



Title: Legal Representation and Indemnification of Council Members and Employees		Number: 0146
Reference: Administrative Committee June 22, 2011 July 13, 2022	Adopted by City Council: July 4, 2022	Supersedes: N/A
Prepared by: CITY SOLICITOR		

STATEMENT:

Employees, council appointees and council members that serve the City of Medicine Hat (the "City") should be protected from the expenses of lawsuits and other actions that arise out of conduct undertaken in good faith in the performance or intended performance of the employee's, council appointee's or council member's duties for the City.

DEFINITIONS:

"Claim" means any civil action commenced in any Court seeking compensatory damages or any other civil remedy and includes any claim or demand for the payment of money, but does not include a civil action, claim or demand made where the conduct complained of is defamation.

"Complaint or Inquiry" means any formal complaint or inquiry brought pursuant to any enactment and includes any complaint under the *Alberta Human Rights Act*, and any professional disciplinary proceedings pursuant to an enactment regulating conduct of any profession.

"Council Appointee" means any member of the public who is appointed by City Council to sit as a member of a Council committee, commission or board.

"Council Member" includes any person who was a member of Council at the time of the conduct giving rise to the Claim, Complaint or Inquiry, or Criminal or Quasi-Criminal Prosecution.

"Criminal Prosecution" means alleged violation of the *Criminal Code* or the *Controlled Drugs and Substances Act*.

"Quasi-Criminal Prosecution" includes alleged violation of any federal or provincial statute or regulation or municipal bylaw punishable by fine or imprisonment or both, including, without restricting the generality of the foregoing, prosecution under environmental protection and occupational health and safety statutes, but does not include a Criminal Prosecution.

"Employee" includes any person who was a City employee or Council Appointee at the time of the conduct giving rise to the Claim, Complaint or Inquiry, or Criminal or Quasi-Criminal Prosecution, but does not include unionized employees whose Collective Agreement contains an indemnity clause.

“Indemnity” means:

- (a) in the case of a Claim, that the City will pay the Council Member’s or Employee’s legal fees, costs of settlement and any judgments (including interest and costs) awarded in regard to the Claim;
- (b) in the case of a Criminal or Quasi-Criminal Prosecution, that the City will pay the Council Member’s or Employee’s legal fees and, in the case of a Quasi-Criminal Prosecution only, fines; and
- (c) in the case of a Complaint or Inquiry, that the City will pay the Council Member’s or Employee’s legal fees (where legal representation is reasonably required) and any fines, penalties, compensatory damages or other costs imposed in regard to the Complaint or Inquiry.

PRINCIPLES:

1. Where any Claim is made against any Council Member or Employee and it is determined in accordance with this Policy that the conduct giving rise to the Claim was conduct undertaken in good faith in the performance or intended performance of the duties of his or her position that is not covered by the City’s insurance, then subject to the other provisions of this Policy, the City shall provide that Council Member or Employee with an Indemnity.
2. If the Council Member or Employee has insurance from some source other than the City which will provide the Council Member or Employee with a source of indemnification in regard to a Claim, the City shall only indemnify the Council Member or Employee to the extent that her or she is not already provided with indemnification by his or her insurer.
3. In order to receive the benefit of the Indemnity provided in this Policy, the Council Member or Employee must sign any and all documents required by the City to enable the City to subrogate itself to the position of the Council Member or Employee as it concerns a Claim.
4. Where an Indemnity has been approved pursuant to this Policy for a Claim, the Council Member or Employee shall not commence either a claim, a counterclaim or a third party claim as part of, or in relation to the subject matter of, the Claim unless the same has been approved in advance and in writing by the City.
5. Where any Criminal or Quasi-Criminal Prosecution is brought against any Council Member or Employee, and it is determined in accordance with this Policy:
 - (a) that the conduct giving rise to the prosecution was conduct undertaken in good faith in the performance or intended performance of the duties of his or her position; and
 - (b) that the Council Member or Employee had reasonable grounds to believe his or her conduct was lawful;

the City shall provide the Council Member or Employee an Indemnity.

It shall be the obligation of the Council Member or Employee to co-operate with the City in the defence of the charges.

6. Where any Complaint or Inquiry is brought against any Council Member or Employee, and it is determined in accordance with this Policy:
 - (a) that the conduct giving rise to the Complaint or Inquiry is conduct of the Council Member or Employee acting in good faith in the performance or intended performance of the duties of his or her position; and
 - (b) that the Council Member or Employee had reasonable grounds to believe his or her conduct was lawful;the City shall provide the Council Member or Employee an Indemnity.

