

# TORONTO TRANSIT COMMISSION REPORT NO.

**MEETING DATE:** November 21, 2012

**SUBJECT:** TTC CORPORATE POLICY REVIEW – POLICY 9.6  
INDEMNIFICATION OF COMMISSIONERS FROM ACTION OR  
JUDGMENT

## **ACTION ITEM**

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### **RECOMMENDATION**

It is recommended that the Commission adopt the amended TTC Corporate Policy 9.6.3 – Indemnification of Commissioners from Action and Judgment, as attached to this report as Appendix B.

### **FUNDING**

The number of instances and costs per instance that might occur, during the course of a year as a result of this Policy, cannot be estimated. However, it is recommended that any costs incurred related to this policy be absorbed within the annual Commission operating budget.

### **BACKGROUND**

At its meeting of October 30<sup>th</sup>, 31<sup>st</sup> and November 1, 2012, City Council appointed 4 citizen members to the Commission. As a result TTC staff has reviewed the current policy relating to Commissioners in order to update the policy and to ensure that it addresses the changes to the structure of the Commission.

### **DISCUSSION**

The current Commission Indemnification Policy provides that a Commissioner may be provided with reimbursement for legal expenses relating to any charges under the Criminal Code or other statutes arising out of an act done in the performance of his/her official duties as a Commissioner of the TTC. The current policy further provides that the Commission may also pay damages, costs and legal expenses with respect to any civil action or proceeding. However, the current policy provides that the issue of whether to reimburse legal expenses or to provide an indemnity is to be decided by the Commission on a case by case basis. In other words, based on the current policy, a Commissioner may not know whether he/she is covered under the policy until after the Commission has made a decision



**APPENDIX A**  
**Toronto Transit Commission**  
**POLICY/INSTRUCTION**

SUBJECT	CLASSIFICATION	DATE APPROVED	P/I NUMBER
Indemnification of Commissioners from Action or Judgment	Legal		<u>9.6.3</u>

1.0 RESPONSIBILITY

General Counsel

2.0 PURPOSE

To indemnify Commissioners for: (a) legal expenses incurred as a result of charges under the *Criminal Code* or other statute(s); and (b) legal expenses, damages and/or or costs which are incurred or awarded against them in a civil action or other proceeding arising out of acts or omissions committed by them in their capacity as Commissioners of the TTC.

3.0 BASIS FOR INDEMNIFICATION

3.1 Where a Commissioner is charged with an offence under the *Criminal Code*, or under any other statute(s), arising out of an act done in the performance of his/her official duties as a Commissioner of the TTC:

- (a) The Commissioner shall, in the first instance, be responsible for his/her own defence including the retaining of legal counsel or a paralegal; and
- (b) Where a Commissioner is acquitted and is seeking reimbursement for legal expenses, the matter shall be referred to the ~~Litigation Sub-Committee and the Commission~~ and the Commission for their consideration on advice from General Counsel.

Interpretation Note:

- (i) For the purposes of this policy, the term “acquitted” shall be taken to be the same as a finding of not guilty, a dismissal of the charge(s), a stay of the charges, or and may, in appropriate circumstances, include the withdrawal of the relevant charge(s).

~~Section 3.1 shall not be read as to preclude the reimbursement of funds in circumstances where no charge has been laid and where independent legal advice is necessary, except for a proposed application alleging a Commissioner has contravened the *Municipal Conflict of Interest Act*.~~

3.2 This policy shall apply to the reimbursement of legal expenses in

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circumstances where no charge has been laid and where independent legal advice is necessary, except for a proposed application alleging a Commissioner has contravened the *Municipal Conflict of Interest Act*.

3.3 ~~Where a civil action or proceeding, which is not covered by the Commission's or City of Toronto's insurance policy, as applicable, is brought against a Commissioner, which in the opinion of the Commission arises out of acts or omissions done or made by such Commissioner in his/her capacity as a Commissioner of the TTC, the Commission may shall pay damages or costs awarded against such Commissioner or legal expenses incurred by him/her the Commissioner as may be determined by the Commission on advice from General Counsel, as provided for by section 279 of the *Municipal Act, 2001, S.O. 2001, as amended. [Note: Effective December 1, 2006, this reference shall read sections 218 and 219 of the *City of Toronto Act, 2006, S.O. 2006, c. 11, Sched. A, as amended,*] and in accordance with this policy.*~~

~~3.3.4~~ Whenever a civil action or other proceeding is brought against a Commissioner, the Commissioner is to advise General Counsel immediately with respect to such action or proceeding.

~~3.4~~ 3.5 Where a request for reimbursement of legal expenses has been made under this policy, General Counsel shall provide a report and a recommendation to the ~~Litigation Sub-Committee and to the Commission for their its consideration and determination.~~ In appropriate circumstances, or when requested by the Commissioner involved, General Counsel shall consult with the City of Toronto's Integrity Commissioner and/or external counsel in the preparation of the report.

