

Report Date: May 27, 2014
Contact: Paul Mochrie
Contact No.: 604.873.7666
RTS No.: 10601
VanRIMS No.: 08-2000-20
Meeting Date: June 24, 2014

TO: Vancouver City Council

FROM: General Manager of Human Resources

SUBJECT: Proposed Amendment to Indemnification By-Law No. 6579 Regarding Volunteers

RECOMMENDATION

- A. THAT Council approve in principle the changes to the Liability Indemnification By-Law, as described in this report and as generally set out in Appendix A.
- B. THAT Council instruct the Director of Legal Services bring forward for enactment a by-law repealing and replacing the Liability Indemnification By-Law, on the terms generally set out in Appendix A.

REPORT SUMMARY

The *Vancouver Charter* grants Council the authority to indemnify certain persons against claims for damages arising in connection with the honest performance of their duties. Council's authority is effected through the City's Liability Indemnification By-Law. This report recommends the modernisation of the City of Vancouver Liability Indemnification By-law to include certain groups of volunteers and employees that are presently excluded from the By-law and, as a result, are not indemnified by the City against damage claims by third parties.

Specifically, under the current By-Law, the City indemnifies volunteers of the Vancouver Public Library ("VPL") against claims for damages arising in relation to their volunteer service. However, the By-Law does not reference volunteers engaged to support the work of the City or the Vancouver Police Department ("VPD"). As a result, individuals who volunteer their services to the City or the VPD are exposed to personal liability for damages arising out of that volunteer work.

The recommended amendment to the By-law supports the City's goals of expanding opportunities for interested citizens to engage with the delivery of public service as volunteers and creating a policy framework for the safe and effective deployment of those volunteers. The amended By-Law would align the City of Vancouver's practices with the protection provided to individuals volunteering for any other municipality in the province. For those municipalities, the Local Government Act provides that volunteers are exempt from individual liability for damage claims.

In addition to volunteers, the current Liability Indemnification By-Law also excludes employees of the VPD. In the case of sworn police officers, indemnification for actions and omissions in the course of duty is provided under the *Police Act* and contractual terms negotiated with the Vancouver Police Union and Vancouver Police Officers Association. However, those protections do not extend to the VPD's civilian employees. As there is no rational basis for distinction from City or VPL employees in this regard, the recommended changes to the By-Law would bring civilian employees of the VPD within the scope of the indemnification provided to City and VPL employees.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

The Vancouver Charter provides as follows:

180. (2) The council may, by a vote of not less than 2/3 of all members, provide for the payment of a sum required for the protection, defence or indemnification of an officer or employee of the city, a member of its council or any public service organization together with costs necessarily incurred and damages recovered where an action or prosecution is brought against him in connection with the performance of his duties, or where an inquiry under the Public Inquiry Act or other proceeding involves the administration of a department of the city or the conduct of a part of the civic business. The council shall not pay a fine imposed on an officer or employee on his conviction for a criminal offence.

(4) The council may by by-law provide that the city will, to the extent therein set out, indemnify its officers and employees, members of its council or any public service organization against a claim for damages against an officer or employee, members of its council or public service organizations or any of them arising out of the performance of his or its duties and, in addition, pay legal costs incurred in a court proceeding arising out of the claim.

(5) The council may in a by-law under subsection (4) provide that the city will not seek indemnity against a public service organization in respect of an action that results in a claim for damages against the city by a third party unless the public service organization has been grossly negligent or has failed to comply with terms established governing the provisions of a public service.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The General Manager of Human Resources recommends approval of the report.

REPORT

Background/Context

In March 2011, the City staff commenced a review of volunteer programs and the management of those programs across the organization. The initial impetus for this review was focused on volunteer resources supporting emergency preparedness planning and emergency response, although the review was expanded to encompass the engagement of volunteers by other programs across the City, including programs operated by Parks, Community Services and Engineering.

Excluding VPL and VPD, there are over 8000 individuals who have been identified as active volunteers for the City.

As a first phase of work, staff effort was focused primarily on the establishment of the Vancouver Volunteer Corps (VVC) as an organizing framework for volunteer resources supporting emergency preparedness and response. Since 2011, the Vancouver Volunteer Corps has been expanded from 250 to a cohort of 900 volunteers. VVC volunteers are deployed as an essential element of the City's Emergency Social Services program and the Neighbourhood Emergency Assistance Team (NEAT). VVC resources have also been utilized to supplement City staff in managing large public events such as the Celebration of Light.