It shall be the obligation of the Council Member or Employee to co-operate with the City in the defence of the Complaint or Inquiry.
7. The City reserves the right to dispense whatever discipline it may deem appropriate if an Employee acts beyond the course and scope of his or her duties or while acting in the course and scope of his or her duties goes beyond, falls short of or breaches what would be considered normal and prudent conduct.
8. Where a Council Member or Employee has been provided an Indemnity and the Council Member or Employee wishes to commence an appeal of a judgment or decision in the Claim, Quasi-Criminal Prosecution, or Complaint or Inquiry, the Council Member or Employee is not entitled an Indemnity for the costs of the appeal or for any judgments, fines, penalties or compensatory damages greater than those that were awarded against the Council Member or Employee in the first instance, unless approved by the City pursuant to the Procedures.
9. The City may provide an Indemnity to a Council Member or Employee for the costs of an appeal launched by the opposing side or the prosecution if there is a reasonable chance of success, the costs of the appeal are reasonable, the circumstances of the conduct giving rise to the appeal are such that an Indemnity should be provided, and it is in the best interests of the City to provide the Indemnity.
10. Where an Indemnity has been approved pursuant to this Policy, the City reserves the right to appoint a lawyer to act on behalf of the Council Member or Employee, unless the City determines that a conflict of interest exists between the Council Member or Employee and the City regarding the subject matter of the Claim, Criminal or Quasi-Criminal Prosecution, or Complaint or Inquiry, or where there is the possibility of imprisonment for the Council Member or Employee. Where the City determines that a conflict of interest exists or there is the possibility of imprisonment, the Council Member or Employee shall be entitled to retain his or her own lawyer for the defence of the Claim, Criminal or Quasi-Criminal Prosecution, or Complaint or Inquiry.
11. Where the Council Member or Employee has retained their own lawyer, the City shall be entitled to set a monetary limit for the defence, which limit shall not be exceeded without the prior written approval of the City. The City shall be entitled to review the account of the Council Member or Employee's lawyer in accordance with Part 10 of the Rules of Court.
12. It is intended that this Policy shall form a part of the compensation package of Council Members and Employees and is intended to be binding on the City. Council may amend or revoke this Policy at any time by resolution and upon passing such resolution the Policy will automatically and without notice to anyone be amended or revoked thirty days after

the passage of such resolution. As Members of Council do not have contracts of employment with the City, Council Members may request written indemnity agreements on substantially the same terms and conditions contained in this Policy.

13. Where a decision has been made to not provide an Indemnity pursuant to this Policy, that decision shall be final and shall not be subject to any right of reconsideration, judicial review or appeal.
14. Where, subsequent to an Indemnity being approved pursuant to this Policy, facts become available to the City that, in the reasonable opinion of the City, demonstrate that the Council Member or Employee was not entitled to an Indemnity, the City shall have the discretion to rescind the Indemnity.
15. Where a Council Member or Employee has received, or has been approved to receive, the benefit of an Indemnity, the City reserves the right to make such investigations, negotiations or settlement as may be deemed appropriate by the City, and the Council Member or Employee shall provide the City with such assistance and cooperation as the City may request including, but not limited to, attending all proceedings, signing any documents and providing any information that the City, or any solicitor appointed by the City, may deem advisable.
16. When a Council Member or Employee has been indemnified in relation to a Criminal Prosecution and he or she is found guilty of that charge, or a lesser charge arising from the same facts, the Indemnity is automatically rescinded.
17. When a Council Member or Employee has been indemnified in relation to a Quasi-Criminal Prosecution and he or she is found guilty of that charge, or a lesser charge arising from the same circumstances, the City shall have no obligation to pay any fine levied against that Council Member or Employee unless, upon examination of the findings of fact arising from the conviction, the City determines that the Council Member or Employee still meets the criteria set out in Section 5 of this Policy.
18. Where, subsequent to an Indemnity being approved, a Council Member or Employee fails to cooperate with the City or provide information as required by this Policy and Procedure, the City shall have the discretion to rescind the Indemnity.
19. Where an Indemnity is rescinded, the Council Member or Employee shall be solely responsible for the payment of all legal fees and other costs in connection with his or her defence, any damages, costs of settlement, judgments (including interest and costs) or fines awarded against him or her in the Claim, Criminal or Quasi-Criminal Prosecution, or Complaint or Inquiry and shall be responsible to repay to the City, forthwith upon written demand, all amounts already paid by the City pursuant to the Indemnity.
20. Notwithstanding anything else in this Policy, the City Manager may, following consultation with the Administrative Committee, choose to indemnify or otherwise conditionally commit to pay certain legal fees incurred by a Council Member or Employee in any situation where the City Manager determines it is appropriate to do so in accordance with the Procedure of this Policy.
21. For the purposes of this Policy, the duties of a Council Member or an Employee include the duties that he or she performs for the organizations which he or she has been appointed to by, or is a representative for, Council or the City.

