

INDEMNITY

Recitals

- A. By motion on July 29, 2015 and in accordance with special directions adopted on September 9, 2015, the Select Standing Committee on Finance and Government Services of the Legislative Assembly of British Columbia made a referral to the Ombudsperson pursuant to section 10(3) of the *Ombudsperson Act* in relation to terminations in the Ministry of Health and related matters;
- B. By letter dated November 13, 2015, the government committed in the unique circumstances of the referral to provide participants in the Ombudsperson's investigation arising from the referral with assistance in meeting certain legal expenses they may incur in relation to the referral;
- C. The Deputy Minister of Finance, in consultation with the Acting Deputy Minister of Justice and Attorney General and the Ombudsperson, considers that the assistance is most effectively provided through an indemnity granted under section 72 of the *Financial Administration Act*.

Definitions

- 1. In this Indemnity:

"Address" means the address provided under section 5, 6, 7, 8, 12 or 25(2), as the case may be;

"Certificate" means a written statement executed by the Coverage Administrator

- (a) setting out or attaching in respect of any particular account from a Lawyer,
 - (i) the total amount payable to the Lawyer,
 - (ii) the amounts billed with respect to fees of each of the lawyers, paralegals and articling students employed by the Lawyer, and confirmation that the basis for calculating those fees is in accordance with this Indemnity and the Legal Representation Agreement,
 - (iii) the amounts attributable to each of the charges and disbursements payable and confirmation that they were incurred in accordance with this Indemnity and the Legal Representation Agreement;
 - (iv) a copy of the account from which there has been redacted any information (other than the Lawyer's name) that, in the opinion of the Coverage Administrator, would disclose information that is protected by solicitor client privilege or confidentiality, and
 - (v) a copy of all receipts, or logs, as the case may be, for all charges or disbursements claimed in the account from which there has been redacted any information that, in the opinion of the Coverage

Administrator, would disclose information that is protected by solicitor client privilege or confidentiality;

and

- (b) stating that the obligations of the Coverage Administrator under his or her retainer agreement have been complied with;

“Coverage” means payment of legal fees, charges and disbursements payable under section 2 of this Indemnity;

“Coverage Administrator” means a Lawyer chosen by the Ombudsperson, retained by the Ombudsperson and the Province jointly, and paid by the Province to serve as Coverage Administrator under this Indemnity;

“Covered Matter” means Process Advice or Section 17 Advice;

“Investigation” means the Ombudsperson's investigation further to the referral to the Ombudsperson of the Ministry of Health terminations file, pursuant to section 10(3) of the *Ombudsperson Act*, by motion of the Select Standing Committee on Finance and Government Services on July 29, 2015 and in accordance with Special Directions adopted by the same Committee on September 9, 2015, and as they may be amended from time to time;

“Lawyer” includes law firm or law corporation;

“Legal Representation Agreement” means an agreement between a Person Entitled to Coverage and a Lawyer relating to the provision of legal services to the Person Entitled to Coverage with respect to a Covered Matter, which agreement must be subject to, and must incorporate by reference, all of the terms, conditions and limits set out in the Fees, Charges and Disbursements Schedule and Tariff attached as Schedule A to this Indemnity, and includes any extensions of or amendments to that agreement;

“Person Entitled to Coverage” means an individual who is entitled under this Indemnity to receive Coverage with respect to a Covered Matter;

“Process Advice” means legal advice to a Person Entitled to Coverage in order to provide him or her with a better understanding of what being a Witness is likely to involve or require, including for example legal advice on

- (a) whether he or she is required to provide documents in his or her possession or power, or information in that regard, or to answer questions asked by the Ombudsperson, and the consequences of not answering;
- (b) whether he or she must do so despite
 - i. any oath of confidentiality made by that individual with respect to his or her employment or any contract for services with the Province,

