

**LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA
POLICY MANUAL**

SECTION	General
POLICY	6525 – Employee Legal Assistance (Indemnification)

Objective To establish the criteria and approval process for providing employees with legal representation and payment for the cost of legal proceedings arising from the performance of their employment duties. The principle underlying this policy is that employees should not incur personal liability for the good faith discharge of these duties.

Application This policy applies to all employees of the Legislative Assembly appointed under section 39 of the *Constitution Act* (R.S.B.C. 1996, c. 66) in the circumstances described in this policy. Legal assistance may be provided to employees by the Legislative Assembly in certain instances without the need to apply under this policy if determined appropriate by the Legislative Assembly Management Committee.

Authority Legislative Assembly operational policies are approved by the Clerk of the Legislative Assembly, as per *Policy 1000 – Legislative Assembly Policy Framework*.

Key Definitions

“**claim**” means all claims, demands, actions and causes of action;

“**Clerk**” means the Clerk of the Legislative Assembly;

“**costs of a legal proceeding**” means amounts required to be paid as a result of a judgment or a cost award against an employee or as a result of a monetary settlement of a claim made or brought against an employee;

“**employee**” means a current or former employee;

“**LCPC**” means the Law Clerk and Parliamentary Counsel;

“**legal fees**” means the fees charged by outside counsel and includes any disbursements for filing fees, travel, copying, printing, courier services, expert witnesses and other incidental expenses;

“**legal proceeding**” means a civil, criminal or administrative proceeding or investigative process;

“**pre-established rates**” means the pre-established hourly rates for outside counsel as set out in Appendix 1.

1. Eligibility .01 An employee may be eligible for coverage:

**LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA
POLICY MANUAL**

SECTION	General
POLICY	6525 – Employee Legal Assistance (Indemnification)

- a) as a party to a legal proceeding, or where there are reasonable grounds to believe that a legal proceeding may be commenced, in the following circumstances:
 - i. the employee’s involvement in the proceeding arises from conduct in the performance of their employment duties,
 - ii. the legal proceeding is not in respect of a dispute with the Legislative Assembly or another employee or officer of the Legislative Assembly, and
 - iii. the employee has complied with this policy;
- b) in respect of a proceeding in which the employee appears as a witness;
- c) in respect of an internal investigation, review or dispute resolution process of the Legislative Assembly, despite subparagraph (a)(ii), if it is determined that it is appropriate at the outset of such an internal investigation, review or dispute resolution process, or upon application by an employee.

.02 Coverage must be appropriate and reasonable and, depending on the type of proceeding or situation, the following additional factors are to be considered in determining eligibility:

Proceeding/Situation	Eligibility Criteria
All non-prosecution proceedings	Only if the employee’s conduct was not dishonest, malicious or in bad faith. The employee has provided the Legislative Assembly with an opportunity to defend the case and has not compromised the Assembly’s defence.
Defamation proceeding	Only if the statement made by the employee was not defamatory or published by the employee, made on an occasion of absolute privilege, or was reasonably related to the performance of employment and made without malice.
Appeal (non-prosecution proceeding)	Only if the employee continues to maintain eligibility for coverage and, if the employee is the appellant, the appeal is in the public interest.

**LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA
POLICY MANUAL**

SECTION	General
POLICY	6525 – Employee Legal Assistance (Indemnification)

Prosecution appeal	If the employee is acquitted, only if the employee continues to maintain eligibility for coverage. If convicted, there is no coverage to appeal the conviction.
Employee is a witness	Whether the evidence or testimony to be provided relates to information acquired in the course of employment, and either (i) the employee is required by law to appear, or (ii) it is in the public interest to provide coverage.

- .03 An employee is ineligible for indemnification for legal fees incurred or costs of a legal proceeding if either of the following apply – both of which are a term and condition of an indemnification payment – and must return to the Legislative Assembly all amounts paid under this policy, unless the Clerk determines indemnification is appropriate in whole or in part:
- a) a judgment or decision is given against an employee in a legal proceeding; or
 - b) a decision is made against the employee by the Legislative Assembly with the benefit of information that may become available to it.

2. Confidentiality

- .01 All requests made under this policy shall be treated as confidential.

3. Making a Request – Legal Fees

- .01 An application for indemnification in respect of legal fees must be made by an employee using the *Employee Application for Legal Indemnification Form* to the LCPC at the earliest opportunity, describing the circumstances and demonstrating that the eligibility criteria are met.
- .02 An employee may make an initial application for an amount up of \$5,000 (at the applicable pre-established rates) to enable the employee to obtain legal counsel in respect of a legal proceeding. An employee may make a subsequent application for an increase if the need arises.
- .03 A request must be made by an employee before incurring legal fees. (It is highly recommended that an employee not sign a legal retainer before a request has been made and approved.) A request in respect

**LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA
POLICY MANUAL**

SECTION	General
POLICY	6525 – Employee Legal Assistance (Indemnification)

of legal fees already incurred may be approved if special circumstances justify the delay in an employee making a request.

