



# LEGAL INDEMNIFICATION NON-ASSOCIATION MEMBERS PRP-LG-005

Effective Date: 03/22/1996

Amended:09/27/2013

Amended:10/03/ 2018

## Policy Statement

*It is the policy of the Regional Municipality of Peel Police Services Board that the requirements set out in this document shall form part of the Board Policies with respect to the legal representation and legal indemnification of Non-Association Members of Peel Regional Police and of the Peel Police Services Board.*

## 1. Preamble

1.1 The *Police Services Act* provides in section 29 for protection from personal liability of Police Services Board Members acting in good faith in the execution or intended execution of their duties.

1.2 The *Municipal Act, 2001* provides in section 279 that a police services board (and its municipality) is authorized to be or act as an insurer with respect to protection of members and employees of the board against liability. The *Municipal Act, 2011* provides at section 283 that a municipality may pay in whole or in part such expenses of the members, officers and employees of its board, as are actually incurred, if the expenses are of those persons in their capacity as members, officers or employees.

1.3 The *Police Services Act* provides in section 50 the Board's authority to provide indemnification of members of the police services inclusive of a Chief of Police and Deputy Chief of Police.

## 2. Definitions

**Board** – means The Regional Municipality of Peel Police Services Board

**Non-Association Member** – means the Chief of Police and Deputy Chief of Police who are not members of or are represented by either the Peel Regional Police Association or the Peel Regional Police Senior Officers' Association.

**Board Member** - means all members and employees of the Peel Police Services Board. The definition of Board Member specifically includes Executive Director to the Board, Board Members and Board staff. For the purposes of this policy, Board Members, as defined above, will hereinafter be referred to as "**Members**".

**OIPRD** – means Office of the Independent Police Review Director

### 3. Application

3.1 The Board's provision for legal indemnification for Non-Association Members shall be in accordance with the provisions as outlined in the current Senior Officers Association (SOA) Collective Agreement, *Article 25 – Legal Indemnification* (or as amended).

3.2 The express provisions of this Policy shall not limit or preclude the Peel Police Services Board from exercising its discretion to approve payment of legal representation and/or indemnification for Members in circumstances deemed appropriate by the Board.

3.3 The guiding principle in interpreting this policy is that Members and Non-Association Members must be defended and protected against losses in respect of proceedings (other than criminal proceedings) arising out of acts done in good faith in the attempted performance of their duties, without gross negligence or misconduct.

3.4 This policy applies in respect of the following proceedings:

- (a) Civil actions brought in any court in Ontario;
- (b) Any proceeding to enforce any statute or by-law pursuant to the *Provincial Offences Act*;
- (c) Any proceeding brought or made under a statute of Canada or Ontario other than a criminal proceeding and without limiting the generality of the foregoing including proceedings under the *Human Rights Code*, and *OIPRD* directed proceedings under the *Police Services Act*; and
- (d) Any criminal proceeding which includes proceedings under the *Criminal Code*, the *Narcotic Control Act* and the *Food and Drugs Act*.

3.5 Proceedings named in Sections 3.4(a), (b) and (c) shall be governed by Section 5 – Civil Matters and Non-Criminal Prosecutions. Proceedings named in Section 3.4(d) shall be governed by Section 6 - Criminal Proceedings.

### 4. Insurance

4.1 If coverage is available through Region of Peel insurance policies for the cost of legal representation and indemnification of the Member or Non-Association Member, the insurance policy will be engaged first. In the event coverage is not available under an insurance policy, the within Policy PR-LG-005 will be engaged.

### 5. Civil Matters And Non-Criminal Prosecutions:

5.1 Where any Member or Non-Association Member is named as a party or becomes subject to an investigation which could result in the Member or Non-Association Member being named as a party to any of the proceedings set out in Sections 3.4(a), (b) or (c) and which arises out of the conduct of the Member or Non-Association Member in the course of his or her employment or duties, the Member or Non-Association Member shall:

- (a) Take appropriate steps to bring the matter to the attention of the Board (through the Member's or Non-Association Member's superior where appropriate); and
- (b) Inform the Board or its legal counsel or agent appointed for the purpose, of all relevant facts and evidence regarding the matter.

5.2 Unless and until the Board, in its discretion determines that the matter arose out of the gross negligence or misconduct of the Member, the Board shall:

- (a) Retain legal counsel of the Board's choice to act on behalf of both the Member and the Board.

5.3 Where it is determined by either the Board or the Member that the legal counsel retained by the Board can no longer represent the interests of both, and the Member wishes to retain separate legal counsel, the Board may in its discretion:

- (a) Enter into an arrangement or contract with the Member for reimbursement, in whole or in part, and subject to such terms and conditions as the Board may approve, of the Member's reasonable legal fees and disbursements incurred in defending the matter; provided that no such obligation for reimbursement shall exist unless and until a written memorandum regarding the arrangements has been approved by the Board or its designate.

5.4 Where the Member is found liable or is ordered to pay damages or a fine or is subject to any other order requiring a monetary payment, unless the Board determines in its discretion that the matter is one arising out of the gross negligence or misconduct of the Member, the Board may:

- (a) Authorize the payment or reimbursement of the Member for any such damages, fine or monetary liability.

5.5 Before making a determination that the matter is one arising out of the gross negligence or misconduct, the Board shall afford to the Member an opportunity to make representations to the Board regarding the matter. The Board may take into consideration any relevant matters or information.

5.6 Members shall not be indemnified for legal fees and disbursements arising out of any of the following:

- (a) Any action or proceeding brought by or on behalf of any Member against any officer, member or employee of the Police Services Board, the Board or the Police Service;
- (b) Any action or proceeding brought against the Member under the *Police Services Act* or any regulations there under unless it was directed by the OIPRD as a result of a public complaint ; and
- (c) Any action or proceeding brought against the Member by the Police Services Board.

## **6. Criminal Proceedings:**

6.1 Where any Member is charged or becomes subject to an investigation which could result in the Member being charged in any criminal proceeding referred to in Section 3.4(d) and which arises out of the conduct of the Member in the course of his or her employment or duties, the Board may:

- (a) In its discretion enter into an agreement with the Member for reimbursement, in whole or in part, and subject to such terms and conditions as the Board may approve, of the Member's reasonable legal fees and disbursements incurred in defending the matter.

6.2 Reimbursement shall not be made unless the following have occurred:

- (a) A written agreement regarding the arrangements for reimbursement has been entered into between the Board and the Member; and
- (b) At the conclusion of the investigation, the investigating authorities have advised that the Member will not be charged, or, if charged, the Member is not convicted of the offence charged or any included offence or of any other charge arising out of the same incident or incidents; and
- (c) Notwithstanding that the Member is not convicted as provided for in (b) above, the Board determines in its discretion that the conduct of the Member which was the subject matter of the investigation or charge did not constitute gross negligence or misconduct on the part of the Member.

6.3 Before making any determination that the conduct of the Member arose out of the gross negligence or misconduct of the Member, the Board shall afford to the Member an opportunity to make representations to the Board regarding the matter. The Board may take into consideration any relevant matters or information.

## **7. Authority/Legislative Reference**

Board Minute # IC58/96

Replaces: Non-Association Members- Legal Idemnification *Adopted September 27, 2013*

Board Minute #63/13

Board Minute # 19-11-18

*Municipal Act 2001, S.O. 2001, c. P. 25*

*Police Services Act R.S.O. 1990, c.P.15, s 50, and s.31(1)(h)*

## **8. Linkage to Appropriate Board and or Police Service Procedure/Directive**

Senior Officer Association Collective Agreement – Article 25- Legal Indemnification