- ii. any requirement of confidentiality agreed to by that individual as a term and condition of a settlement between that individual and the Province or under any other existing non-disclosure agreement,
 - iii. any rights of or duties and obligations with respect to solicitor-client privilege and confidentiality of him or her or the Province,
 - iv. any requirements of executive privilege, Cabinet confidentiality or public interest immunity,
 - v. any provisions of the *Freedom of Information and Protection of Privacy Act* or any other enactment pertaining to the disclosure of personal information;
- (c) whether by doing so he or she becomes potentially subject to liability for defamation;
- (d) whether the documents or information disclosed by the individual to the Ombudsperson may be subject to disclosure or use in other legal proceedings;
- (e) whether the individual will be afforded an opportunity to review any possible adverse findings about her or him and to provide representations to the Ombudsperson before the matter is decided;
- (f) the terms and conditions of Coverage for Witnesses or Section 17 Respondents;
- (g) the protections conferred under section 16 of the Ombudsperson Act; and
- (h) other matters with respect to the conduct of the Investigation;

but for greater certainty Process Advice does not include

- (i) advice with respect to whether that individual may, based on any of his or her personal circumstances, conduct, involvement in or knowledge of any of the matters which are subject to the Investigation, disclosure of information other than to the Ombudsperson, or otherwise, be potentially subject to criminal proceedings or prosecution, professional body proceedings or sanction, administrative investigation or penalty, civil proceedings or liability, consequences with respect to his or her employment or re-employment, or any other sanction; or
- (j) advice with respect to other matters unrelated to the conduct of the Investigation involving or affecting that individual's personal circumstances or interests.

"Province" means Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Finance;

"Section 17 Advice" means legal advice to and representation of a Section 17 Respondent in making his or her representations in response to a Section 17 Notice, but does not include advice or representation with respect to court proceedings, professional

body proceedings, proceedings before an administrative tribunal or statutory decision-maker, or proceedings under the *Freedom of Information and Protection of Privacy Act*;

“Section 17 Notice” means a notice to an individual under section 17 of the *Ombudsperson Act* with respect to the Investigation, including how to obtain a copy of this Indemnity and contact information for the Coverage Administrator;

“Section 17 Respondent” means an individual to whom the Ombudsperson sends a Section 17 Notice;

“Tariff” means the tariff incorporated by reference into the Legal Representation Agreement, stipulating the hourly rate applicable to lawyers who do work for which fees are claimed based on his or her year of call;

“Witness” means an individual from whom the Ombudsperson may seek, receive or obtain information pursuant to section 15 of the *Ombudsperson Act* with respect to the Investigation;

“Witness Notice” means a notice in writing delivered by the Ombudsperson to a Witness for the purposes of section 15 of the *Ombudsperson Act*, including how to obtain a copy of this Indemnity and contact information for the Coverage Administrator..

Indemnity

2. Subject to the terms and conditions set out in sections 3 through 27 and Schedule A of this Indemnity, the Province hereby indemnifies and saves harmless each Person Entitled to Coverage from and with respect to the fees, charges and disbursements incurred or to be incurred by him or her under and in accordance with a Legal Representation Agreement with respect to a Covered Matter.

3. An individual may be eligible for Coverage for Process Advice, for Section 17 Advice, or for both.

4. The maximum amount payable under section 2 for any Person Eligible for Coverage is

(a) with respect to Process Advice, the sum of CAN\$1,000, and

(b) with respect to Section 17 Advice, the sum of CAN\$25,000.

Application for Coverage

5. A Witness who wishes Coverage with respect to Process Advice must apply to the Coverage Administrator by letter containing a return Address and attaching a copy of the Witness Notice delivered to him or her.

6. Where the Coverage Administrator provides an applicant with written notice that the requirements of section 5 have been met, the applicant is deemed to be a Person

Entitled to Coverage with respect to Process Advice, effective on the date of the notice and with the notice to contain the address of the Coverage Administrator for purposes of this Indemnity.

7. A Section 17 Respondent who wishes Coverage with respect to Section 17 Advice must apply to the Coverage Administrator by letter containing a return Address and attaching a copy of the Section 17 Notice delivered to him or her.

8. Where the Coverage Administrator provides an applicant with written notice that the requirements of section 7 have been met, the applicant is deemed to be a Person Entitled to Coverage with respect to Section 17 Advice, effective on the date of the notice and with the notice to contain the address of the Coverage Administrator for purposes of this Indemnity..

