

IN THE MATTER OF AN ARBITRATION

BETWEEN:

Ottawa Police Association

And

Ottawa Police Services Board

(Indemnification of Legal Expenses)

Before: William Kaplan
Sole Arbitrator

Appearances: **For the Association**

Bill Cole
Matt Skof

For the Employer

J.D. Sharp
Krista Ferraro

This case proceeded to a hearing in Ottawa on November 1, 2017.

Award

The Association filed a number of grievances in relation to the application of the sworn officer collective agreement’s indemnification language. The facts of each of the six grievances are sufficiently similar to have this matter proceed as a group grievance.

Having heard from the Association and the Employer, I direct the following:

1. The Employer’s Policy “GA-15 Legal Indemnification” as set out in Appendix A hereto is applicable and shall operate between the parties, subject to the conditions listed below.

2. The “Letter to Counsel” as set out in Appendix B hereto and attached to the Legal Indemnification Policy is applicable;

3. Within ninety (90) days of the date of the provision of the final accounts in accordance with the terms of the Policy attached to this award, the Employer will pay to the Association the amount set out in the following table in complete satisfaction of all outstanding claims for legal indemnification;

Cavan	\$83,407.11
Blonde	\$71,409.22
Clement	\$55,668.58
Grimard	\$282,565.53
Rukavina	\$272,243.44
Stockdale	\$38,396.29
TOTAL	\$803,690.17

Further, I direct that should the Employer make changes to the appended Letter to Counsel or Legal Indemnification Policy, such changes may be subject to the Collective Agreement’s

grievance procedure. I direct that, should the grievance procedure be engaged for this purpose, it is understood that both parties reserve the right to argue, *inter alia*, the history of the indemnification clause and the application of the specific language of the Collective Agreement.

I remain seized with respect to the implementation of this award.

DATED at Toronto this 28th day of November, 2017.

“William Kaplan”.

William Kaplan, Sole Arbitrator

APPENDIX A

GA-15 LEGAL INDEMNIFICATION	
LEGISLATIVE AUTHORITY / REFERENCE	<i>Police Services Act</i> sections 31(1)(h), 50 Collective Agreements
DATE APPROVED	24 June 2013
DATE AMENDED	TBD
DATE TO BE REVIEWED	2016
REPORTING REQUIREMENT	As prescribed in the Reporting section of the policy

LEGISLATIVE AUTHORITY / REFERENCES

- Section 31(1)(h) of the *Police Services Act* states that a board shall establish guidelines with respect to the indemnification of members of the police force for legal costs under section 50 of the *Police Services Act*. This is applicable for the section of the policy on Auxiliary Volunteers and individuals not subject to a collective agreement.
- Ottawa Police Association Collective Agreement (Police Personnel), article 26
- Ottawa Police Association Collective Agreement (Civilian Personnel), article 28
- Ottawa Police Senior Officers Association Collective Agreement, article 18.

BOARD POLICY

PURPOSE

In accordance with the *Police Services Act* and/or collective agreements between the Ottawa Police Services Board (“the Board”) and bargaining units representing members of the Ottawa Police Service (“the Service”), the Board approves the retention of legal counsel from time to time, to represent members of the Service in various matters. The Board is also responsible for approving and paying legal accounts submitted by members of the Service for necessary and reasonable costs incurred as a result of legal indemnification, as set out in the Uniform, Civilian or Senior Officers Collective Agreements for employees of the Service.

This policy establishes administrative procedures to be followed when requests for legal indemnification and payment of legal accounts are submitted for approval by members of the Service.

RESTRICTION

Nothing in this policy is intended to contravene the provisions of any applicable collective agreement.

APPLICATION

This policy applies to requests for legal indemnification and payment of legal accounts submitted to the Board pursuant to the Uniform, Civilian or Senior Officers Collective Agreements, as well as requests submitted by Auxiliary Volunteers of the Service.

In accordance with this policy in the case of Auxiliary Volunteers and the Uniform, Civilian or Senior Officers Collective Agreements for employees of the Service, the Board will provide legal representation through the Board Solicitor for an auxiliary volunteer or member of the Service who is a defendant in a civil or administrative claim for damages arising out of the attempted performance, in good faith, of his/her duties, unless it would result in a conflict of interest for the same legal representative to represent both the Board and the member. In such cases, the member will be required to retain his/her own legal representation, which will be subject to indemnification as per the applicable collective agreement.