22. A serving Council Member shall be entitled to indemnification for legal expenses that he or she incurred to obtain legal advice on issues of bias and pecuniary interest, up to \$1,000 per year, without prior approval.

ROLE OF COUNCIL

To receive, review and adopt this Policy and any recommended amendments thereto.

Policy 0146 – Legal Representation and Indemnification of Council Members and Employees		PROCEDURE
Authority: Administrative Committee	Effective Date: July 18, 2011	Page 6 of 11

1. DEFINITIONS

- 1.01 Any term that has been defined in the Policy shall have the same meaning in this Procedure.

2. RESPONSIBILITIES

2.01 City Council

- (a) Approve this Policy and any amendments hereto.

2.02 Administrative Committee

- (a) Recommend amendments to this Policy to City Council;
- (b) Develop procedures to implement this Policy; and
- (c) Upon approval of an Indemnity, identify a source of funding for reimbursement of approved legal fees and expenses in connection with the defence.

2.03 City Solicitor

- (a) Exercise discretion and decision making powers of the City in accordance with this Procedure.
- (b) Where an indemnity has been approved or rescinded report the matter to the Administrative Committee.

2.04 Council Member and Employees:

- (a) Notify the City Solicitor immediately upon receipt of any Claim, upon being charged with any Criminal or Quasi-Criminal offence or upon being made party to any Complaint or Inquiry for which he or she wishes an Indemnity.
- (b) Co-operate with and provide full and frank information to the City and legal counsel appointed by the City in regard to the defence of any Claim, Criminal or Quasi-Criminal Prosecution, or Complaint or Inquiry.
- (c) Where an Indemnity is rescinded, repay to the City all amounts paid by the City pursuant to the Indemnity on behalf of that Council Member or Employee.
- (d) Where the Council Member or Employee receives an award of costs or a judgment arising out of a matter for which he or she has been indemnified by the City:
- i. pay to the City the full amount of the costs or judgement; or
 - ii. repay to the City all amounts paid by the City pursuant to the Indemnity, whichever is less.

2.05 CAO – Municipal Services:

- (a) Where the City Solicitor is seeking an Indemnity pursuant to this Policy, make all decisions and perform all duties pursuant to this Procedure that would ordinarily be made or performed by the City Solicitor.

Policy 0146 – Legal Representation and Indemnification of Council Members and Employees		PROCEDURE
Authority: Administrative Committee	Effective Date: July 18, 2011	Page 7 of 11

3. PROCEDURES

3.01 Claims for indemnification

- (a) In the case of an application for an Indemnity pursuant to this Policy by an Employee other than a designated officer, the CAO- Municipal Services or the COO – Energy Services, the City Solicitor shall approve indemnification of the Employee if the City Solicitor is satisfied that the conduct giving rise to the request for an Indemnity is conduct undertaken in good faith in the performance or intended performance of his or her duties and otherwise meets the requirements set out in this Policy.
- (b) Where an application for Indemnity is made by a Council Member, a designated officer, the CAO – Municipal Services or the COO – Energy Services, the City Solicitor shall refer the matter to an independent lawyer who shall provide an opinion to the City Solicitor on whether the conduct giving rise to the request for an Indemnity is conduct undertaken in good faith in the performance or intended performance of his or her duties and otherwise meets the requirements set out in this Policy. If the independent lawyer is of the opinion that an Indemnity should be granted, the City Solicitor shall approve the Indemnity. If the independent lawyer is of the opinion that the Indemnity should be denied, the City Solicitor shall deny the Indemnity.

3.02 Where subsequent to an Indemnity being approved pursuant to this Policy, facts become available to the City that, in the opinion of the City Solicitor, demonstrate that the Council Member or Employee was not eligible for an Indemnity pursuant to this Policy, the City Solicitor shall:

- (a) in the case of an Employee, have the discretion to rescind the Indemnity; or
- (b) in the case of a Council Member, the CAO-Municipal Services, the COO-Energy Services or a designated officer, forward the facts to an independent lawyer (who shall, whenever possible, be the same lawyer that provided the initial opinion regarding the Indemnity) to make a recommendation on whether the Indemnity should be rescinded, which recommendation shall be implemented by the City Solicitor.

