



## STAFF REPORT ACTION REQUIRED

### City Insurance, Indemnification and Reimbursement Policies for Board Members

<b>Date:</b>	May 15, 2014
<b>To:</b>	Board of Governors of Exhibition Place
<b>From:</b>	City Solicitor
<b>Wards:</b>	
<b>Reference Number:</b>	

#### SUMMARY

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The purpose of this report is to provide the Board with information respecting the application of the City of Toronto's insurance coverage and indemnification policy to members of the Board.

#### RECOMMENDATIONS

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**The City Solicitor recommends that:**

1. The Board receive this report for information.

#### Financial Impact

There is no financial impact beyond what has already been approved in the current year's budget.

## **DECISION HISTORY**

At its meeting of April 11, 2014, the Board considered Agenda Item 11 from Board staff and Agenda Item 12 from the City Solicitor both titled Electronic Dance Music Concerts.

## **ISSUE BACKGROUND**

In the context of the discussion of the above noted items, the Board requested that the City Solicitor provide some general information to the Board respecting the extent of protection available for members of the Board under the City's insurance and indemnification policy in the event of a claim against the Board or a Board member.

## **COMMENTS**

### Insurance Coverage

I have now had the opportunity to consult with the City's Insurance & Risk Management (IRM) group. Members of the Board, while acting in good faith in the scope of their Board duties, are covered by the City's insurance policies against claims alleging unintentional acts, e.g. negligence. The City has a number of insurance policies in place which are renewed on an annual basis. The most relevant policies for Board members are the Comprehensive General Liability ("CGL") policy and Public Officials Errors and Omissions ("E&O") Policy. The CGL Policy covers claims for bodily and personal injury (e.g. libel, slander, defamation, etc.) and property damage. The E&O Policy covers claims for financial loss arising from errors, omission, misstatements, misleading statements, etc. in the performance of professional duties. The City's insurance policies do not provide coverage for fines, penalties, or legal defence costs arising from regulatory or statutory offences (e.g. occupational health and safety) or for civil actions alleging intentional wrongdoing, for example, theft, civil assault/battery.

Where a Board member receives a letter threatening legal action or where a Board member is served with a statement of claim, the matter should be referred to IRM for review and confirmation that coverage is available under City insurance. If covered by insurance, IRM can utilize services from Granite Claims Solutions (the City's outsourced claims adjusters) to investigate the claim and IRM will assign defence counsel as necessary. For insurance claims legal defence, IRM utilize either staff lawyers in the City's Legal Services division, or a lawyer is retained from the Council approved roster of external law firms. Insured claims must follow the City Council approved Insurance Claims Administration procedures which includes the assignment of defence counsel as noted above. All expenses are covered by the insurer and all legal invoices, if any, are sent directly to Insurance and Risk Management for payment. If the matter is not covered by City insurance, the member will be immediately notified by IRM and an alternative defence strategy can be explored, including the Indemnification Policy.

## Indemnification Policy

The City's Indemnification policy for Council Members was extended by City Council in February 2009 to include the members of agencies, boards, commissions, corporations and special purpose bodies included in the City's "Public Officials Errors & Omissions Liability Insurance" coverage, including The Board of Governors of Exhibition Place.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EX29.13>

A consolidated copy of the indemnification policy is attached to this report for the information of the Board.

The policy provides for the reimbursement of legal expenses for matters not covered by the City's insurance policies, for example, criminal and quasi-criminal charges and certain civil claims, e.g. civil assault or battery, arising out of an act done in the performance of the Member's official duties. Members of Council are responsible, in the first instance, for obtaining their own counsel. Where the Member is seeking reimbursement of legal expenses, the matter is referred to the Executive Committee and City Council for a decision. Members may seek interim reimbursement for the Executive Committee up to \$25 000. In general, Members of the Board should note that the City's indemnification policy is designed to apply only in instances where the City's insurance coverage would not apply.

