

What is indemnity coverage?

Generally, indemnity coverage provides employees with legal representation and payment for the cost of legal proceedings arising from the performance of their employment duties. The principle behind indemnity coverage is that employees should not incur personal liability for the good faith discharge of these duties.

Coverage for excluded public service employees is provided under the [Excluded Employees \(Legal Proceedings\) Indemnity Regulation](#) and the [Excluded Employees Indemnity Protection Regulation](#). This guideline summarizes key information regarding the application and approval process, and identifies key roles, responsibilities and accountabilities. For additional details on the terms of coverage, the regulations should be consulted.

Who is covered?

The indemnity regulations provide coverage to **excluded employees** in the BC Public Service. These are employees that are excluded from collective bargaining. Other persons eligible for coverage under the regulation include members of the Executive Council and chairs, vice-chairs and members of tribunals listed in the *Administrative Tribunals Act*.

Indemnity coverage for **bargaining unit employees** is provided under the applicable collective agreement.

What types of legal proceedings may be eligible for coverage?

An employee may be eligible for coverage as a party to the following legal proceedings:

- a civil action against the employee
- a defamation action against the employee
- a defamation action commenced or continued by the employee
- a professional body proceeding in which the employee is the respondent
- a human rights proceeding in which the employee is a respondent
- a prosecution in which the employee is an accused person
- a penalty proceeding in which the employee is an accused person or the respondent
- an appeal or judicial review of the exercise of a statutory power by a person other than the employee
- an appeal from a proceeding related to any of the above.

An employee is also eligible for coverage where there are reasonable grounds to believe that any of the above legal proceedings may be commenced. In addition, coverage may be provided in any proceeding in which the employee appears as a witness.

I am an excluded employee who has been advised I am party to a legal proceeding. How do I apply for indemnity coverage?

An employee may obtain their own legal coverage at their own expense and indemnity coverage under the regulations will not be available. If, however, an employee becomes aware of a legal proceeding and wishes that coverage be provided under the regulations, they **must**:

1. At the **earliest opportunity** advise his or her deputy minister (or equivalent) in writing of the proceeding and that they are seeking indemnity coverage.
2. Complete the [Excluded Employees Application for Indemnity Coverage](#).
3. Provide the completed and signed application form, **along with any copy of the official notice of proceeding**, to their Deputy Minister. The Deputy Minister must then sign the application form to indicate support for the request and forward the completed application package to the DM of the BC Public Service Agency for consideration and approval. (Note different application rules apply to former employees, Executive Council members, Crown Counsel, deputy ministers, and tribunal chairs, vice-chairs and members; such persons should consult Table 1 in this document to determine who they send their application to).

Who is the “administrator” and how do they make the decision to approve coverage?

Under the [Excluded Employees \(Legal Proceedings\) Indemnity Regulation](#), the administrator is the person who applies the eligibility criteria for coverage found in the regulation and determines whether the employee (or former employee) will be covered.

For most excluded employees, the administrator is the Deputy Minister of the BC Public Service Agency. For certain employees the role of administrator is assumed by other government officials:

Category of Employee	Administrator
Excluded employee	Head of the BC Public Service Agency
Crown Counsel	Assistant Deputy Attorney General, Criminal Justice Branch, Ministry of Justice
Deputy Minister, an Assistant Deputy Attorney General or the Agency Head	Deputy Attorney General, Ministry of Justice
Premier and other Executive Council members	Deputy Minister to the Premier
Deputy Attorney General	Deputy Minister to the Premier
Chair of a tribunal	Deputy Minister of the ministry responsible for the Act under which the Chair is appointed
Vice-chair or member of a tribunal	Chair of the tribunal

Once an application for coverage is received by the administrator, it is referred (where necessary) for legal advice to Legal Services Branch, Ministry of Justice. The legal advice is forwarded to the administrator who will make the coverage decision and advise the employee and Legal Services Branch accordingly. Legal Services Branch then arrange for coverage.

What criteria are considered by the administrator in considering whether an employee is eligible for indemnity coverage?

All requests for indemnity coverage must meet the following criteria:

Type of Proceeding	Eligibility Criteria
All proceedings	Whether the employee's involvement in the proceeding arises from conduct in the performance of their employment.

