

CHAPTER 8: LEGAL

8.1 Legal Counsel

- 8.1.1 The Board shall utilize legal services available from the City of Vancouver Legal Services Department, where in the opinion of the Board: (1) there is no conflict of interest; (2) the advice can be provided within the necessary time frame; and (3) the necessary legal expertise exists.
- 8.1.2 The Board shall retain outside legal counsel on matters for which the criteria contained within 8.1.1 cannot be met, or the Board determines the independence and/or jurisdiction of the Board is best served by retaining outside legal counsel.

8.2 Indemnification

- 8.2.1 Indemnification of VPD employees for legal costs shall be in accordance with provisions of the respective collective agreement or contracts, and guidelines in the Department's *Regulations and Procedures Manual*.
- 8.2.2 A VPD employee not covered by a collective agreement or contract and who needs to seek legal advice shall submit a written request for indemnification to the Chief Constable for review and recommendation to the Board.
- 8.2.3 A Board Office employee who needs to seek legal advice shall submit a written request for indemnification to the Board Chair for review and recommendation to the Board.

8.3 Applications to Indemnify Members for Legal Costs Pursuant to the Collective Agreement

Article 9.9 of the Collective Agreement provides for a wide range of circumstances under which the Board is required to indemnify members for necessary and reasonable legal costs after receiving such application.

- 8.3.1 In making its decision whether to indemnify, the Police Board must remain conscious of the following overriding principles:
- 8.3.1.1 The right of a police officer to indemnification is a negotiated "member benefit" under the collective agreement;
- 8.3.1.2 To be entitled to indemnification, an officer must have an honest belief, founded on reasonable grounds (utilizing an objective standard), that his/her conduct was lawful. The notion of "good faith" involves consideration of an officer's subjective state of mind and an objective assessment of that state of mind against a reasonableness test. It must first be determined whether the officer believed that he/she was properly carrying out his/her duties in a lawful and appropriate manner and, second, whether that belief was reasonable;

- 8.3.1.3 The conduct of officers will be held to a high standard of honesty, trustworthiness and integrity, but the benefit of any doubt should be resolved in favour of the officer;
- 8.3.1.4 The decision whether to indemnify or not and the decision to seek reimbursement for an indemnification paid is a decision for the Board and does not require Union agreement or agreement by the officer.
- 8.3.2 It is appropriate that the Professional Standards Section (PSS) receive the request for indemnification sent by the Union/Officer to the Chief Constable.
- 8.3.3 The PSS will then make a report to the Vancouver Police Board, which, as the Employer, is charged with approving indemnification requests.
- 8.3.4 In its report to the Board, the PSS should identify when and in what manner there may be an issue of whether an officer has not acted in “good faith in the performance or attempted performance of his duties as a police officer” as well as any contemplated proceedings involving the officer arising from the incident.
- 8.3.5 It is not necessary for the PSS to recommend whether indemnification should, or should not be made. That is, the PSS should not be put in the position of making a determination of whether the officer has acted in “good faith”. This is the responsibility of the Board.
- 8.3.6 When the Board receives a request for indemnification, it should examine all the facts, then readily available, to make a determination as to whether it will indemnify, not indemnify or indemnify subject to a right to seek reimbursement should the officer be proven not to have acted in “good faith in the performance or attempted performance of his duties as a police officer”.
- 8.3.7 Where the Board decides it will indemnify for legal costs, it should continue its current practice of qualifying such indemnification with an express statement that such payments are made on the assumption the officer was acting in good faith.
- 8.3.8 It is open to the Board to decline to provide any indemnification at all until it is in the position to determine whether the officer was acting in good faith. To obtain indemnification in the absence of Board agreement to pay, the Union would have to grieve and to prove, in arbitration, that the officer was acting in good faith.
- 8.3.9 Notification of the Board’s intention should be immediately communicated to both the officer and the Union. It is noted that, in many cases, the incurring of legal costs can be immediate and significant given the public profile of the issues and the nature of the criminal process. Accordingly, it is important the Board communicate its decision promptly to put the officer and the Union on notice of potential liability for costs.
- 8.3.10 If the Board’s decision is that it may seek reimbursement, it must clearly and promptly communicate that fact to both the Union and the officer.

- 8.3.11 Copies of all legal bills should, as a matter of course, be sent to the officer by legal counsel and should then be forwarded by the officer to the VPD for reimbursement. This process will ensure it is clear the retainer for fees is between the officer and legal counsel, and that the Board is indemnifying the officer for those fees. In the past, legal accounts have been submitted directly by counsel directly to the Department without copies going to the officer or Union.
- 8.3.12 Should the issue involve criminal or civil proceedings or proceedings under the Police Act, and where the Board decides to indemnify for legal costs, both the officer and the Union should be advised as promptly as possible that the Board will review the entire case upon conclusion of those proceedings with a view whether to seek reimbursement of legal costs.
- 8.3.13 The Board should be advised on an ongoing basis as to the status of matters that are the subject of indemnification. That is, duty reports, other significant events in the progression of a case (guilty pleas, commencement of civil proceedings or *Police Act* proceedings), should be brought to the attention of the Board. The Board should review at such stages and make a determination whether continued indemnification is warranted.
- 8.3.14 Where circumstances are such that the Board has serious reservations about indemnifying for legal costs, as an alternative to refusing indemnification, the Board may consider obtaining an agreement from the officer or the Union in advance of the indemnification, committing the officer to repay the Board in the event it is determined that the officer did not act in “good faith”, and consider authorizing a wage deduction to meet the repayment obligation. This option would only be available to the Board in cases where it had a reasonable basis to believe that the officer may not have been acting in “good faith”.

8.4 Liability

- 8.4.1 Pursuant to s. 20(1)(a) of the *Police Act*, the City of Vancouver is jointly and severally liable for a tort that is committed by any of the police constables, special constables, designated constables, enforcement officers, bylaw enforcement officers or employees of the Vancouver Police Board, if any, if the tort is committed in the performance of the person’s duties.
- 8.4.2 Pursuant to s. 20(2) of the *Police Act*, the Police Board and any Members of the Board are not liable for the claim, if it is alleged or established that any police constable, special constable, designated constable, enforcement officer, bylaw enforcement officer or employee of the Board committed a tort in the performance of his or her duties.
- 8.4.3 Pursuant to s. 21(2) of the *Police Act*, no action for damages lies against a police officer or any other person appointed under the *Act* for anything said or done or omitted to be said or done by the him or her in the performance or intended performance of his or her duty in the exercise of his or her power or for any alleged neglect or default in the performance or intended performance of his or her duty or exercise of his or her power. This section also protects Board members for being held personally liable for actions they take, or fail to take, in the performance of their duties as Board members.

- 8.4.4 Pursuant to s. 21(3) of the *Police Act*, s. 21(2) does not provide a defence if (a) the police officer or other person appointed under this *Act* has, in relation to the conduct that is the subject matter of action been guilty of dishonesty, gross negligence or malicious or wilful misconduct, or (b) the cause of action is libel or slander.
- 8.4.5 The *Vancouver Charter*, s.180, contains provisions under which City Council may pay a sum required for the protection, defense or indemnification of a Police Board member, together with costs necessarily incurred and damages recovered, where an action or prosecution is brought against them in connection with the performance of their duties.