Under the current policy, the City Solicitor provides a report and recommendation to Executive Committee and to Council for consideration. In appropriate circumstances, or when requested by the member involved, the City Solicitor consults with the Integrity Commissioner and/or external counsel in the preparation of the report. Where a Member is eligible for reimbursement, the reasonableness of the lawyer's fee is determined in accordance with the criteria set out in the policy.

In addition, reimbursement for legal costs under certain conditions in the Code of Conduct Complaint Protocol for Members of Local Boards, which includes the Board, provides for reimbursement for legal costs under certain conditions. The Protocol is posted on the Integrity Commissioner's website and can be found here:

<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=ec7c5c44c7ee0410VgnVCM10000071d60f89RCRD&vgnnextchannel=369f40efd8f30410VgnVCM10000071d60f89RCRD&vgnnextfmt=default>

## Conclusions:

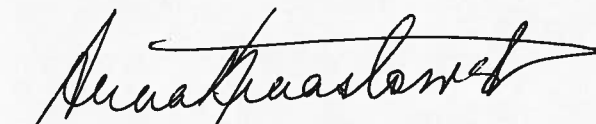
Members of the Board are protected by both the City's insurance coverage and the City's indemnification policy which has been extended by City Council to members of City agencies such as The Board of Governors for Exhibition Place. As well, the Code of

Conduct Complaint Protocol for Members of Local Boards provides for the reimbursement of legal costs for members of the Board.

## **CONTACT**

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## **SIGNATURE**

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Anna Kinastowski  
City Solicitor

## **ATTACHMENTS**

Attachment 1 – Indemnification Policy for Members of Council extended by City Council to Members of City agencies

## ATTACHMENT 1

### INDEMNIFICATION POLICY FOR MEMBERS OF COUNCIL AND LOCAL BOARDS

- (1) Where a Member of Council or a local board ("Member") is charged with an offence under the *Criminal Code*, or under any other statutes(s), arising out of an act done in the performance of his/her official duties:
  - (a) The Member shall, in the first instance, be responsible for his/her own defence including the retaining of legal counsel or a paralegal.
  - (b) Where the Member is acquitted and is seeking reimbursement for legal expenses, the matter shall be referred to the Executive Committee and City Council for their consideration on advice from the City Solicitor.

#### Interpretation Notes:

- (i) The term "acquitted" shall be taken to be the same as a dismissal of the charge(s) and may, in appropriate circumstances, include the withdrawal of the relevant charge(s).
  - (ii) Section (1) shall not be read so 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 Member has contravened the *Municipal Conflict of Interest Act*.
- (2) Where a civil action or proceeding, which is not covered by the City's insurance policy, is brought against a Member, which in the opinion of City Council arises out of acts or omissions done or made by such Member in his/her capacity as a Member, the City may pay damages or costs awarded against such Member or legal expenses incurred by him/her as may be determined by City Council on advice from the City Solicitor, as provided for by section 218 of the *City of Toronto Act, 2006*, as amended. Whenever a civil action or other proceedings is brought against a Member, the Member is to advise the Insurance and Risk Management Section of the Corporate Finance Division immediately with respect to such action proceeding.
- (3) Upon the approval of the Executive Committee and Council, Members may be reimbursed for legal expenses in matters covered by sections (1) and (2) above to a maximum of \$25,000, where the reimbursement of funds is warranted upon consideration of all the circumstances. In the event that the initial reimbursement is exhausted before the matter is concluded, any further financing shall be referred to the Executive Committee for its consideration and recommendation to Council.

- (4) Section (3) does not apply to an application alleging a Member has contravened the *Municipal Conflict of Interest Act*.
- (5) Where a request for reimbursement of legal expenses has been made under this policy, the City Solicitor shall provide a report and a recommendation to the Executive Committee and to City Council for their consideration. In appropriate circumstances, or when requested by the Councillor involved, the City Solicitor shall consult with the Integrity Commissioner and/or external counsel in the preparation of the report.
- (6) Where a Member is eligible for the reimbursement of legal expenses, the City Solicitor's report shall include an assessment of the reasonableness of the lawyer's account, having regard to the factors ordinarily considered 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.