Through the creation of the Vancouver Volunteer Corps, the review of the City's other volunteer programs and a comparison with other large public employers, staff identified opportunities for three systemic improvements to the City's volunteer management practices:

- Implementation of a web-based, enterprise-wide information system to support management of the City's volunteers.
- Establishment of a consistent policy framework governing the engagement and oversight of volunteers by the City.
- Alignment of the City's treatment of volunteers in regards to personal liability and insurance coverage.

The City has initiated action on all three of the above-referenced opportunities. The process to procure and implement a corporate volunteer management system is presently under way. Additionally, with input from Risk Management and Legal Services, the General Manager, Human Resources has drafted a Volunteer Policy which sets out requirements for individuals volunteering their services to the City and expectations for City staff responsible for managing volunteers in the performance of their assigned functions. The Volunteer Policy is attached as Appendix B.

As the Volunteer Policy addresses the issues of liability and indemnification for volunteers, final approval of the Policy by the General Manager of Human Resources is subject to Council's decision on the recommended amendments to the Liability Indemnification By-Law.

The City's insurance coverage presently includes protection for volunteers, to a limit of \$50,000, for personal losses associated with injury incurred in the course of volunteer duties. With the implementation of the corporate Volunteer Policy, the extent and limitations on that coverage will be communicated to volunteers explicitly through a standardized waiver form.

As distinct from personal injury or loss that may be suffered by individuals directly, volunteers' liability for damages incurred by third parties is subject to the Liability Indemnification By-Law.

The Liability Indemnification By-Law No. 6579 was enacted on November 7, 1989 and updated September 1, 1992. Under the current By-Law, City employees working across all departments and divisions of the City (including Park Board), employees and volunteers of the VPL, and members of Council, the Board of Parks and Recreation, the

Vancouver Library Board and the Vancouver Police Board are all indemnified by the City against damage claims arising in connection with the honest performance for their duties.

Specifically in relation to volunteers, the current By-law provides that individuals volunteering for the Library are indemnified by the City. However, volunteers providing services to the City or the VPD are excluded from the By-law and are not protected from third party claims.

The current exclusion of these volunteers from indemnification coverage is also at odds with the practice of other BC municipalities. Excepting only the City of Vancouver, BC municipalities are subject to Section 287 of the *Local Government Act* which exempts volunteers providing service to a municipality from damage claims arising out of performance of their duties, provided the damages are not a result of dishonesty, gross negligence or wilful or malicious misconduct. The recommended amendment to the City's Liability Indemnification By-Law would extend comparable protection to individuals volunteering for the City and VPD.

In reviewing the Liability Indemnification By-Law and its application to volunteers, it was also noted that the By-Law presently excludes employees of the Vancouver Police Board. In the case of police officers, the matter of indemnification for on-duty conduct is addressed in the *Police Act* and in contractual provisions negotiated between the VPD, the Vancouver Police Union and the Vancouver Police Officers Association. However, for the Police's civilian employees, exclusion from the Liability Indemnification By-Law is material and distinct from individuals employed by the City and VPL. Accordingly, in keeping with the intent to modernize the By-Law, it is recommended that the scope be expanded to include civilian employees of the VPD.

Strategic Analysis

The City's current Liability Indemnification By-law is outdated, and provides inconsistent protection for different groups of employees and volunteers. For the specific groups of employees and volunteers that have been identified as excluded from the current By-law, such exclusion is also inconsistent with the indemnity that would be afforded those groups in other BC municipalities pursuant to the *Local Government Act*.

There is no operational justification to exclude from the City's indemnification coverage civilian employees of the VPD or individuals volunteering for the City or the VPD. The present exclusion of those groups is incompatible with the City's interest to maintain fair working conditions across its varied staff groups and the aim of promoting volunteerism as an opportunity for meaningful civic engagement.

Implications/Related Issues/Risk (if applicable)

Financial

Based on a review of claims history, the financial risk associated with the expansion of indemnity coverage to include City and VPD volunteers and VPD civilian staff is estimated to be negligible. Given the nature of the activities undertaken by these groups, the inherent risk of damage to third parties is limited. To date, the City has never received a third party claim arising specifically out of performance by a City volunteer (which includes Parks Board volunteers) VPD volunteer, VPL volunteer or VPD civilian employee.