Where the auxiliary volunteer or member is charged with a criminal or statutory offence arising out of his/her good faith performance of their duties with the Service, this policy will apply in addition to the applicable collective agreement provision for legal indemnification.

Reimbursement of legal costs for a member required to retain his/her own legal counsel will be determined in accordance with the applicable collective agreement and this policy.

POLICY REQUIREMENTS

It is the policy of the Ottawa Police Services Board that the following procedures shall be followed with regard to legal indemnification. In the case of a dispute, the dispute resolution mechanism in the applicable collective agreement will apply (not applicable for auxiliary members).

A. INDEMNIFICATION OF MEMBERS OF THE OTTAWA POLICE SERVICE

1. Uniform and Civilian Members of the Ottawa Police Service may be entitled to legal indemnification in accordance with their respective Collective Agreement. Such indemnification is subject to the conditions set out in the applicable agreement.
2. The following process for approval of legal indemnification will apply:
 - Step 1. In accordance with the applicable collective agreement, the employee seeking legal indemnification will apply to the Board for approval to retain counsel and approval of counsel to be retained within thirty (30) days of being charged or receiving notice of other legal proceedings covered by their collective agreement. The Board

will require, in writing, the name of counsel(s), their contact information, and hourly rates. The Board will not pay for the difference between the hourly rate of a lawyer when the retainer is approved and any subsequent change in his or her hourly rate. The hourly rate at the time of approval will apply for the duration of the retainer.

Step 2. The Board will advise the applicant whether the application for legal indemnification and counsel has been approved. Upon approval of the application for legal indemnification, the Board will send the attached letter to counsel retained to make clear its expectations with respect to billing practices and necessary and reasonable costs.

Step 3. Once legal indemnification and counsel has been approved, the Board will require:

- a) Summary billing updates upon receipt of legal bills. Interim accounts should not be rendered until the amount of the fees and disbursements incurred totals \$2,500.00. Notwithstanding the foregoing, accounts should be rendered prior to December 31st of each year.
- b) A final statement of account for payment (upon conclusion of the matter), addressed to the Board Chair, which includes the following information:
 - i. the name of the matter
 - ii. the date the task was performed
 - iii. by whom the task was performed (if initials are used, the full name should appear elsewhere on the account)
 - iv. his or her hourly rate
 - v. the time spent for each task (by tenths of an hour, for example)
 - vi. a detailed description of the work performed specific enough to allow a person unfamiliar with the file to determine the function performed and its necessity. It is understood that the member is the client and the Board is not seeking any information that would violate solicitor/client privilege.
 - vii. a detailed itemization of disbursements
 - viii. the cumulative total of fees and disbursements on the file to date.

Accounts rendered to the Board that do not include all the required information will not be paid and clarification will be sought from the association or employee or individual, where appropriate. It is understood that the member is the client and the Board is not seeking information that would violate solicitor-client privilege, however, the Board requires sufficient information upon which to base its approval of legal accounts submitted to it for approval.

3. After approval of legal accounts, the Board will make its best efforts to pay the final account within 60 days of receipt. In accordance with the applicable collective agreement, the Board will reimburse those amounts which constitute necessary and reasonable legal costs. Any concerns should be raised within 60 days of receipt of the account. If concerns are not resolved, the dispute mechanism in the applicable collective agreement will apply (not applicable for auxiliary members).

