

28. LEGAL REPRESENTATION FOR ELECTED MEMBERS AND EMPLOYEES

Policy Objective

To define the circumstances in which the City would consider the provision of financial assistance to Elected Members and employees who require legal representation arising out of the performance of their official functions and duties.

Policy Statement

This policy is designed to set out circumstances in which the City may provide financial assistance to Elected Members and employees who require legal representation arising out of the performance of their official functions and duties.

In each case it will be necessary to determine whether assistance with legal expenses is within the general function of the City to provide for the good government of persons in its district under section 3.1(1) of the *Local Government Act 1995* and otherwise justified with reference to the requirements of this policy.

Policy Detail

Where legal representation is required by an Elected Member or an employee of the City arising out of the performance of their official duties and functions, the Elected Member or employee may apply to the City for financial assistance toward legal expenses in accordance with this policy.

1. Eligible persons
A person is eligible to make application for financial assistance under this policy if that person is an Elected Member or an employee of the City.
2. Form of application
An application under this policy shall:
 - i. be in writing;
 - ii. provide full details of the nature and extent of the legal representation anticipated to be required and when they are required;
 - iii. provide details of the lawyer (or law firm) that is proposed to provide the legal representation required;
 - iv. in the event that the application is not made in advance – provide details of the services previously provided and the explanation for there being no application made in advance;
 - v. indicate if the applicant considers that the application is urgent and the applicant's reasons;
 - vi. contain sufficient details to explain how the financial assistance is required in relation to the performance of the official duties and functions of the applicant so as to be within the general function of the City to provide for the good government of persons in its district; and

- vii. be accompanied by a statement that the applicant:
 - a) has read and understood the terms of this Policy;
 - b) acknowledges and agrees that repayment of financial assistance may be required in accordance with clause 11; and
 - c) acknowledges and agrees that financial assistance required to be repaid may be recovered by the City in accordance with clause 11; and
 - d) warrants that the circumstances in respect of which legal representation is required do not involve actions of the applicant that are illegal, improper, dishonest, against the interests of the City, or in bad faith.
- 3. Who determines an application
 - i. The CEO may determine an application seeking financial assistance not exceeding an amount of \$5,000.00.
 - ii. Notwithstanding subclause (i), the CEO may refer any application to the Council for determination.
 - iii. All applications seeking financial assistance exceeding \$5,000 shall be determined by the Council.
- 4. Determination of an application
 - i. The CEO under clause 3(i) or Council may determine an application by:
 - a) refusing the application;
 - b) approving the application; or
 - c) approving the application subject to any condition the CEO or Council (as the case may be) sees fit.
- 5. Council Informed of CEO Determination

Any decision by the CEO to provide financial assistance under this policy is to be reported to the Council by way of the CEO's weekly information report.
- 6. Formal agreement to be executed
 - i. A person to whom financial assistance is to be provided shall be required to execute a formal agreement with the City, prepared by the City's solicitors, setting out the terms and conditions upon which the assistance is offered.
 - ii. The terms of the agreement required under subclause (i) shall include but not be limited to requirements for:
 - a) repayment of financial assistance provided in accordance with clause 11; and
 - b) recovery of financial assistance required to be repaid in accordance with clause 12.
 - iii. The person shall be required to execute the agreement prior to any financial assistance being provided.

7. Preconditions to the provision of financial assistance

- i. Financial assistance for the provision of legal representation for an Elected Member or employee will only be provided in relation to a matter:
 - a) that relates to the performance of the official duties and functions of the applicant as an Elected Member or employee (as the case may be) and not to the applicant's personal affairs;
 - b) that does not involve any action on the part of the applicant that is illegal, improper, dishonest, in bad faith or otherwise contrary to the interests of the City;
 - c) in respect of which legal representation is reasonably be required; and
 - d) that relates to the good government of persons in its district.
- ii. Without detracting from subclause (i), and subject to satisfaction of subclauses (i)(a)-(d) inclusive in each case, financial assistance for legal representation may be provided to an Elected Member or employee in the following circumstances:
 - a) in the case of an Inquiry where the Elected Member or employee is the subject of inquiry or is required to give evidence;
 - b) in the case of the consideration of a complaint by the Standards Panel where the Elected Member or employee is the subject of complaint or otherwise required to give evidence;
 - c) in the case of other legal proceedings where:
 - (i) legal action has been taken or is likely to be taken against the Elected Member or employee in relation to the performance of their official duties or functions; or
 - (ii) the Elected Member or employee is required to give evidence in relation to the performance of their official duties or functions;
 - d) in exceptional circumstances, where defamatory statements have been made in relation to an Elected Member or employee in connection with the discharge of their official functions or duties and the defamatory statements:
 - (i) have not been withdrawn or retracted upon request;
 - (ii) unreasonably disparage the Elected Member or employee or subject them to hatred, ridicule or contempt; and
 - (iii) are likely to unreasonably lessen public confidence of the community in the local government.
 - e) in exceptional circumstances, where an Elected Member or employee seeks to obtain a restraining order against a person due to threatening or intimidatory behaviour towards the Elected Member or employee in connection with the discharge of their official functions or duties.