Retainer and Instruction of Counsel

9. A Person Entitled to Coverage must be represented by a Lawyer retained by him or her under the Legal Representation Agreement, and will have at all times exclusive control over the instructions to that Lawyer.

10. Nothing in this Indemnity precludes or limits an individual from retaining a Lawyer at his or her own expense, or a Person Entitled to Coverage from paying a Lawyer, at his or her own expense, an amount that is more than the maximum amount payable under this Indemnity or at higher hourly rates than are provided under the Tariff.

Time period for Coverage

11. Coverage does not include legal fees for work done, or any charges or disbursements incurred,

- (a) with respect to Process Advice, before the date of the notice referred to in section 6,
- (b) with respect to Section 17 Advice, before the date of the notice referred to in section 8, and
- (c) with respect to any Covered Matter, after the date on which the report deposited by Ombudsperson in the Investigation is released by the Speaker of the Legislative Assembly.

Claims

12. (1) A Person Entitled to Coverage who wishes to make a claim for Coverage must instruct his or her Lawyer to prepare an account under and in accordance with the Legal Representation Agreement and this Indemnity and to submit the account to the

Coverage Administrator, together with a fully-executed copy of the Legal Representation Agreement containing the Lawyer's Address.

(2) If, on receiving an account, the Coverage Administrator considers that the information provided on or in support of the account does not comply with the requirements of this Indemnity or the Legal Representation Agreement, or is otherwise insufficient or inadequate to enable the Coverage Administrator to carry out his or her duties or exercise his or her powers under sections 13, 14, 15 or 17 in an effective, efficient and timely manner, the Coverage Administrator may decline to deal further with the account, in whole or part, unless and until the deficiencies are corrected to the Coverage Administrator's satisfaction.

Conditions for Approval of Accounts – Process Advice

13. An account submitted under section 12 with respect to Process Advice must bear both of the following certifications:

(a) by the Lawyer:

"I certify that all work performed and any disbursement or charge incurred, for which payment is claimed under this account, was reasonably necessary to the provision of Process Advice to the Person Entitled to Coverage.

(signed by the Lawyer)"

and

(b) by the Person Entitled to Coverage:

"I certify that

I have received or had the opportunity to receive legal advice in relation to the Indemnity pursuant to which this claim is submitted;

I have applied and been approved for Coverage as a Witness subject always to the terms and conditions of the Indemnity;

the work performed and any disbursement or charge incurred, for which payment is claimed under this account, was actually performed or incurred by the Lawyer in accordance with my instructions;

I hereby grant the consent and waiver required under section 21 of the Indemnity.

(signed by the Person Entitled to Coverage)"

Conditions for Approval of Accounts – Section 17 Advice

14. An account submitted under section 12 with respect to Section 17 Advice must bear the following certification:

“I certify that

I have received or had the opportunity to receive legal advice in relation to the Indemnity pursuant to which this claim is submitted;

I have applied and been approved for Coverage as a Section 17 Respondent subject always to the terms and conditions of the Indemnity;

the work performed and any disbursement or charge incurred, for which payment is claimed under this account, was actually performed or incurred by the Lawyer in accordance with my instructions;

I hereby grant the consent and waiver required under section 21 of the Indemnity.

(signed by the Person Entitled to Coverage)”

15. Amounts claimed in an account under section 12 of this Indemnity with respect to Section 17 Advice are not payable as Coverage:

(a) for fees unless and except to the extent that the work performed is determined by the Coverage Administrator to have been reasonably necessary to the provision of the Section 17 Advice, applying the following criteria:

- (i) the extent and/or complexity of the Person Entitled to Coverage’s involvement in the matter leading to the Investigation;
- (ii) the difficulty or the novelty of the issues involved in responding to the Section 17 Notice on behalf of the Person Entitled to Coverage;
- (iii) the degree of skill, specialized knowledge and responsibility required of the Lawyer in doing so;
- (iv) the time reasonably spent by the Lawyer in advising and representing the Person Entitled to Coverage in responding to the Section 17 Notice;
- (iv) the extent or degree of seriousness of likely impact of the draft report on the Person Entitled to Coverage’s interests or reputation;