In addition, depending on the type of proceeding, a number of additional factors are considered in determining eligibility for coverage under the regulation:

Type of Proceeding	Eligibility Criteria
All non-prosecution proceedings	Only if the employee's conduct was <u>not</u> dishonest, malicious or in bad faith.
Employee is a defendant in a defamation proceeding	Only if LSB provides a legal opinion that the statement made by the employee was not defamatory or published by the employee, or was made on an occasion of absolute privilege or was reasonably related to the performance of employment and made without malice.
Employee is seeking to commence a defamation proceeding	Only if LSB provides a legal opinion that there is a cause of action in defamation and it is in the public interest that a defamation action be commenced (see s.6(3)(b) of the regulation for factors related to determining what is in the public interest).
Employee is party to an appeal or judicial review (and is not the statutory decision-maker)	Only if the proceeding is likely to adversely affect the employee's personal privacy interests (see s.6(3)(4) of the regulation for additional eligibility criteria).
Employee is party to an appeal (non-prosecution proceeding)	Only if the employee continues to maintain eligibility for coverage and, if the employee is the appellant, the administrator determines that the appeal is in the public interest.
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) the administrator determines it is in the public interest to provide coverage.
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.

When does my indemnity coverage begin?

Coverage for fees and/or expenses related to the legal proceeding may begin immediately after the date the employee has informed their Deputy Minister of the proceeding. If fees and/or expenses were incurred before the employee informed their Deputy Minister, such costs may be covered if the administrator is satisfied the employee could not comply or acted reasonably in seeking legal advice before coverage had been approved.

Under what circumstances may the administrator decide to terminate my indemnity coverage?

Coverage may be terminated if the administrator finds criteria for termination have been met under the regulation. Coverage must be terminated if the administrator determines that:

- the employee was **not initially or is no longer** eligible for coverage (e.g., it is determined the employee's conduct in relation to the proceeding was dishonest, malicious or in bad faith), or
- the employee is in breach of any of the terms and conditions of coverage and the breach is not remedied within the timeframe and in the manner directed by the administrator, or
- the employee is no longer involved in the proceeding as a party, accused or witness.

See [section 34 of the regulation](#) for additional information regarding termination of coverage.

My request for indemnity coverage has been denied (or terminated). Can I request a reconsideration of this decision?

Yes. An employee denied coverage will receive a letter from the administrator summarizing the reasons why the determination to deny coverage was made and providing instructions on how to request a reconsideration. An employee has **14 days** following receipt of this letter to request reconsideration of the decision unless the administrator determines a longer period of time is appropriate in the circumstances. The administrator must make and communicate a final decision on a reconsideration request as soon as possible.

A request for reconsideration may also be made where coverage is terminated.

Who should I contact if I have further questions?

If you are an excluded employee and have questions about applying for indemnity coverage, please contact the BC Public Service Agency by telephone at 250-952-6000, toll free at 1-877-277-0772 or by email at myhr@gov.bc.ca.

I am a member of the BC Government and Service Employees' Union (BCGEU) and I need indemnity coverage. What is the process for bargaining unit staff? Who should I contact?

[Indemnity coverage for members of the BCGEU](#) is provided under Article 32.5 of the Master Agreement. Similar provisions are included the [collective agreements for the Professional Employees Association](#) and the [BC Nurses Union and Union of Psychiatric Nurses of BC](#).

A bargaining unit employee who is advised they are party to a legal proceeding (or have reasonable grounds to believe a legal proceeding will likely be commenced) should notify their supervisor or manager immediately. Your supervisor or manager will work with the appropriate persons within your ministry or organization, and with Legal Services Branch, Ministry of Justice, to determine if coverage is required.

References and Links

- [Excluded Employees Application for Indemnity Coverage](#)
- [Excluded Employees \(Legal Proceedings\) Indemnity Regulation](#)
- [Excluded Employees Indemnity Protection Regulation](#)

Roles, Responsibilities and Accountabilities

The following tables identify key roles, responsibilities and accountabilities required to ensure administration of the [Excluded Employees \(Legal Proceedings\) Indemnity Regulation](#) results in transparent, cost-effective, consistent and well-documented decisions. Prior to reviewing these tables, please read the questions and answers provided above.

The tables include information on roles and responsibilities related to the following principal steps of the indemnity process:

1. **Approval of Applications for Coverage**
2. **Appointment of Legal Counsel**
3. **Payment for Legal Expenses and Employee Reimbursement of Government**

A final table is also provided:

4. **Key Accountabilities of Main Participants in the Indemnity Process**

Note this administrative policy does not cover all terms and conditions of coverage. For additional information, the regulation should be consulted.