The City's assumption of risk for third party damages arising out performance by the above-referenced groups is limited by the following parameters:

- Individuals are not indemnified for damage claims arising out of dishonesty, gross negligence or malicious or wilful misconduct, or where the cause of action is libel or slander.
- Individuals are not indemnified for conduct inconsistent with direction by City staff. The City reserves the right to exclude designated volunteer placements or activities from indemnification at any time prior to engaging a volunteer and will state these exclusions in the City Volunteer Form.

Specifically with regard to volunteers, the corporate Volunteer Policy to be introduced by the General Manager, Human Resources will serve to further mitigate risks associated with volunteer activity. The policy establishes standardized requirements for volunteer recruitment, training and oversight, including criminal record checks for individuals volunteering in any capacity that involves unsupervised access to vulnerable individuals.

Human Resources/Labour Relations

The recommended amendment to the Liability Indemnification By-Law is not expected to have any human resources or labour relations implications.

The By-Law amendment is not intended to alter in any way the manner in which the City deploys volunteers. The City does not engage volunteers to displace or replace paid staff. Rather, volunteer assignments are offered to enhance or complement City services and provide individuals with opportunities for civic engagement.

CONCLUSION

The proposed revision to the Liability Indemnification By-law No. 6579 will create a consistent approach to personal liability and indemnification across all categories of employee and volunteer engaged by the City (including Park Board), VPL and VPD. That approach aligns with the indemnification provided by all other municipal jurisdictions in the province pursuant to the *Local Government Act*.

The By-Law amendments support the City's broader aims of fostering opportunity for civic engagement through volunteerism and maintaining an appropriate degree of fairness and comparability in employment conditions across the organization and City agencies.

It is recommended that Council approve the amendments as outlined in the foregoing report and as set out in Appendix B.

* * * * *

BY-LAW NO. []

A By-law to Indemnify Officers,
Employees and Elected Officials against
claims for damages

Whereas the Vancouver Charter provides:

"180. (2) The council may, by a vote of not less than 2/3 of all members, provide for the payment of a sum required for the protection, defence or indemnification of an officer or employee of the city, a member of its council or any public service organization together with costs necessarily incurred and damages recovered where an action or prosecution is brought against him in connection with the performance of his duties, or where an inquiry under the Public Inquiry Act or other proceeding involves the administration of a department of the city or the conduct of a part of the civic business. The council shall not pay a fine imposed on an officer or employee on his conviction for a criminal offence.

(4) The council may by by-law provide that the city will, to the extent therein set out, indemnify its officers and employees, members of its council or any public service organization against a claim for damages against an officer or employee, members of its council or public service organizations or any of them arising out of the performance of his or its duties and, in addition, pay legal costs incurred in a court proceeding arising out of the claim.

(5) The council may in a by-law under subsection (4) provide that the city will not seek indemnity against a public service organization in respect of an action that results in a claim for damages against the city by a third party unless the public service organization has been grossly negligent or has failed to comply with terms established governing the provisions of a public service.

And whereas it is in the interest of the responsive and efficient public service that officers and employees be protected within the limits prescribed herein.

THE COUNCIL OF THE CITY OF VANCOUVER, in open meeting assembled, enacts as follows:

1. This by-law may be cited as the "Liability Indemnification By-law".
2. In this by-law,
 - "employee" includes every person capable of coming within the meaning of those words as contained in section 180 of the Vancouver Charter and includes former employees in respect of actions done as employees
 - "protected person" means a person described in Section 3(i) through (viii).
 - "registered volunteer" means a person who has applied for and been accepted in writing as a volunteer of the City, Board of Parks and Recreation, Vancouver Library Board, or Vancouver Police Board;
3. Subject to section 4, to the extent authorized by law, the City shall indemnify every person being:
 - i. A member of its Council;
 - ii. An employee, official, or registered volunteer of the City of Vancouver;
 - iii. A member of the Board of Parks and Recreation;
 - iv. A member of the Vancouver Library Board;
 - v. An employee, official, or registered volunteer of the Vancouver Library Board;

- vi. An employee, official, or registered volunteer of the Vancouver Police Board not covered by sections 20 and 21 of the Police Act;

against any claim for damages arising in connection with the honest performance by him of his duties.

