whole or in part, in accordance with this policy;
- b) upon being advised by a City employee or agent that he or she has been charged with a criminal or quasi-criminal offence or is the subject of any complaint or inquiry arising out of actions carried out in good faith the course and scope of his or her employment, the City Solicitor (or his or her designate) shall convene a meeting of the Review Committee;
- c) the Review Committee may meet in person, by telephone or may communicate in writing and may hear from or receive submissions from the employee or agent and such other persons as it feels appropriate and shall determine whether the requirements of paragraphs 4 or 6 of this policy (as may be applicable) have been met, and if so, may approve legal representation or reimbursement of legal fees and expenses or indemnification, in whole or in part, in accordance with this policy.
- d) the City Solicitor or the Review Committee may require that it be provided with an estimate from legal counsel for the member of Council, City employee or agent, of the likely cost of the defence or representation prior to approving payment or reimbursement;
- e) if payment or reimbursement is approved but the prosecution results in conviction, no reimbursement will be provided for legal fees and expenses associated with the costs of any appeal or new trial arising out of any appeal without the prior written approval of the City Solicitor or the Review Committee, as may be appropriate;
- f) if the decision is made not to provide payment or reimbursement for legal fees and expenses and the prosecution results in acquittal or the charges are withdrawn or stayed, the member of Council or City employee or agent may apply to the City Solicitor, or to the Review Committee, as may be



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appropriate, for reconsideration of the decision not to provide payment or reimbursement; and

- g) in reconsidering an application for payment or reimbursement of legal fees and expenses following an acquittal or the withdrawal or stay of charges, the City Solicitor or Review Committee may consider whether the acquittal, withdrawal or stay arose out of a substantive review of the charge on its facts and merits or out of technical or procedural matters.