Table 1: Approval of Applications for Coverage		
Applicant Type	Verifier <i>(person having overall responsibility for the employee's organization who supports coverage by verifying applicable sections of the employee's application for coverage)</i>	Administrator <i>(determines and approves eligibility for coverage under the regulation, and makes other determinations related to compliance with terms and conditions of coverage)</i>
Excluded Employee	Employee's Deputy Minister (DM)	DM of the BCPSA
Former Employee	Deputy Attorney General	DM of the BCPSA
Crown Counsel	Deputy Attorney General	Assistant Deputy Attorney General, Criminal Justice Branch
Former Crown Counsel	Deputy Attorney General	Assistant Deputy Attorney General, Criminal Justice Branch
Deputy Minister Assistant Deputy Attorney General DM of the BCPSA	Deputy Attorney General	Deputy Attorney General
Premier / Executive Council Former Premier and Exec. Council	Deputy Minister to the Premier	Deputy Minister to the Premier
Deputy Attorney General	Deputy Minister to the Premier	Deputy Minister to the Premier
Chair of a tribunal Former Chair	Deputy Minister of the ministry responsible for the Act under which the Chair is appointed.	Deputy Minister of the ministry responsible for the Act under which the Chair is appointed.
Vice-Chair or member of a tribunal Former Vice-Chair or member	Chair of the tribunal	Chair of the tribunal

Table 2: Appointment of Legal Counsel		
Type of Proceeding <i>(including appeals)</i>	Authority to Appoint Counsel	Legal Services Branch (LSB) Appointment & Retention of Counsel
Non-Prosecution Proceedings		
<ul style="list-style-type: none"> • Civil action against employee • Defamation action against employee • Human rights proceeding • Penalty proceeding • Where employee is a witness • Involving the employee's personal privacy interests 	Assistant Deputy Attorney General, Legal Services Branch (ADAG, LSB), has authority to appoint and instruct legal counsel	LSB appoints in-house or retains outside legal counsel as appropriate (in consultation with employee)
<ul style="list-style-type: none"> • Defamation action by employee • Professional body proceeding • Any proceeding where employee reasonably asserts a conflict of interest exists with the government or another employee involved in the proceeding 	Employee has authority to appoint and instruct legal counsel (in-house LSB counsel are rarely used in such proceedings)	<p>In most cases, the employee appoints their own (outside) legal counsel (often in consultation with LSB if so requested by the employee)</p> <p>The rate for legal fees must be consistent with the rate for legal fees paid to ad hoc counsel retained by LSB to act for the government in comparable civil proceedings.</p>
Prosecution Proceedings		
<ul style="list-style-type: none"> • All prosecutions (criminal proceedings – a proceeding in which the employee is or is likely to be an accused person) 	Employee has authority to appoint and instruct legal counsel (in-house LSB counsel are not used in criminal proceedings)	<p>The employee appoints their own (outside) legal counsel.</p> <p>ADAG (LSB) appoints outside "reviewer" who:</p> <ul style="list-style-type: none"> • Sets the terms and conditions of the retainer agreement for outside legal counsel appointed by the employee; • Reviews and certifies the accounts of the employee's legal counsel as payable by government <p>The reviewer sets maximum legal fees in the retainer agreement based on the minimum amount required to achieve a fair trial</p>

Table 3: Payment of Legal Expenses and Employee Reimbursement of Government

Type of Proceeding	Payment of Legal Expenses	Employee Reimbursement of Government
Non-prosecution proceedings	Risk Management Branch, Ministry of Finance	<p>If the employee's coverage is terminated under section 34(1) of the regulation, the administrator may direct that the employee reimburse government for all or part of the amount paid or payable by government for coverage</p> <p>If there is an order for costs in favour of the employee, another order that money be paid to the employee for legal fees and expenses, or an award of damages to the employee (defamation action only), the employee <u>must</u> reimburse government the amount paid or payable by government for coverage</p>
Prosecution proceedings	Risk Management Branch, Ministry of Finance	<p>If the employee's coverage is terminated under section 34(1) of the regulation or section 34(3), the administrator may direct that the employee reimburse government for all or part of the amount paid or payable by government for coverage</p> <p>If all rights of appeal have been exhausted, and the result of the prosecution is the employee is convicted of any offences, the employee <u>must</u> reimburse government for all amounts paid or payable by government for coverage</p>

