



Policy Name:	LIABILITY INDEMNIFICATION		
Policy #:	AD 8.7	Last Updated:	2022-05-12
Issued By:	SUPPORT SERVICES BUREAU	Approved By:	SURREY POLICE BOARD
		Review Frequency:	AS REQUIRED

RELATED POLICIES

1. PURPOSE

- 1.1 The Surrey Police Board (SPB), either directly or through the City of Surrey (City) and their respective insurers, defends and indemnifies Employees and Volunteers in the manner and under the circumstances described in this Policy.

2. SCOPE

- 2.1 This Policy applies to these categories of personnel who, at the time a claim arises, are:
- i. **Sworn SPS Officers who are exempt** from SPU membership, not covered by a collective agreement and not a party to an employment contract with SPB that has indemnification provisions;
 - ii. **Sworn SPS Members** who are covered by SPB-Surrey Police Union (SPU) Collective Agreement, 2022-2024;
 - iii. **SPS Civilian Employees who are exempt** from union membership, not covered by a collective agreement and not party to an employment contract with SPB that has indemnification provisions;
 - iv. **SPS Civilian Employees who are members of the Canadian Union of Public Employees (CUPE), Local 402** and covered by SPB-CUPE Local 402 Collective Agreement; and
 - v. **Volunteers** who perform duties and services without remuneration under the direction of SPS and SPB.
- 2.2 This Policy does not apply to SPS Employees who are a party to an employment contract with SPB that has indemnification provisions.

3. POLICY

- 3.1 The Chief Constable will designate an Administrator for this policy. The Administrator will develop appropriate practices for this policy and coordinate any requests made under this policy.

4. APPLICATION

- 4.1 **Sworn Exempt** - Sworn SPS Officers who are exempt from SPU membership, not covered by a collective agreement and not a party to an employment contract with SPB that has indemnification provisions: the terms and conditions governing indemnification in the SPB-SPU Collective Agreement, Article 6 apply by reference. See Appendix C to this policy.

- 4.2 **Sworn SPU** - Sworn SPS Members who are covered by the SPB-SPU Collective Agreement, 2022-2024: the terms and conditions governing indemnification in the SPB-SPU Collective Agreement, Article 6 apply directly. See Appendix C to this policy.

- 4.3 **Civilian Exempt** - SPS Civilian Employees who are exempt from union membership, not covered by a collective agreement and not party to an employment contract with SPB that has indemnification provisions: these terms and conditions governing indemnification in the SPB-SPU Collective Agreement apply by reference. See Appendix C to this policy.

- i. Article 6.01 (Definitions and Review);
- ii. Article 6.02 (Civil Litigation - civil claims);
- iii. Article 6.03 (Charges under Federal and Provincial Laws and Regulations);
- iv. Article 6.04(b) (Judicial Reviews);
- v. Article 6.04(c) (Inquests);
- vi. Article 6.04(d) (Royal Commissions and other proceedings); and
- vii. Article 6.05 (General provisions and exclusions)

- 4.4 **Civilian CUPE** - SPS Civilian Employees who are members of CUPE, Local 402 and covered by the SPB-CUPE Local 402 Collective Agreement: these terms and conditions governing indemnification in the SPB-SPU Collective Agreement apply by reference. See Appendix C to this policy.

- i. Article 6.01 (Definitions and Review);
- ii. Article 6.02 (Civil Litigation - civil claims);
- iii. Article 6.03 (Charges under Federal and Provincial Laws and Regulations);
- iv. Article 6.04(b) (Judicial Reviews);
- v. Article 6.04(c) (Inquests);
- vi. Article 6.04(d) (Royal Commissions and other proceedings); and
- vii. Article 6.05 (General provisions and exclusions).

- 4.5 **Volunteers** - **Volunteers who perform duties and services without remuneration under the** direction of SPS and SPB: Volunteers should carry personal liability insurance to protect their

risk of liability when performing duties for the SPB and SPS. However, where a Volunteer does not carry personal liability insurance with such coverage, SPB may in its discretion, based on a recommendation from the Chief Constable, indemnify the Volunteer as specified in sections 4.3 and 4.4 of this policy.

5. EXCLUSIONS

- 5.1 In addition to all terms, conditions, limitations, exceptions, and exclusions in this policy, an Employee or Volunteer is not eligible to be defended, obtain assistance, or be indemnified with respect to:
- i. legal proceedings brought by or on behalf of the Employee or Volunteer;
 - ii. the application or interpretation of this Policy;
 - iii. employment disputes;
 - iv. a claim by a professional body of which the Employee is a member and in which the Employee is the respondent and is entitled to be defended and/or indemnified by an insurance policy covering the membership of the professional association; and
 - v. a claim for which the Employee is eligible for assistance and indemnification pursuant to another policy, agreement, or arrangement, including through a professional body, up to limits of such other policy, agreement, or arrangement, unless otherwise agreed to by the Chief Constable.