4. It shall be a condition of the City's obligation to indemnify a protected person that the protected person agree that the City have the right to conduct a defence of any claim and in its discretion to compromise or settle any claim. It is a further condition of the City's obligation to indemnify the protected person or that the protected person co-operate fully in the defence of the claim and provide statements when requested by the City.
5. The City shall, at its discretion, either assume the defence of the protected person or pay the legal cost and expenses incurred by the protected person in defending the claim.
6. The City will not indemnify a protected person where (but only to the extent that) the claim is a result of dishonesty, gross negligence, malicious or wilful misconduct, libel or slander, or conduct contrary to their duties or an order of a supervisor.
7. This By-law and the indemnity provided by it applies to former as well as current protected persons, but only to their acts or omissions in their capacity as a protected person.
8. Bylaw No. 6579 is repealed.
9. This By-law comes into force and take effect on its passing

DONE AND PASSED in open Council this day of

Mayor

City Clerk

SUBJECT: Volunteer Policy	
CATEGORY:	POLICY NUMBER:

PURPOSE	<p>The purpose of the Volunteer policy is to establish the relationship between the City of Vancouver and volunteers and to recognize the role City Volunteers play within the community. The policy also establishes consistent practices for City programs, services and events that engage volunteers.</p>
SCOPE	<p>This policy applies to City of Vancouver Volunteers.</p>
DEFINITIONS	<p>City Volunteer</p> <p>Any individual, over the age of 15, who offers time, energy and skills of his or her own free will and without compensation for the mutual benefit of the City Volunteer and the City and who is named in a City Volunteer Form.</p> <p>It is possible that an individual may engage in a volunteer activity that involves some interaction with the City or City employees. However, unless the person has signed a formal City Volunteer Form and received a signed copy back from a City Employee, that person is not a "City Volunteer" and is not a person to whom this policy applies.</p> <p>City Volunteer Form</p> <p>The form prepared and used by the City and required to be signed by each City Volunteer or Young Volunteer and countersigned by a Program Organizer recognizing the City Volunteer as a volunteer and person to whom this Policy applies.</p> <p>Program Organizer</p> <p>Any manager, supervisor or employee of the City of Vancouver who oversees City Volunteers in their role with the City of Vancouver.</p> <p>Placements</p> <p>Unpaid volunteer opportunities with the City that have defined or undefined lengths of service.</p> <p>Young Volunteers</p> <p>Any individual, age 15 or under, who offers time, energy and skills of his or her own free will and without compensation for the mutual benefit of the City Volunteer and the City and who is named in a City Volunteer Form.</p>

POLICY STATEMENTS	<div data-bbox="548 226 1435 254">General</div> <div data-bbox="607 291 1435 478"><p>Volunteerism with the City is intended to enhance or complement City services and provide opportunities for individuals to engage and connect to their community.</p><p>It is not intended that volunteers be engaged for the specific purpose of displacing City employees.</p></div> <div data-bbox="548 506 873 537">Roles and Responsibilities</div> <div data-bbox="548 567 735 598">City Volunteers</div> <div data-bbox="607 630 1435 877"><p>City Volunteers actively participate in assigned volunteer engagements with the City under the oversight of City staff. City Volunteers must comply with all applicable City policies and procedures and are required to carry out assigned functions as directed by staff.</p><p>City Volunteers make a commitment to the City and will contribute in ways that support the City's mission and corporate values.</p></div> <div data-bbox="548 907 776 938">Program Organizer</div> <div data-bbox="607 968 1435 1276"><p>Program Organizers will ensure that City Volunteers receive all required training, orientation and documentation required to volunteer with the City. They will also ensure that City Volunteers comply and adhere to all applicable policies and procedures. Program Organizers will provide support and guidance and will recognize the contribution of City Volunteers.</p><p>Program Organizers will ensure a safe environment for all volunteers and will complete all orientation documents with volunteers prior to or on their first day of engagement.</p></div> <div data-bbox="548 1306 816 1337">The City of Vancouver</div> <div data-bbox="607 1367 1435 1461"><p>The City will support City Volunteers and volunteerism and will provide positive, meaningful volunteer experiences for individuals who volunteer within the community.</p></div> <div data-bbox="548 1491 631 1522">Safety</div> <div data-bbox="607 1551 1435 1890"><p>The City of Vancouver is committed to promoting a safe and healthy environment for volunteers.</p><p>Program Organizers must ensure City Volunteers are properly trained to identify and address the hazards of their placement. They will ensure City Volunteers follow safe work procedures and practices through proper supervision and they will reduce placement hazards through regular inspections.</p><p>City Volunteers are responsible for their own health and safety, and the safety of those around them. City Volunteers will follow safe</p></div>
--------------------------	--