Table 4: Key Accountabilities of Main Participants in the Indemnity Process

Participant	Key Accountabilities
Applicant (employee or former employee)	<ul style="list-style-type: none"> • Inform their deputy minister (or equivalent) of their involvement in a legal proceeding and intention to seek coverage • Request coverage by completing the application for coverage and providing a signed copy to their deputy minister (or equivalent) • Comply with the terms and conditions of coverage (if approved)
Deputy Minister of employee or equivalent	<ul style="list-style-type: none"> • Support their employee's application for coverage by verifying the proceeding arises from the employee's employment with government, and that the employee acted in good faith (the good faith test applies only in non-prosecution proceedings). • Sign the application for coverage and forward it to the Deputy Minister of the BCPSA (or other applicable "administrator" – see Table 1) • Advise the administrator of any new information that may arise pertaining to the proceeding or the employee's eligibility for coverage
Deputy Minister of the BCPSA (or other "administrator" under the regulation – see Table 1)	<p>Act as administrator for <u>excluded employees</u> (see Table 1 for exceptions):</p> <ul style="list-style-type: none"> • Determine eligibility under the regulation and approve/refuse coverage • Provide employees the right to reconsideration where coverage is refused or terminated • Make other determinations under the regulation as required to ensure compliance with the terms and conditions of coverage, including in relation to reimbursement for costs of coverage (where applicable) • Consult/coordinate with the Assistant Deputy Attorney General, Legal Services Branch and Risk Management Branch as necessary • Maintain records of decision and other records related to provision of coverage for excluded employees
Assistant Deputy Attorney General, Legal Services Branch (ADAG, LSB)	<ul style="list-style-type: none"> • Arrange/assign counsel for excluded employees and other eligible persons whose coverage is approved by an administrator • Provide legal advice to an administrator seeking such advice where required by the regulation • Maintain records of decision and other records related to provision of coverage for employees and other eligible persons
Deputy Attorney General	<ul style="list-style-type: none"> • Act as verifier for proceedings involving a former employee (for current employees the verifier is their DM or equivalent – see Table 1) • Act as verifier for current and former Crown Counsel • Act as administrator where the individual seeking coverage is the Deputy Minister of the BCPSA, a deputy minister or the ADAG (see Table 1) • Consult/coordinate with the ADAG, LSB regarding appointment of counsel, legal advice, etc. • Consult/coordinate with the ADAG, CJB regarding their role as administrator for current and former Crown Counsel

Excluded Employees Indemnity Coverage Application Guideline & Roles and Responsibilities

<p>Legal Services Branch, Ministry of Justice</p>	<ul style="list-style-type: none"> • Legal Services Branch (LSB) supports the Attorney General as the legal advisor to the government of British Columbia and ensures that the administration of public affairs is carried out in accordance with the law; all legal services to government respecting civil matters (including civil indemnities) are delivered by or under the supervision of LSB lawyers • Appoint counsel, provide legal advice and establish retainers • Provide an administrator with required legal opinion where the employee seeking coverage is a defendant in a defamation action, or provide a legal opinion establishing there is a cause of action where the employee wishes to commence such an action • Maintain records of decision and other records related to provision of coverage for employees and other eligible persons
<p>Risk Management Branch, Ministry of Finance</p>	<ul style="list-style-type: none"> • Make payment or arrange for payment of amounts directed by an administrator to be payable for coverage under the regulation • Prepare and include in public accounts a statement regarding all payments made to honour indemnities as required by the <i>Financial Administration Act</i> • Maintain records of decision and other records related to provision of coverage for employees and other eligible persons
<p>Deputy Minister to the Premier</p>	<ul style="list-style-type: none"> • Act as administrator where individual seeking coverage is the Premier or other member of Executive Council (includes former Premiers and members), or the Deputy Attorney General (see Table 1)
<p>Deputy Minister of Chair of a tribunal / Chair of a tribunal</p>	<p>Deputy Minister of a Chair of a tribunal:</p> <ul style="list-style-type: none"> • Act as administrator where the individual seeking coverage is the Chair of a tribunal for which the Deputy Minister is responsible <p>Chair of a tribunal:</p> <ul style="list-style-type: none"> • Act as administrator where the individual seeking coverage is the Vice-Chair or a member of the tribunal (see Table 1)
<p>Reviewer (prosecutions only)</p>	<p>In providing coverage for a prosecution, the reviewer will:</p> <ul style="list-style-type: none"> • Set the terms and conditions of the retainer agreement made with the employee's legal counsel • Review and certify amounts payable by government to the employee's legal counsel • Set maximum legal fees in the retainer agreement based on the minimum amount required to achieve a fair trial

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