- (v) the potential benefit to the Person Entitled to Coverage of the services rendered by the Lawyer in providing the Section 17 Advice to that Person Entitled to Coverage;

- (b) for charges or disbursements, unless and except to the extent that each has been necessarily and properly incurred in the provision of the Section 17 Advice, and the amounts incurred are reasonable;

and for greater certainty, the Coverage Administrator may determine that an amount payable as Coverage for fees, charges or disbursements is less than the amount claimed in the account in that regard.

16. A determination by the Coverage Administrator under section 15 is final and binding and is not open to challenge by anyone in any court proceedings or otherwise.

Provision of Coverage

17. The Province fulfils its obligation to provide Coverage under this Indemnity to a Person Entitled to Coverage

- (a) by providing the Coverage Administrator with an advance or advances of money in the amount or amounts which the Ombudsperson considers will, in the aggregate, be sufficient to pay for all Coverage that may become payable under this Indemnity,
- (b) by causing the Coverage Administrator to receive and hold the money paid under paragraph (a) in trust in a single segregated trust account for the purpose of making the payments contemplated under paragraph (c), subject always to an accounting and repayment to the Province of any unused balance,
- (c) by directing the Coverage Administrator, if he or she is satisfied that all the requirements of this Indemnity and the Legal Representation Agreement have been met with respect to a claim for Coverage, to execute a Certificate in the amount payable and to pay from the trust account to the Lawyer for the Person Entitled to Coverage
 - (i) the full amount claimed in the account submitted by the Lawyer with respect to Process Advice, or
 - (ii) the amount of the account submitted by the Lawyer which the Coverage Administrator determines under section 15 is payable with respect to Section 17 Advice,

and

- (d) when the Coverage Administrator has made that payment to the Lawyer.

Confidentiality

18. The Province must, subject to section 20, direct the Coverage Administrator not to disclose any of the following information to any person:

- (a) the fact that Coverage has been approved, provided, denied or terminated;
- (b) the fact that a Lawyer has been retained;
- (c) any term or condition of a Legal Representation Agreement with a Lawyer;
- (d) any work done, disbursement or charge incurred, account submitted, or amount payable by a Lawyer in respect of Coverage;
- (e) any payment made or required to be made in respect of Coverage;
- (f) any accounts reviewed by the Coverage Administrator under this Indemnity;
- (g) any information, including any evidence, submission or legal opinion provided or obtained or factor considered, and any notice or reason given or communication made under this Indemnity, with respect to any of the matters set out in paragraphs (a) to (f).

19. The restrictions on disclosure contemplated under in section 18 are in addition to any right of privilege or confidentiality otherwise provided by law, including without limitation under section 9 of the *Ombudsperson Act*.

20. (1) Subject to subsection (2), the restrictions on disclosure in section 18 and 19 do not apply

- (a) to the extent disclosure is required by law,
- (b) to disclosure to the applicant for Coverage under section 5 or 7, the Person Entitled to Coverage, his or her Lawyer, or any individual employed by the Coverage Administrator to assist in performing his or her duties under this Indemnity,
- (c) to disclosure with the written consent of every person whose personal interests or privilege may be affected by the disclosure, and
- (d) to disclosure to the Province for the purpose of the accounting contemplated in paragraph 17(b),
 - (i) of the total, in the aggregate, of all amounts paid with respect to Process Advice under this Indemnity and the total number of individuals who received Coverage in that regard, but not their names or any other information through which they might be identified;
 - (ii) of the documents delivered to the Coverage Administrator under section 7, the notices delivered under section 8 and the Certificates issued under section 15.