~~3.5.6~~ 3.6 Where a Commissioner is eligible for reimbursement of legal expenses, the General Counsel's report shall include ~~the Commissioner shall be reimbursed an assessment of the reasonableness of the lawyer's account, having regard to the factors ordinarily by a court, including, but not limited to, the experience, skill and competence of the lawyer, the complexity of the issues, the importance of the matter and the time expended by the lawyer in accordance with the cost grid set out in Section 4 to this policy and in accordance with Part II (Disbursements) of Tariff A to the *Rules of Civil Procedure, as amended (hereinafter collectively referred to as the "Cost*~~

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~~Grid"). The Executive Director of Human Resources, on advice from General Counsel, shall review the Cost Grid from time to time.~~

- ~~3.6.7 Notwithstanding Section 3.5 and the Cost Grid, General Counsel shall assess the reasonableness of a bill submitted by the Commissioner in accordance with the provisions of this policy. Commissioners who retain a lawyer shall be provided with a letter setting out the Cost Grid and stating that the Commission reserves the right to assess refer the any legal expenses for assessment as to the reasonableness of such expenses to an Assessment Officer at Toronto and the Commission shall be bound by the assessment of the Assessment Officer bill for its reasonableness. In exceptional circumstances, the Commission may, upon the recommendation of General Counsel, reimburse for rates in excess of those set out in the Cost Grid. The letter will also include the telephone number of the Lawyer Referral Service offered by the Law Society of Upper Canada.~~
- 3.78 Prior to the conclusion of a legal proceeding, other than a proceeding under the *Municipal Conflict of Interest Act*, the Commission may authorize the payment of legal expenses up to a maximum of \$50,000. In the event that the initial reimbursement is exhausted before the matter is concluded, any further financing shall be referred to the Commission for its consideration and determination.

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~~4.0 COST GRID~~

~~**COSTS GRID**  
 (Criminal or Civil Matters)~~

<del>Law Clerks</del>	<del>Up to \$80.00 per hour</del>
<del>Student at law</del>	<del>Up to \$60.00 per hour</del>
<del>Lawyer (less than 10 years)</del>	<del>Up to \$225.00 per hour</del>
<del>Lawyer (10 or more but less than 20 years)</del>	<del>Up to \$300.00 per hour</del>
<del>Lawyer (20 years and over)</del>	<del>Up to \$350.00 per hour</del>

~~Disbursements shall be in accordance with Part II of Tariff A of the Rules of Civil Procedure.~~

~~54.0 REFERENCE SOURCES~~

- ~~• Municipal Act, 2001, S.O. 2001, c. 25, as amended~~
- ~~• City of Toronto Act, 2006, S.O. 2006, c. 11, Sched. A, as amended~~
- ~~• Rules of Civil Procedure, Tariff A, Part II (Disbursements)~~

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**APPENDIX B**

Toronto Transit Commission

**POLICY/INSTRUCTION**

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1.0 RESPONSIBILITY

General Counsel

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3.3 Where a civil action or proceeding, which is not covered by the TTC's or City of Toronto's insurance policy, as applicable, is brought against a Commissioner, arising out of acts or omissions done or made by such Commissioner in his/her capacity as a Commissioner of the TTC, the

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Commission shall pay damages or costs awarded against such Commissioner or legal expenses incurred by the Commissioner, as provided for by sections 218 and 219 of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, as amended, and in accordance with this policy.

- 3.4 Whenever a civil action or other proceeding is brought against a Commissioner, the Commissioner is to advise General Counsel immediately with respect to such action or proceeding.
- 3.5 Where a request for reimbursement of legal expenses has been made under this policy, General Counsel shall provide a report and a recommendation to the Commission for its consideration and determination. In appropriate circumstances, or when requested by the Commissioner involved, General Counsel shall consult with the City of Toronto's Integrity Commissioner and/or external counsel in the preparation of the report.
- 3.6 Where a Commissioner is eligible for reimbursement of legal expenses, the General Counsel's report shall include an assessment of the reasonableness of the lawyer's account, having regard to the factors ordinarily by a court, including, but not limited to, the experience, skill and competence of the lawyer, the complexity of the issues, the importance of the matter and the time expended by the lawyer.
- 3.7 The Commission reserves the right to refer any legal expenses for assessment as to the reasonableness of such expenses to an Assessment Officer at Toronto and the Commission shall be bound by the assessment of the Assessment Officer.
- 3.8 Prior to the conclusion of a legal proceeding, other than a proceeding under the *Municipal Conflict of Interest Act*, the Commission may authorize the payment of legal expenses up to a maximum of \$50,000. In the event that the initial reimbursement is exhausted before the matter is concluded, any further financing shall be referred to the Commission for its consideration and determination.

**4.0 REFERENCE SOURCES**

- City of Toronto Act, 2006, S.O. 2006, c. 11, Sched. A, as amended

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