



STAFF REPORT ACTION REQUIRED

TTC Corporate Policy Review - Policy 9.6 Indemnification of Board Members From Action or Judgment

Date:	June 15, 2017
To:	TTC Board
From:	Chief Executive Officer

Summary

At its meeting of February 9, 2017, the Audit and Risk Management Committee requested that TTC staff report back and provide an update on Director Indemnity and Insurance Coverage.

As a result, TTC staff in Legal revised and updated the current Corporate policy to reflect corporate reorganization changes and to mirror the current City policy.

Recommendations

It is recommended that the Board:

1. Approve the changes to the TTC Corporate policy, as amended.

Financial Summary

There are no financial implications resulting from the adoption of this report. However, should a Board member seek indemnification through the policy, including the payment or reimbursement of legal fees, there could be a financial implication to the TTC.

The Chief Financial & Administration Officer has reviewed this report and agrees with the financial impact information.

Accessibility/Equity Matters

There are no accessibility or equity impacts associated with this report.

Issue Background

This policy was last updated in 2012. The changes to the policy include a name change and other housekeeping changes to reflect corporate reorganization changes and to mirror the City policy.

Comments

One of the main changes to the policy involves providing the Board with a broad discretion related to reimbursement of external counsel legal fees in a particular case, based on all the circumstances (experience of the lawyer, complexity of the case, etc.). The previous policy had a rigid box chart with specified rates that is no longer workable. Another change to the policy allows the Board to advance up to \$25,000 for legal fees in advance of the conclusion of a particular case, and possibly further amounts thereafter, which are referred to the Board for consideration.

Contact

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416-393-3860
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Attachments

Appendix “A” – black-lined version of the original policy
Appendix “B” – clean copy of the revised policy

APPENDIX A
Toronto Transit Commission
POLICY/INSTRUCTION

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SUBJECT	CLASSIFICATION	DATE APPROVED	P/I NUMBER
Indemnification of Commissioners Board Members from Action or Judgment	Legal		9.6.3

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1.0 RESPONSIBILITY

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Head of Legal & General Counsel

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2.0 PURPOSE

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To indemnify members of the Board~~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 members~~Commissioners~~ of the TTC~~Board~~.

3.0 BASIS FOR INDEMNIFICATION

3.1 Where a member of the Board~~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 member~~Commissioner~~ of the TTC~~Board~~:

(a) The member~~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 member~~Commissioner~~ is acquitted and is seeking reimbursement for legal expenses, the matter shall be referred to the Board~~Commission~~ for its~~their~~ consideration on advice from the Head of Legal & General Counsel.

Interpretation ~~N~~note:

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 the withdrawal of the relevant charge(s).

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3.2 This policy shall apply to the reimbursement of legal expenses in circumstances where no charge has been laid and where independent legal advice is necessary, except for a proposed application alleging a member~~Commissioner~~ has contravened the *Municipal Conflict of Interest Act*.

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- 3.3 Where a civil action or proceeding, which is not covered by ~~the~~ TTC's or ~~the~~ City of Toronto's insurance policy, as applicable, ~~which in the opinion of the Board is brought against a Commissioner, arising arises~~ out of acts or omissions done or made by ~~such Commissioner~~the member in his/her capacity as a ~~member~~Commissioner of the ~~TTC Board, the TTC Commission~~ shall pay damages or costs awarded against ~~such Commissioner~~the member or legal expenses incurred by the ~~Commissioner~~member as determined by the Board on advice from the Head of Legal & General Counsel, 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~~member of the Board, the ~~Commissioner~~member is to advise ~~the Chief Financial and Administrative Officer~~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, ~~the Head of Legal &~~ General Counsel shall provide a report and a recommendation to the ~~Board~~Commission for its consideration and determination. In appropriate circumstances, or when requested by the ~~Commissioner~~member involved, ~~the Head of Legal &~~ 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 ~~member~~Commissioner is eligible for reimbursement of legal expenses, the ~~Head of Legal &~~ 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~~TTC 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 ~~Board~~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 ~~Board~~Commission may authorize the

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payment of legal expenses up to a maximum of \$~~50,000~~25,000. In the event that the initial reimbursement is exhausted before the matter is concluded, any further financing reimbursement shall be referred to the Board Commission for its consideration and determination.

4.0 REFERENCE SOURCES

- City of Toronto Act, 2006, S.O. 2006, c. 11, Sched. A, as amended
- City of Toronto Indemnification Policy for Members of Council, as amended and adopted by City Council at its meeting on July 16, 2008 on EX22.8, "Review of Indemnification Policy for Members of Council"

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**APPENDIX B
Toronto Transit Commission**

POLICY/INSTRUCTION

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1.0 RESPONSIBILITY

Head of Legal & General Counsel

2.0 PURPOSE

To indemnify members of the Board 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 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 members of the Board.

3.0 BASIS FOR INDEMNIFICATION

3.1 Where a member of the Board 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 member of the Board:

- (a) The member 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 member is acquitted and is seeking reimbursement for legal expenses, the matter shall be referred to the Board for its consideration on advice from the Head of Legal & General Counsel.

Interpretation note:

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 the withdrawal of the relevant charge(s).

3.2 This policy shall apply to the reimbursement of legal expenses in circumstances where no charge has been laid and where independent legal advice is necessary, except for a proposed application alleging a member has contravened the *Municipal Conflict of Interest Act*.

3.3 Where a civil action or proceeding, which is not covered by TTC’s or the City of Toronto’s insurance policy, as applicable, which in the opinion of the Board arises out of acts or omissions done or made by the member in his/her capacity as a member of the Board, TTC shall pay damages or costs awarded against the member or legal expenses incurred by the member as determined by the Board

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on advice from the Head of Legal & General Counsel in accordance with this policy.

- 3.4 Whenever a civil action or other proceeding is brought against a member of the Board, the member is to advise the Chief Financial and Administrative Officer immediately with respect to such action or proceeding.
- 3.5 Where a request for reimbursement of legal expenses has been made under this policy, the Head of Legal & General Counsel shall provide a report and a recommendation to the Board for its consideration and determination. In appropriate circumstances, or when requested by the member involved, the Head of Legal & 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 member is eligible for reimbursement of legal expenses, the Head of Legal & 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 TTC 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 Board 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 Board may authorize the payment of legal expenses up to a maximum of \$25,000. In the event that the initial reimbursement is exhausted before the matter is concluded, any further reimbursement shall be referred to the Board 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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