B. INDEMNIFICATION OF AUXILIARY VOLUNTEERS

1. Auxiliary Volunteers of the Ottawa Police Service may be entitled to legal indemnification in respect of actions or proceedings arising out of acts or omissions by the Auxiliary in his or her capacity as an Auxiliary Volunteer of the Ottawa Police Service. For the purposes of this policy “action or proceeding” includes all civil actions, provincial offences or administrative proceedings, except those arising under the *Highway Traffic Act*, municipal parking or traffic by-laws, or the *Criminal Code*.
2. Subject to the provisions of this policy, in an action or proceeding against an Auxiliary Volunteer with the exception of any criminal or quasi-criminal proceeding, the Board shall defend or represent the Auxiliary in such proceeding in the name of and on behalf of the Auxiliary.
3. An Auxiliary Volunteer may retain his or her own legal counsel for the defence or representation in an action or proceeding in lieu of the defence or representation provided by the Board, provided that the Board shall not reimburse the Auxiliary for his or her legal costs except where the Board has declined to defend or represent the Auxiliary because either:
 - (a) The Board Solicitor has determined that it would be inappropriate for the Board to defend or continue to defend or represent the Auxiliary; or
 - (b) The Board Solicitor is satisfied that the interests of the Board and the Auxiliary conflict.
4. The Board shall not reimburse the Auxiliary Volunteer under this policy unless it has approved the selection of legal counsel retained by the Auxiliary. Such approval shall be conditional upon the requirements set out in sections C and D and Appendix “A” of this policy.
5. Where an Auxiliary Volunteer is charged with and subsequently acquitted of an offence under the *Criminal Code* or a provincial statute or regulation because of any act done or any failure to act or allegations of same in the attempted performance or performance in good faith of his or her duties as an Auxiliary Volunteer, the Auxiliary shall be indemnified by the Board for the necessary and reasonable legal costs incurred in defence of such charges or allegations. The Auxiliary Volunteer may be entitled to receive payment from the Board for a retainer for interim legal costs

incurred in the defence of such charges or allegations to a maximum of \$5,000, at the discretion of the Board.

6. Where an Auxiliary Volunteer is the subject of an investigation in a matter which may result in charges being laid against the Auxiliary under the *Criminal Code* or other provincial statute or regulation, because of any act done or any failure to act or allegations of same in the attempted performance or the performance in good faith of his or her duties as an Auxiliary Volunteer, the Auxiliary may be entitled to receive payment from the Board for a retainer of and/or interim legal costs, not exceeding \$5,000, to obtain legal representation during the investigation, at the discretion of the Board.
7. As a condition precedent to the Board making payments in respect of the costs pursuant to paragraphs 5 or 6 above, the Auxiliary Volunteer must agree in writing to repay the Board, if the Auxiliary is convicted of an offence, all sums paid by the Board including the legal retainer as provided for in paragraphs 5 and 6.

C. COMMUNICATIONS

All communications, including requests for legal indemnification, shall be addressed to the Board Chair.

D. REVIEW OF LEGAL INDEMNIFICATION REQUESTS AND ACCOUNTS

Requests for legal indemnification and all related accounts will be submitted by the Board Chair to the Board Solicitor for review and approval.

The Board Solicitor shall have delegated authority to review and approve requests for legal counsel and the counsel to be retained. In the case of a dispute concerning the counsel to be retained, the matter shall be resolved in accordance with the dispute resolution mechanism outlined in the applicable collective agreement.

The Board Solicitor will review all legal accounts submitted for payment and has delegated authority to authorize their payment where appropriate.

MONITORING REQUIREMENTS

Not applicable.

REPORTING REQUIREMENTS

The Board Solicitor shall report to the Board as part of his/her regular report to the Board:

1. Approval of the provision of legal counsel and retention of said counsel.
2. Payment of accounts.



<date>

APPENDIX B

<name>

<address>

<address>

<address>

Dear <name>,

The Ottawa Police Services Board (“Board”) is a party to a collective agreement with the Ottawa Police Association and the Senior Officers Association. As part of those collective agreements, there are circumstances where the Board is required to reimburse for necessary and reasonable legal costs (to either the member directly or to the association) incurred in the representation of members of the bargaining units.

The Board, as the civilian oversight body of the Ottawa Police Service, represents community interests and one of our responsibilities is the approval of the annual police budget. In this regard, we make our best efforts to ensure that expenses incurred by the Board are fiscally responsible and demonstrate value for public funds.

In the representation of your client, we therefore ask that you review staffing and work assignments with a view to minimize costs and duplication of effort. We also ask upon submitting the final statement(s) of account, that you include sufficient detail within task descriptions to allow for ease in reviewing and approving expenses.

When you were retained by your client, you indicated an hourly rate that would be charged for services rendered. This hourly rate is expected to apply for the duration of the retainer, barring exigent circumstances and approval by the Board.

For clarity, in requesting your consideration of the above, we are not taking a position on counsel’s professional obligations as outlined by the Law Society of Upper Canada, representation and/or strategic decision making or other functions in the representation of clients.

Thank you for your consideration of the Board’s concerns. Should you have any questions or require further clarification, please feel free to contact the Board’s Solicitor, David White, at 613-580-2424, ext. 21933, or David.White@ottawa.ca.

Yours truly,

Chair

Ottawa Police Services Board