6. PROCEDURES

- 6.1 **Notice of Claim** - An Employee or Volunteer must promptly notify their Supervisor in writing upon becoming aware of a potential claim, or that a proceeding has been or is likely to be commenced against the Employee arising from the scope of the Employee's duties or against the Volunteer arising from the scope of the Volunteer's duties. The Supervisor must then notify, through their chain of command, the Deputy Chief Constable Support Services, and the Chief Constable. Former Employees must notify the Inspector, Employee Services Section.
- 6.2 **Conduct of Claims** – the City of Surrey or their respective insurers is solely responsible for the conduct and management of a claim, including to retain and instruct legal counsel, investigators and consultants, experts, and representatives and to settle any claims on terms and conditions the City of Surrey or the insurers consider appropriate. Nothing in this Policy prevents an Employee or Volunteer from obtaining their own legal representation; however, the Employee or Volunteer does so at their own risk, cost and expense and is not eligible for assistance, reimbursement, or indemnification under this Policy in that event.
- 6.3 **Employee/Volunteer Cooperation** - The Employee or Volunteer must cooperate fully in the defence of the claim, including providing complete and accurate information, and aiding in securing witness, evidence and other information when requested. An Employee or Volunteer must not interfere in the management of the claim, the proceeding, or any negotiations for settlement of the claim, or act in a manner that creates a conflict of interest between the Employee or Volunteer, and the City of Surrey or between the Employee or Volunteer, and

another Employee or Volunteer involved in the proceeding. An Employee or Volunteer must not act against the advice of legal counsel provided by or on behalf of the City of Surrey under this policy.

- 6.4 **Reimbursement** - An Employee or Volunteer, who has been provided assistance under this policy, must not profit from that assistance and must reimburse the City of Surrey if the Employee or Volunteer is awarded costs in the proceeding or is entitled to reimbursement of legal fees, disbursements or other expenses incurred by or on behalf of the Employee or Volunteer for defending the claim. An Employee or Volunteer must reimburse the City of Surrey for all amounts paid by or on behalf of the City of Surrey if:
- i. after the rights of appeal of the Employee or Volunteer, or Crown have been exhausted or extinguished, the Employee or Volunteer is convicted of an offence with which the Employee or Volunteer was charged or a related offence; or
 - ii. the Employee or Volunteer was not eligible for coverage, breached a condition of this policy or the applicable insurance, or there was non-compliance with the terms of this policy, unless the amounts were paid on behalf of the City of Surrey by its insurer(s), and the insurer(s) have not requested the return of any amounts paid.
- 6.5 **Confidentiality** – An Employee or Volunteer shall not disclose any information about the claim to any third party without the consent of the City of Surrey and their insurers, including the following information which is privileged and confidential:
- i. the fact that assistance has been requested, provided, denied, or terminated under this policy;
 - ii. the terms or conditions of any retainer agreements with legal counsel or the advice given, and services performed by legal counsel;
 - iii. any payment or reimbursement made or required;
 - iv. any settlement discussions, proposals or offers; and
 - v. any evidence, information, submission, or legal opinion provided or obtained, or factors considered, and any notice or reason given, or communications made.
- 6.6 **Disclosure required** – the confidentiality duty in section 6.5 of this policy does not apply to disclosure required by law, disclosure to legal counsel, a reviewer, or any person responsible for the management of the claim or the administration of this policy, or disclosure with the written consent of every person whose personal interests or privilege may be affected by the disclosure.
- 6.7 **Volunteers** – in each of sections 6.1 to 6.6 above, the Surrey Police Board replaces the City of Surrey for duties and responsibilities relating to the conduct of claims and the indemnification of volunteers.

APPENDIX A: DEFINITIONS

“Administrator” means the person designated by the Chief Constable to administer this Policy.

“Employee” means any employee (including Members and civilian staff) and former employees who, at the time a claim arose, were employees of Surrey Police Board.

“Officer” means the ranks of Inspector, Superintendent, Deputy Chief Constable, and Chief Constable.

“Member” means a sworn Police Officer appointed by the Surrey Police Board.

“Supervisor” means a Team Leader, Manager, Staff Sergeant, Sergeant, Inspector, Superintendent, Deputy Chief Constable, Chief Constable, and any other person acting in a supervisory capacity who is accountable for a particular area or shift on behalf of SPS.