(2) If, following receipt of submissions by or on behalf of a Section 17 Respondent, the Ombudsperson determines pursuant to section 9 of the *Ombudsperson Act* that confidentiality must be maintained in respect of that Section 17 Respondent, then

- (a) subparagraph 20(1)(d)(ii) does not apply in relation to that Section 17 Respondent, and
- (b) the consent and waiver in paragraph 20(d) instead apply to allow the Province to direct the Coverage Administrator to disclose to the Province the total amount paid with respect to Section 17 Advice for that Section 17 Respondent, but without disclosing any information that would identify that Section 17 Respondent.

21. A Person Entitled to Coverage must, as a condition for receiving Coverage,

- (a) consent under section 33.1 (1) (b) [*consent to disclosure of personal information*] of the *Freedom of Information and Protection of Privacy Act*
 - (i) to disclosure by the Coverage Administrator to the Province of the information referred to in section 20(1)(d) or (2)(b), and
 - (ii) to disclosure by the Province of that information under and for the purposes of the *Financial Administration Act*; and
- (b) waive any solicitor-client privilege that may exist in the Person Entitled to Coverage's favour respecting the information referred to in paragraph (a) of this section.

22. A consent or waiver referred to in section 21 takes effect 30 days after the date on which the report deposited by Ombudsperson in the Investigation is released by the Speaker of the Legislative Assembly.

Termination of Coverage

23. If at any time the Coverage Administrator determines that an individual deemed to be a Person Entitled to Coverage was or is not eligible for Coverage, and the Coverage Administrator delivers notice in writing to that effect to that individual and his or her Lawyer with reasons, Coverage is terminated effective as of the date stated in the notice under this section.

24. A determination under section 23 is final and binding and not open to challenge in any court proceedings or otherwise.

Miscellaneous

25. (1) Any notice contemplated by this Indemnity, to be effective, must be in writing and delivered as follows:

- (a) by fax to the addressee's fax number specified as his or her Address, in which case it will be deemed to be received on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a Business Day, in which cases it will be deemed to be received on the next following Business Day;
- (b) by hand to the addressee's street or post office box Address, in which case it will be deemed to be received on the day of its delivery; or
- (c) by prepaid post to the addressee's street or post office box Address, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing.

(2) Any person may from time to time give notice to the other party of a substitute Address or fax number, which from the date such notice is given will supersede for purposes of section 13.1 any previous Address for the addressee.

26. The schedules to this Agreement (including any appendices or other documents attached to, or incorporated by reference into, those schedules) are part of this Agreement.


27. Time is of the essence in this Agreement and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.

28. References to an enactment include the enactment as it may be amended.

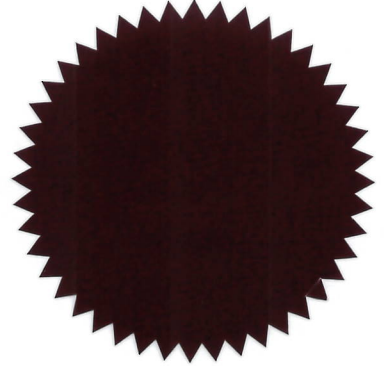
Grant of Indemnity

This Indemnity is given under seal on behalf of Her Majesty the Queen in right of the Province of British Columbia.

February ⁴, 2016
Date



Kurt J. W. Sandstrom, Q.C.
Acting Deputy Attorney General



Approval of Agreement under Guarantees and Indemnities Regulation

Pursuant to the *Guarantees and Indemnities Regulation*, B.C. Reg. 258/87, as amended, I hereby approve the Indemnity.

February 3, 2016
Date



Linda Irvine
Executive Director, Risk Management Branch

SCHEDULE A

FEES, CHARGES AND DISBURSEMENTS SCHEDULE AND TARIFF

DEFINITIONS

1. (1) In this Schedule,

"Authorized Lawyers" means the lawyer or lawyers named in section 2 of this Schedule;

"Client" means the client under the Legal Representation Agreement;

"Counsel" means the Lawyer under the Legal Representation Agreement;

"Indemnity" means the Indemnity to which this Schedule is attached;

"Maximum Amount" means the maximum amount for the Services as set out in section 4(a) or (b) of the Indemnity, as applicable;

"Services" means the services described in section 12(a) or 12(b) of this Schedule, as applicable;

"Tariff" means the tariff which appears at the end of this Schedule; and

"Travel Costs" means the costs set out in section 9 of this Schedule.

