



LEGAL INDEMNIFICATION NON-ASSOCIATION MEMBERS PRP-LG-005

Effective Date: 03/22/1996
Amended:09/27/2013

Policy Statement

It is the policy of the Regional Municipality of Peel Police Services Board that the policy requirements set out in this document shall form part of the Board Policies with respect to the legal indemnification of non-association members of Peel Regional Police and employees of the Regional Municipality of Peel Police Services Board.

1. Subject

The Regional Municipality of Peel Police Services Board approves the retainer of legal counsel to represent non-association members of Peel Regional Police and employees of the Regional Municipality of Peel Police Services Board.

This policy outlines the expectations of the Board when indemnifying non-association members. It establishes guidelines and provisions for requests submitted for approval for legal indemnification by non-association members.

2. Definitions

Non-Association member – means employees of the Regional Municipality of Peel Police Services Board and members and employees of the Peel Regional Police, who are not members of or are represented by either the Peel Regional Police Association or the Peel Regional Police Senior Officers' Association. This policy applies to the Chief of Police, Deputy Chief(s) of Police, Chief Administrative Officer, Executive Director to the Board and Board staff. For the purposes of this policy a person to whom this policy applies shall hereinafter be referred to as a "member".

Board – means The Regional Municipality of Peel Police Services Board

OIPRD – means Office of the Independent Review Director

3. Policy Requirements

This policy applies to all members who are not members of or are represented by either the Peel Regional Police Association or the Peel Regional Police Senior Officers' Association.

Guiding Principles

The Regional Municipality of Peel Police Services Board reserves in every case the ultimate decision to the Board itself while establishing guidelines to be observed in the decision making process with respect to legal representation and indemnification for non-association members.

The guiding principle in interpreting this policy is that members covered by this policy 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 negligence or misconduct.

With regard to criminal proceedings, other considerations apply. It is recognized that members will require separate independent counsel in all cases. Indemnification can only occur when the member is acquitted of all charges.

PART I – APPLICATION:

1. This policy applies in respect of the following matters:
 - (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*, *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*.
2. The provisions of **Part II** of this policy shall apply in respect of those matters listed in clauses 1(a), (b) and (c) and the provisions of **Part III** shall apply in respect of those matters listed in clause (d) - criminal proceedings.

PART II – CIVIL MATTERS AND NON-CRIMINAL PROSECUTIONS:

3. Where any member is named as a party or becomes subject to an investigation which could result in the member being named as a party to any of the matters set out in clauses 1(a), (b) or (c) and which arises out of the conduct of the member in the course of his or her employment or duties, the member shall:
 - (a) Take appropriate steps to bring the matter to the attention of the Board (through the 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.
4. Unless and until the Board, in its absolute and uncontrolled 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 until such time as the member or the Board determines that the legal counsel so retained can no longer represent the interests of both the Board and the member.

5. 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 absolute and uncontrolled 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.
6. Where the member is found liable or is ordered to pay for damages or fine or is subject to any other order requiring a monetary payment, unless the Board determines in its absolute and uncontrolled 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.
7. 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.
8. 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 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.

PART III – CRIMINAL PROCEEDINGS:

9. 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 clause 1(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 absolute and uncontrolled 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.

10. 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;
 - (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 absolute and uncontrolled 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.
11. 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.

6. Authority/Legislative Reference

Board Minute # IC58/96

Replaces: Non-Association Members- Legal Idemnification *Adopted March 22, 1996*

Board Minute #63/13

7. Linkage to Appropriate Board and or Police Service Procedure/Directive

N/A

Review Date: Four Years