“Volunteer” means a person serving SPB and SPS who is not an Employee, as defined in this policy, and includes those individuals serving on any board(s), commission(s) or committee(s) established by SPS and former volunteers who, at the time a claim arose, were volunteers.

APPENDIX B: REFERENCES

Police Act, R.S.B.C. 1996, c. 367

Surrey Officer and Indemnification By-law, 2006, No. 15912, section 7.1A (revised November 8, 2021)

Collective Agreement: Surrey Police Board and Surrey Police Union, 2022-2024, Article 6
“Indemnification”

**APPENDIX C: SURREY POLICE BOARD-SURREY POLICE UNION COLLECTIVE AGREEMENT (2022-2024),
ARTICLE 6 "INDEMNIFICATION"**

[start of Article 6]

Article 6. INDEMNIFICATION

6.01 Definitions and review

- (a) For the purposes of this Article, "necessary and reasonable legal costs" are based upon the account rendered by the legal counsel retained in the matter, provided that the hourly rate for a lawyer does not exceed three hundred and fifty dollars (\$350) per hour and the hourly rate for an articulated student does not exceed one hundred and twenty dollars (\$120) per hour.
- (b) For the purposes of this Article, acts or omissions that represent "good faith" do not include willful neglect, gross negligence, gross dereliction of duty, deliberate abuse of power, willful violation of statutes, a lawful order or policy, or circumstances where the Employee intended to advance the Employee's personal interests contrary to or not in alignment with the duties, expectations and responsibilities as a police officer.
- (c) The Employer may review the account of the legal counsel as a "person who has agreed to indemnify" the Employee, pursuant to the *Legal Profession Act*, S.B.C. 1998, c. 9. The Employer is not responsible for otherwise indemnified costs under this Article where privilege is claimed over the itemized invoice.

6.02 Indemnification: civil litigation

- (a) Consistent with the *Police Act*, R.S.B.C. 1996, c. 367, section 20(3) and the *Surrey Officer and Indemnification By-law, 2006*, No. 15912, section 7.1A, as that Act and By-law existed on the date of approval of this Collective Agreement, if an Employee is a named defendant or third party in a civil action or claim (the "action or claim") for damages arising from acts done in the performance, or attempted performance, in good faith of the Employee's duties as a police officer, the Employee will be represented by legal counsel appointed by the City and all necessary and reasonable legal costs, settlements, awards, damages and penalties awarded against the Employee shall be paid by the City, provided that,

The City's obligations are conditional upon the Employee cooperating fully in the defence of the action or claim; and that,

Legal counsel appointed by the City is given full authority in the conduct of the action or claim, including authority to settle the action or claim at any time in the manner the legal counsel deems advisable in the circumstances.

- (b) The City's obligations in Article 6.02(a) are conditional upon the Employee cooperating fully in defence of the action or claim, and the City's legal counsel is given full authority in the

conduct of the action or claim, including the authority to settle the action or claim at any time in the manner the legal counsel deems advisable in the circumstances.

- (c) If legal counsel appointed by the City determines that a conflict exists between the Employee's defence of an action or claim and the City's defence of an action or claim, then the Employee may be represented by their own legal counsel with necessary and reasonable legal costs and all damages awarded against the Employee to be paid by the City.

6.03 Indemnification: charges under Federal and Provincial laws and regulations

- (a) Pursuant to the *Police Act*, section 22(1), the Employer indemnifies for necessary and reasonable legal costs an Employee who is charged with an offence under Federal and Provincial laws and regulations, arising from the performance, or attempted performance, in good faith, of the Employee's duties as a police officer, but not including traffic offences under the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, for which the maximum fine is five hundred dollars (\$500) or the maximum demerit points is three (3). Despite the foregoing, where an Employee faces disciplinary process under the *Police Act* as well as proceedings under the *Motor Vehicle Act* arising out of the same allegation, indemnification applies to proceedings under the *Police Act* even when the maximum fine is five hundred dollars (\$500) or the maximum demerit points is three (3).
- (b) The Employer indemnifies an Employee for necessary and reasonable costs for up to a two (2) hour consultation by the Employee with a lawyer to determine whether or not the Employee should make a statement, and if so, in what form, if the Employee:
 - (i) learns that an allegation has been made that the Employee has committed misconduct in the performance of their duties as a police officer;
 - (ii) reasonably believes that the allegation may result in the initiation against the Employee of proceedings under the *Criminal Code*, R.S.C. 1985, c. C-46 or *Motor Vehicle Act*; and
 - (iii) has been asked by the Employer or a person in authority to make a statement to anyone about the facts connected with the allegation.
- (c) No prior arrangement for indemnification needs to be made by the Employee with the Employer before obtaining the legal advice if fees for only up to two (2) hours of services are claimed.
- (d) If the Employee considers the allegation to be complex or serious and requires more than two (2) hours of legal assistance, the Employee may, before consulting the lawyer, seek the Employer's agreement to indemnify them for the cost of more than two (2) hours of service by the lawyer. The Employer will not unreasonably refuse to indemnify the Employee for the cost of these reasonable and necessary services.
- (e) If it is proven that the Employee did not act in good faith in the performance of their duties as a police officer, the Employee is responsible for the reimbursement of the Employer for the amount properly paid by it pursuant to this Article. The Employee may be required to

enter into a written agreement to reimburse the Employer for the amount properly paid pursuant to this part if the Employee is later found to have not acted in good faith.

