

POLICY: EXEC-CEO-010

LEGAL REPRESENTATION FOR ELECTED MEMBERS AND EMPLOYEES

PURPOSE

This policy will set out guidelines to assist Council in determining when it is appropriate to pay legal representation costs attributed to elected members and employees (including past elected members and former employees) where they have become involved in legal proceedings as a result of their official functions.

DEFINITIONS

“Approved Lawyer” means:

- a. a certified practitioner’ as defined under the Legal Practice Act 2003;
- b. approved in writing by the Council or the CEO under delegated authority.

“Elected Member or Employee” means a current or former commissioner, elected member, non-elected member of a council committee or employee of the City.

“Legal Proceedings” may be civil, criminal or investigative.

“Legal Representation” is the provision of legal services, to or on behalf of an elected member or employee, by an approved lawyer that are in respect of:

- a) A matter or matters arising from the performance of the functions of the elected member or employee and,
- b) Legal proceedings involving the elected member or employee that have been, or may be, commenced.

“Legal Representation Costs” are the costs including fees and disbursements, properly incurred in providing legal representation.

“Legal Services” includes advice, representation or documentation provided by an approved lawyer.

“Payment” by the City of legal representation costs may be either by:

- a) A direct payment to the approved lawyer (or the relevant firm); or
- b) A reimbursement to the elected member or employee

STATEMENT

Section 9.56 of the *Local Government Act 1995* (the Act) provides protection from actions of tort for anything an elected member or employee has in good faith done in the performance, or purported performance, of a function under the Act or under any other written law.

Section 3.1 of the Act provides that the general function of a local government is to provide for the good government of persons in its district. Section 6.7 (2) provides that money held in the municipal fund may be applied towards the performance of the functions and the exercise of the powers conferred on the local government by the Act or any other written law. Under these provisions a council can expend funds to provide legal representation for council members and employees as long as it believes that the expenditure falls within the scope of the local governments function.

1. Payment Criteria

There are four major criteria for determining whether the City will pay the legal representation costs of an elected member or employee. These are:

- a) The legal representation costs must relate to a matter that arises from the performance, by the elected member or employee, or his or her functions;
- b) The legal representation cost must be in respect of legal proceedings that have been, or may be, commenced;
- c) In performing the functions, to which the legal representation relates, the elected member or employee must have acted in good faith, and must not have acted unlawfully or in a way that constitutes improper conduct; and
- d) The legal representation costs do not relate to a matter that is of a personal or private nature.

2. Examples of legal representation costs that may be approved

If the criteria in clause 1 of this policy are satisfied, the City may approve the payment of legal representation costs –

- a) Where proceedings are brought against an elected member or employee in connection with his or her function – for example, an action for defamation or negligence arising out of a decision made or action taken by the elected member or employee; or
- b) To enable proceedings to be commenced and/or maintained by an elected member or employee to permit him or her carrying out his or her functions, for example, where an elected member or employee seeks to take action to commence defamation action or to

obtain a restraining order against a person using threatening behaviour to the elected member or employee; or

- c) Where exceptional circumstances are involved – for example, where a person or organisation is lessening the confidence of the community in the local government by publicly making adverse personal comments about Elected members or Employees.

3. Application for Payment

3.1. An elected member or employee who seeks assistance under this Policy is to make an application (s) for payment of legal representation costs in writing to the CEO. The written application for payment of legal representation costs is to give details of:

- i. The matter for which legal representation is sought;
- ii. How that matter relates to the functions of the elected member or employee making the application;
- iii. The lawyer (or law firm) who is to be asked to provide the legal representation;
- iv. The nature of legal representation to be sought (such as advice, representation in court, preparation of document etc.);
- v. An estimated costs of the legal representation;
and
- vi. Why it is in the interests of the City for payment to be made.

3.2. The application is to be accompanied by a written statement by the applicant that he or she:

- a) Has read and understands the terms of this Policy;
- b) Acknowledges that any approval of legal representation costs is conditional on the repayment provisions of clause 4.7 and any other conditions to which the approval is subject; and
- c) Undertakes to repay to the City any legal representation costs in accordance with provisions of clause.

3.3. In relation to clause 3.2.c, when a person is to be in receipt of such monies the person should sign a document which requires repayment of that money to the local government as may be required by the local government and the terms of the Policy.

3.4. An application is to be accompanied by a report prepared by or on behalf of the CEO or, where the CEO is the applicant, by the Director Corporate Services

4. Legal representation Costs - Limit

4.1 The Council in approving an application in accordance with this policy shall set a limit on the costs to be paid based on the estimated costs in the application.

4.2 An Elected member or Employee may make a further application to Council in respect of the same matter.

5. Council's Powers

5.1 Council may:

- a) Refuse
- b) Grant, or
- c) Grant subject to conditions, an application for payment of legal representation costs.

5.2 A condition under clause 5.1 may include a financial limit and/or a requirement to enter in to a formal agreement, including a security agreement, relating to the payment, and repayment, if legal representation costs.

5.3 In assessing an application, regard may be had to any insurance benefits that may be available to the applicant under the City's existing insurance policy.

5.4 Council may at any time revoke or vary an approval, or any conditions of approval for the payment of legal representation costs.

5.5 Council may, subject to clause 5.6 determine that an elected member or employee whose application for legal representation costs has been approved:

- a) Has in respect of the matter for which approval was given, not acted in good faith, or has acted unlawfully or in a way that constitutes improper conduct; or
- b) Has given false or misleading information in respect of the application.

5.6 A determination under clause 5.5 may be made by Council only on the basis of and consistent with the findings of a court, tribunal or inquiry.

5.7 Where Council makes a determination under clause 5.5 it may also determine that all or part of the legal representation costs paid by the City, are to be repaid by the elected member or employee in accordance with clause 7.

6. CEO Authorisation

6.1 In cases of urgency, the CEO, subject to clause 6.2, may exercise, on behalf of the Council, any of the powers of the Council under clauses to a limit of \$10,000, where a delay in approving an application would be detrimental to the legal rights of any elected member or employee.

6.2 Where the CEO is the applicant, the powers in clause 6.1 are to be exercised by the Director Corporate Services.

6.3 An application approved by the CEO under clause 6.1 or by the Director Corporate Services under 6.2 is to be submitted to the next meeting of Council which may exercise any of its powers under this Policy.

7. Repayment of Legal Representation Costs

7.1 An Elected member or Employee, whose legal representation costs have been paid by the City, is to repay the City:

- a) All or part of those costs – in accordance with a determination by Council under clause 5.5; or
- b) As much of those costs as are available to be paid by way of set-off – where the Elected member or Employee receives monies paid for costs, damages, or settlement, in respect of the matter for which the City paid the legal representation costs.

7.2 The City may take action in a court of competent jurisdiction to recover any monies due it under the Policy.

RELEVANT DOCUMENTS

Local Government Operational Guidelines Number 14 – Legal Representation for Council Members and Employees.

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| Policy Number: | EXEC-CEO-010 |
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| Responsible Officer: | CEO |