8. No pledging of the City's credit
Nothing in this policy is intended to represent that any person has authority to pledge the City's credit or otherwise commit the City to any liability for legal expenses whatsoever.
9. CEO may continue to seek legal advice
Nothing in this Policy derogates from the ability of the CEO or other employees of the City to seek legal representation concerning the business and affairs of the City from the City's solicitors.
10. Applications by the CEO
Where the employee seeking financial assistance is the CEO, then the matter is to be referred to Council for determination, in accordance with the provisions of this policy.
11. Repayment of financial assistance
 - i. Provision of financial assistance shall cease and any financial assistance already paid by the City shall be repaid by the Elected Member or employee where:
 - a) a finding is made in the report of an inquiry or in Court proceedings that the Elected Member or employee has acted illegally, improperly, dishonestly, against the interests of the City or in bad faith;
 - b) information provided in the application is materially false or misleading; or
 - c) an action for which financial assistance has been provided is successful and the legal costs of the applicant are to be met by an order for costs or an award of damages and only so that there is no financial detriment to the applicant.
 - ii. Where any financial assistance becomes repayable under subclause (i), repayment shall be made within 30 days of written demand by the City, or such longer period as the Council permits.
12. Recovery
The City may take action to recover any financial assistance required to be repaid under clause 11 by:
 - i. commencing proceedings in a court of competent civil jurisdiction; or
 - ii. deducting the amount of such assistance from any allowance or salary payable by the City to the applicant.

Reference/Associated Documents

N/A

Reference to Internal Procedure

Register of Delegations: DA – Determination of Applications for Legal Representation for Council Members and Employees.

Definitions

“Act” means the *Local Government Act 1995*.

“Department Inquiry” means an inquiry initiated under section 8.3 of the *Local Government Act 1995*.

“employee” means a past or present employee of the City.

“Inquiry” means:

- (a) a Department Inquiry;
- (b) a Panel Inquiry;
- (c) an inquiry by the Corruption and Crime Commission; or
- (d) any other form of government inquiry affecting local government.

“legal expenses” means the cost of an applicant’s own legal representative to provide legal representation as well as court fees, witness fees or other approved costs.

“legal representation” means the provision of legal services for advice or representation in connection with court proceedings, or any inquiry or other investigation, hearing or adjudication dealing with the conduct of a member or employee.

“Elected Member” means a past or present member of the Council of the City or a Council Committee.

“Panel Inquiry” means an inquiry instituted under section 8.16 of the Act.

Monitoring, Evaluation and Review

This policy has been risk assessed as Low.

The policy will be reviewed every two years.

THIS POLICY IS SUPPORTED BY:		
REGISTER OF DELEGATIONS	DA – DETERMINATION OF APPLICATIONS FOR LEGAL REPRESENTATION FOR COUNCIL MEMBERS AND EMPLOYEES	
SERVICE AREA:	CORPORATE AND GOVERNANCE	
POLICY OWNER:	MANAGER GOVERNANCE, STRATEGY AND RISK	
<u>AMENDMENT STATUS</u>		
DATE OF AMENDMENT		MINUTE ITEM REFERENCE
23/05/06		11.5.2
23/05/06		12.10
22/11/11		12.9
22/09/15	REVIEW – NONE	10.7
27/09/16	MINOR	12.9
10/12/19	REVIEW – MAJOR	12.8
24/05/22	REVIEW - MINOR	12.7
NEXT REVIEW DATE	2023	