6.04 Indemnification: *Police Act* and other proceedings

(a) *Police Act*:

- (i) An Employee who is a named respondent in any proceeding held pursuant to the *Police Act*, R.S.B.C. 1996, c. 367, including investigations by the Independent Investigations Office of British Columbia (IIO-BC), arising from acts done in the performance, or attempted performance, in good faith, of the Employee's duties as a police officer shall be indemnified by the Employer for the necessary and reasonable legal costs incurred in representing the Employee.
- (ii) The Employer will have no obligation to indemnify an Employee under Article 6.04(a) if the Employee is found to have committed misconduct, and disciplinary or corrective measures include a suspension without pay of three (3) days or more, demotion, or dismissal.
- (iii) An Employee who appeals under the *Police Act*, section 154, the decision of an adjudicator at a public hearing arising from acts done in the performance, or attempted performance, in good faith, of the Employee's duties as a police officer, will be indemnified by the Employer for the necessary and reasonable legal costs incurred in representing the Employee in the appeal only where the appeal is successful.

(b) *Judicial reviews*: an Employee who applies for judicial review in the Supreme Court of British Columbia arising from acts done in the performance, or attempted performance, in good faith, of their duties as a police officer will be indemnified by the Employer for the necessary and reasonable legal costs incurred in representing them in the judicial review, but only where the Employee's application for judicial review is successful.

(c) *Inquests*: an Employee whose actions appear to have been a material contributing cause of the death of another person arising out of the performance, or attempted performance, in good faith, of the Employee's duties will be indemnified by the Employer for the necessary and reasonable legal costs to represent them at an inquest or inquiry held pursuant to Federal or Provincial laws and regulations.

(d) *Royal Commissions and other proceedings*: where an Employee requests legal representation in a Royal Commission or proceedings not otherwise referred to in this Article, they may request the Employer recommend that the City indemnify them for all or a portion of necessary and reasonable legal costs prior to the commencement of the proceedings. Upon receiving such a request, the Employer will provide the Employee an opportunity to appear before it for the purpose of attempting to persuade it that such a recommendation is appropriate. The Employer, having provided the Employee such an opportunity may, in its unqualified discretion, recommend to the City that the request be granted, or that it be granted subject to conditions, or the Employer may deny such request. It is understood that the City may accept, modify, or reject the recommendation of the Employer.

6.05 General provisions

- (a) Despite the other provisions of this Article, an Employee will not be indemnified for:
 - (i) punitive damages;
 - (ii) legal costs arising from grievances under this Agreement, unless ordered by an arbitrator;
 - (iii) proceedings or processes arising from investigations under the *Police Act*, Part 11, except where otherwise allowed in this Article where the Employee is a witness, but not a subject officer; or
 - (iv) acts or omissions that do not represent good faith as defined in Article 6.01(b).
- (b) Despite the other provisions of this Article, where two (2) or more Employees are charged with an offence or made the subject of a claim, inquiry, public hearing, inquest, or Royal Commission, described in this Article, arising out of substantially the same circumstances, the Employer may limit its indemnification pursuant to this Article to the reasonable legal costs of one (1) legal counsel to represent the interests of both/all of them, including representation at any appeal, unless the legal counsel believes that it would be improper for such legal counsel to represent both or all of them. If one (1) legal counsel is to be retained and the Employees are unable to agree on the choice of legal counsel, the matter will be conclusively settled by the Parties.
- (c) No notice is required from Employees seeking indemnification for a two (2) hour consultation under Article 6.03(a). Employees who intend to apply for all other indemnification under this Article will notify the Chief Constable, in writing, within thirty (30) days of receiving formal notification of the issue giving rise to the need for indemnification. Failure to comply with this time notification requirement may result in an Employee being denied indemnification.
- (d) Nothing in this Article shall be interpreted as limiting the Chief Constable's or the Employer's ability to discipline an Employee.
- (e) This indemnification continues after the Employee's employment with the Service ends for all matters related to the Employee's employment with the Service.

[end of Article 6]