**4. Making a Request –
Costs of Legal
Proceeding**

- .01 An application for indemnification in respect of costs of a legal proceeding must be made by an employee in writing using the *Employee Application for Legal Indemnification Form* to the LCPC at the earliest opportunity describing the circumstances and demonstrating that the eligibility criteria set out in this policy are met.

**5. Consideration of
Requests**

- .01 Upon receipt of an application for indemnification from an employee, the LCPC is to consider the request against the eligibility criteria and request any additional information from the employee necessary to consider the request.
- .02 The LCPC is authorized to consider and grant approval of an application for indemnification in respect of legal fees, in whole or in part, up to a total maximum amount of \$5,000. A decision of the LCPC may be appealed to the Clerk whose decision is final. This maximum amount is cumulative in respect of a legal proceeding and is increased to \$10,000 during a period of dissolution in cases of urgency, where section 8 applies.
- .03 For all other requests, the LCPC must prepare a submission for the consideration of the Clerk. The submission must include a recommendation on whether the request should be granted in the circumstances. In preparing the submission, the identity of the parties is to be kept strictly confidential (this will not be possible where the employee making a request under this policy is the LCPC or the Clerk and section 8 applies).
- .04 The Clerk may grant an application from an employee in whole or in part. All decisions of the Clerk are final.
- .05 The LCPC must inform an employee of the decision in writing and, in cases of approval, liaise with the employee to ensure that all invoices are provided to the LCPC for prompt payment.

**6. Terms and
Conditions**

- .01 An approved request for indemnification in respect of legal fees are to be paid at the pre-established rates up to the approved amount. The pre-established rates increase each year at the rate of the annual Consumer Price Index as determined by B.C. Stats.
- .02 Any legal fees incurred by an employee that are greater than the pre-established rates or the approved amount, or costs of a legal

**LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA
POLICY MANUAL**

SECTION	General
POLICY	6525 – Employee Legal Assistance (Indemnification)

proceeding greater than the approved amount, are the personal responsibility of the employee.

- .03 An employee who is ineligible for indemnification under section 1.03 must repay the Legislative Assembly all amounts paid under this policy, unless the Clerk determines indemnification, in whole or in part, is appropriate in the circumstances.
- .04 An employee who has been indemnified in respect of legal fees must repay the Legislative Assembly an amount equal to any costs or disbursements that have been awarded to the employee by a court, tribunal or other judicial body in relation to the legal proceeding.
- .05 Payments pursuant to an approved request for indemnification may be made by reimbursement to an employee or payment to an employee’s outside counsel at the time of approval or at any stages as agreed upon between an employee and the LCPC.

7. Process – Payment

- .01 Upon submission of an invoice, the LCPC is to review the amounts to verify that they are within the approved amount and that, in respect of an invoice for legal fees, the bills fees are in line with the pre-established rates.
- .02 Payment may only be issued by the Legislative Assembly upon receipt of a detailed invoice that has been verified by the LCPC and written confirmation has been received from the employee that the services listed therein have been received and the accounting is accurate.

8. Other

- .01 In the absence of the LCPC or when there is no LCPC, or where the LCPC is the employee making an application under this policy,
 - a) a reference to “LCPC” shall be read as a reference to “Clerk”, and
 - b) a reference to “Clerk” in this policy shall be read as a reference to “Speaker”.
- .02 Where the Clerk is the employee making an application under this policy, a reference to “Clerk” in this policy shall be read as a reference to “Speaker”.

Contact Please contact S. Suzie Seo, Law Clerk and Parliamentary Counsel, with any questions regarding this policy at Suzie.Seo@leg.bc.ca.

Procedures *Employee Application for Legal Indemnification*

**LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA
POLICY MANUAL**

SECTION	General
POLICY	6525 – Employee Legal Assistance (Indemnification)

Kate Ryan-Lloyd

Approved and authorized by
Kate Ryan-Lloyd, Clerk of the Legislative Assembly

May 25, 2021

Date

POLICY HISTORY

Version 1	May 25, 2021
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**LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA
POLICY MANUAL**

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POLICY	6525 – Employee Legal Assistance (Indemnification)

**APPENDIX 1
PRE-ESTABLISHED HOURLY RATES**

The following hourly rate caps apply for the remuneration of outside counsel under *Policy 6525 – Employee Legal Assistance (Indemnification)*. These caps increase annually at the rate of the annual Consumer Price Index as determined by B.C. Stats and are in line with those found in the *Members’ Legal Assistance (Indemnification) Policy*.

Years at Bar	Hourly Rate
Articling Student / Paralegal	\$124
First two years of call	\$146
3rd and 4th year of call	\$167
5th and 6th year of call	\$187
7th and 8th year of call	\$208
9th and 10th year of call	\$228
11th and 12th year of call	\$250
13th and 14th year of call	\$270
15th and 16th year of call	\$291
17th and 18th year of call	\$311
19th and 20th year of call	\$389
21st year of call and more	\$467

Hourly rates last adjusted on April 1, 2022.