3.03 Where, subsequent to an Indemnity being approved, a Council Member or Employee fails to cooperate with the City as required by this Policy and Procedure, the City Solicitor shall:

- (a) in the case of an Employee, have the discretion to rescind the Indemnity; or
- (b) in the case of a Council Member, the CAO-Municipal Services, the COO-Energy Services, or a designated officer, forward the facts to an independent lawyer (who shall, whenever possible, be the same lawyer that provided the initial opinion regarding the Indemnity) to make a recommendation on whether the Indemnity should be rescinded, which recommendation shall be implemented by the City Solicitor.

Policy 0146 – Legal Representation and Indemnification of Council Members and Employees		PROCEDURE
Authority: Administrative Committee	Effective Date: July 18, 2011	Page 8 of 11

3.04 Indemnification for Appeals

- (a) Where any appeal of a Claim, Criminal or Quasi-Criminal Prosecution or Complaint or Inquiry is commenced by a Council Member or Employee, the City Solicitor may consider the following matters when deciding whether an Indemnity should be provided:
 - i. likelihood of success of the appeal;
 - ii. cost of the appeal;
 - iii. circumstances of the conduct which gave rise to the Indemnity; and
 - iv. whether the appeal is in the best interests of the City.
- (b) Where an appeal of a Claim, Criminal or Quasi-Criminal Prosecution or Complaint or Inquiry is commenced by the opposing party or the prosecution, and the Council Member or Employee was substantially successful in the first instance, the City Solicitor shall approve indemnification for legal fees and costs of the appeal if:
 - i. there is a reasonable chance that the Employee or Council Member will be successful;
 - ii. the costs of the appeal are reasonable;
 - iii. the circumstances of the conduct giving rise to the appeal are such that an Indemnity should be provided; and
 - iv. it is in the best interests of the City to provide the Indemnity.

3.05 Applications Submitted Under Section 20 of the Policy in Relation to Defamation

- (a) This Section 3.05 shall apply to any application submitted under Section 20 of the Policy in relation to defamation, and shall prevail to the extent of any conflict with any other provision of this Procedure in respect of such applications:
 - i. If an Employee, Council Appointee or Council Member (in each case, a "Permitted Applicant") reasonably and in good faith believes that any person, other than any other Permitted Applicant, has made any untrue and defamatory statement(s) (collectively, a "Statement") specifically about the Permitted Applicant in connection with the Permitted Applicant's performance of their assigned or statutory duties in respect of the City, and has communicated such Statement to at least one person other than the Permitted Applicant, then the Permitted Applicant may in writing apply to the City Solicitor for a legal review of the Statement as the basis of a potential action in defamation (an "Application"), provided that such Application shall be submitted by the Permitted Applicant together with a true and accurate written record, prepared by the Permitted Applicant, of all relevant information and documentation known to or in the possession of the Permitted Applicant that is related to such Statement, including the circumstances under which the Statement was made, the persons to whom the Statement was communicated, the circumstances under which the assigned or statutory City duties which are the subject of the

Policy 0146 – Legal Representation and Indemnification of Council Members and Employees		PROCEDURE
Authority: Administrative Committee	Effective Date: July 18, 2011	Page 9 of 11

Statement were performed, any previous or existing relationship between the Permitted Applicant and the person that made the Statement, any other information requested by the City Solicitor, at the City Solicitor's sole and absolute discretion, (collectively, the "Supporting Information"), as well as the Permitted Applicant's consent to the City Solicitor's sharing the Application, Supporting Information and any other information related thereto with such additional persons as the City Solicitor, at their sole and absolute discretion, deems necessary or appropriate in order to evaluate the Application.

