



<b>Policy Name:</b>	<b>LIABILITY INDEMNIFICATION</b>		
<b>Policy #:</b>	AD 8.7	<b>Last Updated:</b>	2021-08-09
<b>Issued By:</b>	SUPPORT SERVICES BUREAU	<b>Approved By:</b>	SURREY POLICE BOARD
		<b>Review Frequency:</b>	AS REQUIRED

**RELATED POLICIES**

**1. PURPOSE**

1.1. The Surrey Police Service (SPS), 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 Employees who, at the time a claim arises, are not covered by a collective agreement or an employment contract with SPS having indemnification provisions, as well as Volunteers.

**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.

**Application**

3.2. Defence - SPS will defend a third-party claim made against, or other external investigation, inquest or inquiry involving, an Employee or Volunteer arising out of the usual scope of their duties for SPS, including in connection with the exercise or intended exercise of the Employee’s or Volunteer’s powers or the performance or intended performance of their role or function with SPS. An Employee or Volunteer is also eligible for coverage in circumstances where there are reasonable grounds to believe that a proceeding described in this Section is likely to be commenced. This defence extends to appeals of the decision in the original proceeding by the other party or if SPS considers it is in its best interest to appeal that decision. SPS, either directly or through the City or through their respective insurers, will, as part of defending a claim, provide legal representation to the Employee or Volunteer with respect to the claim. An Employee or Volunteer is eligible for coverage as a party in a proceeding only if the Employee's or Volunteer's involvement in the proceeding arises from conduct that occurred in the performance of their

usual duties for SPS and only if their conduct to which the proceeding relates was not grossly negligent, dishonest, malicious, or otherwise in bad faith or the Employee or Volunteer did not act against the interests of the SPS. The coverage is subject to reimbursement under s. 4.4.

- 3.3. Indemnification - SPS will indemnify an Employee or Volunteer by paying for the satisfaction of a judgment, order, award, fine or penalty imposed on that Employee or Volunteer, or for a settlement reached, in relation to claims and appeals for which SPS defends the Employee or Volunteer pursuant to s. 3.2 (Defence), provided the payment does not relate to conduct of the Employee or Volunteer which was grossly negligent, dishonest, malicious or in bad faith , and specifically excludes defence and indemnification for the appeal of a decision in which the Employee or Volunteer was convicted in a prosecution or found responsible in a civil proceeding. With prior approval from the Chief Constable, SPS may further indemnify an Employee or Volunteer for amounts reasonably required or incurred by the Employee or Volunteer in relation to an external investigation, inquest, inquiry, or other proceeding that involves the administration of SPS or the conduct of SPS business. The indemnification is subject to reimbursement under s. 4.4.
- 3.4. Participation in Proceedings as a Witness - An Employee may request a consultation with legal counsel or reimbursement for reasonable legal fees incurred for obtaining legal advice with respect to appearing as a witness in a proceeding to give evidence on matters arising from their duties or functions on behalf of SPS, if the Employee has been subpoenaed to testify or the Chief Constable determines it is in SPS' interest for the Employee to testify based on the complexity of the issue, or if the nature, effect or potential outcome of the testimony or the proceeding possesses an economic, reputational or other risk to SPS. No assistance or reimbursement will be provided where the testimony is offered to, or the Employee is subpoenaed on behalf of, a party whose interest is adverse to SPS.
- 3.5. Conduct - Defence and indemnification are subject to the Employee co-operating in the defence of the claim and complying with the reasonable instructions of SPS, the City, and their respective insurers and/or legal representatives throughout the process.
- 3.6. Exclusions - In addition to any other conditions, limitations, exceptions, or exclusions set out 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; or
  - 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.

3.7. Commencement and Duration of Assistance - SPS will provide assistance only in respect of investigation, legal fees, disbursements and other expenses or financial obligations that arise or are incurred after the date the Employee or Volunteer provides notice of a claim pursuant to s. 4.1 (Notice of Claim). The Employee's or Volunteer's right to be defended and indemnified under this Policy applies for so long as the Employee or Volunteer, and the circumstances continue to meet the Policy requirements and the Employee or Volunteer is not in a breach of this Policy which has not been remedied promptly to the satisfaction of the Chief Constable. Assistance under this Policy will terminate once an Employee or Volunteer is no longer involved as a party to a claim or witness in a proceeding.

#### **4. PROCEDURE**

4.1. 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.

4.2. Conduct of Claims - SPS, either directly or through the City 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 SPS 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.

4.3. 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 SPS 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 SPS under this Policy.

4.4. Reimbursement - An Employee or Volunteer, who has been provided assistance under this Policy, must not profit from that assistance and must reimburse SPS 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 SPS for all amounts paid by or on behalf of SPS 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 SPS by its insurer(s), and the insurer(s) have not requested the return of any amounts paid.

4.5. Confidentiality - An Employee or Volunteer shall not disclose any information about the claim to any third party without the consent of SPS 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.

The restriction on disclosure 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.

## **APPENDIX A: DEFINITIONS**

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

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

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

“Supervisor” for the purposes of this policy 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 the SPS.

“Volunteer” means a person serving 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 of the Surrey Police Board or the Surrey Police Service.

**APPENDIX B: REFERENCES**