(2) Words defined in the Indemnity have the same meaning when used in this Schedule, except that in the event of inconsistency the definitions in this Schedule apply.

FEES

2. The hourly rate payable for each Authorized Lawyer retained to provide the Services is as follows:

Authorized Lawyer

Hourly Rate

*

*per tariff

3. The hourly rate payable for each paralegal assisting Counsel in providing the Services is as follows:

<u>Paralegal</u>	<u>Hourly Rate</u>
*	*

4. The hourly rate payable for each articulated student assisting Counsel in providing the Services is \$75.00.
5. In providing the Services, if an Authorized Lawyer, paralegal named in section 3 of this Schedule or articulated student is required to travel, the Client will pay for the travel time of that Authorized Lawyer, paralegal or articulated student at one half of the applicable hourly rate set out above.
6. In no event will the Client pay Counsel for the following:
- (a) the fees of a lawyer providing the Services who is not an Authorized Lawyer; and
 - (b) the fees of a paralegal assisting Counsel in providing the Services unless that paralegal is named in section 3 of this Schedule.

CHARGES AND DISBURSEMENTS

7. Subject to section 8 of this Schedule, the Client will pay Counsel for the following disbursements made by Counsel in providing the Services:
- (a) Travel Costs, provided such costs do not exceed the amounts set out in section 9 of this Schedule;
 - (b) taxi and vehicle rental charges;
 - (c) \$0.50 per kilometer for the use of a motor vehicle of an Authorized Lawyer;
 - (d) photocopies to a maximum cost of \$0.25 per page;
 - (e) costs of telegrams, couriers, long distance telephone charges and
 - (f) all other disbursements for which the Client's prior written approval is obtained.

8. In no event will the Client pay Counsel for the following:
- (a) fees and disbursements for work performed by researchers, librarians, secretaries, administrative assistants, computer operators, bookkeepers, corporate and other records clerks and word processing operators;
 - (b) fees and disbursements for typing, clerical or secretarial work performed by a paralegal, including a paralegal named in section 4 of this Schedule;
 - (c) disbursements for which no receipt is provided to the Client except as expressly permitted by this Schedule;
 - (d) charges for opening, closing, maintaining or storing a file; and
 - (e) miscellaneous travel expenses including gratuities, portage, dry cleaning and personal telephone calls.

TRAVEL COSTS

9. In providing the Services, if Counsel is required to travel, the Client will pay for the cost of hotel accommodation and meals at the follow rates:
- (a) not more than the following for meals:

Meal	Daily Meal Rate
Breakfast Only	\$22.00
Lunch Only	\$22.00
Dinner Only	\$28.50
Breakfast and Lunch	\$30.00
Breakfast and Dinner	\$36.50
Lunch and Dinner	\$36.50
Breakfast, Lunch and Dinner	\$49.00

- (b) hotels at not more than the following rates:

Location	Daily Summer Rate (May 1 to September 30)	Daily Winter Rate (October 1 to April 30)
Vancouver	\$115.00	\$80.00
Victoria	\$95.00	\$70.00
Whistler	\$65.00	\$80.00
All other locations	\$70.00	\$65.00

10. In no event will the Client pay Counsel for the cost of hotel accommodation and meals which exceed the rates set out in section 10 of this Schedule.
11. Records of long distance telephone calls must be kept and, at our request, made available for inspection.

SERVICES

12. Counsel will provide the following legal services under this Schedule:
- (a) provision of Process Advice, or
 - (b) provision of Section 17 Advice.

REVISED FEE TARIFF

YEARS OF EXPERIENCE	CALL DATE	REVISED TARIFF
1	2016	\$100.00
2	2015	\$110.00
3	2014	\$135.00
4	2013	\$150.00
5	2012	\$165.00
6	2011	\$180.00
7 OR MORE	2010 or earlier	Up to \$250.00

1. The above rates are for new retainers.
2. Rates may only be in excess of these amounts if on prior retainers the higher rate has been approved by the ADAG.