	<p>procedures, identify and report potential hazards or unsafe actions to their Program Organizer. City Volunteers have the right to:</p> <ul style="list-style-type: none">• refuse unsafe work;• participate in health- and safety-related activities; and• know the hazards relevant to their placement. <p>Minimum Age</p> <p>Although the age requirements for City Volunteers will vary depending on volunteer opportunity or placement, City Volunteers must be at least 15 years of age or older. Special consideration to this requirement may be granted by the City Manager or General Manager of Human Resources or if a volunteer under the age of 15 is volunteering with a parent or legal guardian.</p> <p>If a parent or legal guardian is volunteering with a child or children under the age of 15 they will stay together for the entire volunteering engagement and the parent or guardian assumes full responsibility of the Young Volunteer.</p> <p>Conduct</p> <p>City Volunteers are required to act in accordance with City policies regulating conduct, including Respectful Workplace Policy, Human Rights and Harassment Policy and the Code of Conduct. Without limiting the foregoing, City Volunteers are expected to:</p> <ul style="list-style-type: none">• act lawfully;• be free from undue influence and not act, or appear to act, in order to gain financial or other benefits for themselves, family, friends or business interests;• follow the letter and spirit of City policies and procedures;• treat people with courtesy and respect. <p>Training</p> <p>City volunteers will receive and complete an on-boarding orientation with their Program Organizer or designate. Every City Volunteer will receive the City's Volunteer Handbook and will complete a face-to-face on-boarding orientation checklist. Onboarding may be done one-on-one or in a large volunteer group.</p> <p>Program Organizers are required to provide adequate orientation and training specific to work sites. This type of training could include, but is not limited to, specific skills training related to the volunteer opportunity, customer services training, handling challenging situations, WHMIS, and safety procedures.</p> <p>Insurance Coverage and Indemnification</p> <p>General Liability Insurance</p> <p>The City does carry liability insurance which names volunteers as persons protected against third party claims while performing</p>
--	---

approved volunteer duties. This liability coverage is stated in the City's policy (1) to be "excess" and so will only cover after all other insurance carried by the volunteer has been used up, and (2) to not cover loss or damage to the Volunteer's personal property. City Volunteers are encouraged to read and review the policy with their insurance advisors. In some circumstances City Volunteers may have third party liability protection from another level of government.

Protection for Un-Insured Expenses

Subject to the terms of the City Volunteer Form, where certain things are not covered by insurance, City Volunteers may be paid directly by the City for losses, legal defence, or third party liability expenses arising from their good faith actions as a volunteer. In addition to other exceptions which may be set out in the City Volunteer Form, City Volunteers will not be reimbursed for expenses caused by .

- a) dishonesty, gross negligence or malicious or wilful misconduct, or
- b) libel or slander, or
- c) failure to comply with City policy or direction of the City supervisor.

The City reserves the right to exclude designated Volunteer placements or activities from this protection at any time prior to engaging a volunteer and will state these exclusions in the City Volunteer Form.

City Volunteer Form

All City Volunteers must sign a City Volunteer Form. This form outlines the scope and details of a volunteering engagement and information on what the volunteer is and is not financially protected from through insurance and direct City reimbursement.

Positions of Trust

City Volunteers working in positions of trust will be required to adhere to the Positions of Trust Policy (AE-025-01). This policy ensures that volunteers in positions of trust obtain and maintain appropriate -clearance. Checks support the City's values to create a safe environment and to provide safe and effective services to the community. Check clearances are used as a screening tool to determine suitability in designated positions.

Confidentiality

Personal information: Access to personal information is limited to those involved in securing or making clearance decisions and those involved in reviewing clearance decisions on appeal or through the grievance procedure.

Retention of information: Data collected to make clearance decisions is kept in a secured check file. Files will be retained as required by the Corporate Records and Information Management Policy (AG-002-01).

	<p>Recognition and Benefits</p> <p>City Volunteers will have opportunities to engage in meaningful volunteer placements. With the support and guidance of the Program Organizers, feedback and opportunities for growth will be provided where appropriate.</p> <p>City Volunteer placements are unpaid and do not receive any form of monetary or value based compensation. Other forms of recognition may be offered from time to time.</p>
REFERENCE	<p>Volunteer Handbook Volunteer Onboarding Orientation City Volunteer Form</p>
RELATED POLICIES	<p>Respectful Workplace Human Rights Harassment Code of Conduct Positions of Trust Safe Driving Policy Occupational Safety - Preventing Violence in the Workplace Corporate Records and Information Management</p>
APPROVAL HISTORY	<p>General Manager, Human Resources</p>

APPROVAL HISTORY

ISSUED BY:	APPROVED BY:	DATE:
-------------------	---------------------	--------------