- ii. Upon receipt of an Application and Supporting Information submitted in accordance with Section 3.05(a)(i), the City Solicitor shall, to the satisfaction of the City Solicitor, obtain one or more legal opinions from one or more external legal counsels selected by the City Solicitor (each an "Opinion") about whether the Statement constitutes the basis of an action in defamation for which there is an estimated reasonable chance of the Permitted Applicant's success at trial (a "Viable Claim"), together with one or more estimates of the legal fees that may be invoiced by such external legal counsel(s) to represent the Permitted Applicant in respect of such potential action (a "Legal Fees Estimate").
- iii. If, upon receipt of any Opinion in accordance with Section 3.05(a)(ii), the City Solicitor, at their sole and absolute discretion, determines that the Statement:
 1. does not constitute the basis of a Viable Claim, the City Solicitor shall provide the Permitted Applicant with a Refusal Notice; or
 2. constitutes the basis of a Viable Claim, the City Solicitor shall inform the City Manager of the Application and shall provide the City Manager with a copy of the Application, the Supporting Information, the Opinion(s), and the Legal Fees Estimate(s).
- iv. If, upon receipt of the Application, the Supporting Information, the Opinion(s), and the Legal Fees Estimate(s), the City Manager, at their sole and absolute discretion, determines that:
 1. it would not be in the public interest for the City to enter into a contract with the Permitted Applicant in accordance with which contract the City would conditionally provide a specified amount of funds towards the legal fees invoiced to the Permitted Applicant by an external legal counsel in respect of the Viable Claim, then the City Manager shall provide the Permitted Applicant with a Refusal Notice; or
 2. it would be in the public interest for the City to enter into a contract with the Permitted Applicant in accordance with which contract the City would conditionally provide a specified amount of funds towards the legal fees invoiced to the Permitted Applicant by an external legal counsel in respect of the Viable Claim, then the City Manager shall direct the City Solicitor to prepare a litigation funding agreement containing terms and conditions that are satisfactory to the City Solicitor, at their sole and absolute

Policy 0146 – Legal Representation and Indemnification of Council Members and Employees		PROCEDURE
Authority: Administrative Committee	Effective Date: July 18, 2011	Page 10 of 11

discretion, (a "Litigation Funding Agreement"), which Litigation Funding Agreement shall thereafter be presented to the Permitted Applicant for review and signature.

- v. If, following the Permitted Applicant's receipt of a Litigation Funding Agreement in accordance with 3.05(a)(iv)(2), the City and the Permitted Applicant, each at their sole and absolute discretion:
 1. fail to execute the Litigation Funding Agreement within a reasonable time, as determined by the City Manager, at their sole and absolute discretion, then the City Manager shall provide the Permitted Applicant with a Refusal Notice; or
 2. execute the Litigation Funding Agreement, then any amounts to be provided by the City to the Permitted Applicant under the Litigation Funding Agreement shall be conditional on, among other things, the Permitted Applicant's strict compliance with the terms and conditions of such Litigation Funding Agreement.
- vi. For greater certainty:
 1. any action brought in connection with this Section shall be brought by the Permitted Applicant against the person who made the Statement, and the City shall not bring such action; and no amount shall be payable by the City to a Permitted Applicant under this Section except and in accordance with a duly executed and *subsisting Litigation Funding Agreement between the City and the Permitted Applicant*.
- vii. A Refusal Notice issued in accordance with this Section shall be final and binding in respect of the Application.
- viii. Except where the City Manager, at their sole and absolute discretion, issues a written approval to the contrary, a Permitted Applicant in receipt of a Refusal Notice issued in accordance with this Section shall not submit the same or any similar Application in respect of the same or any similar Statement within twelve (12) months of the date of such Refusal Notice.
- ix. Without limiting the generality of Section 3.05(a)(ii), the City Solicitor, in obtaining an Opinion from an external legal counsel shall request that such external legal counsel include in such Opinion recommendations about:
 1. The merits of an action in defamation on the basis of the Statement;
 2. Whether the Statement concerns the Permitted Applicant's performance of their assigned or statutory City duties;
 3. Whether the Statement, if left unchallenged, will undermine public confidence in the Permitted Applicant;
 4. Whether the Statement, if left unchallenged, will undermine public confidence in the City; and

Policy 0146 – Legal Representation and Indemnification of Council Members and Employees		PROCEDURE
Authority: Administrative Committee	Effective Date: July 18, 2011	Page 11 of 11

5. Whether the Statement, if left unchallenged, may disrupt the efficient functioning of the municipal corporation.
- x. Notwithstanding any other provision within this Section:
 1. if the City Solicitor wishes to submit an Application in respect of this Section, the City Solicitor shall so inform the City Manager, and shall submit such Application to an external legal counsel engaged by the City Solicitor to carry out the functions of the City Solicitor with respect to such Application; and
 2. if the City Manager wishes to submit an Application in respect of this Section, the City Manager shall so inform the City Solicitor, and shall submit such Application to an external legal counsel engaged by the City Solicitor to carry out the functions of the City Solicitor with respect to such Application, and the functions of the City Manager with respect to such Application (if any) shall be carried out by a separate external legal counsel engaged by the City Solicitor for that purpose.”

4. ATTACHMENTS

4.01 N/A