

1. What is the “Service Delivery Project”?

The Service Delivery Project is a K-12 effort to find additional savings and efficiencies through shared delivery of services across BC school districts. The Ministry of Education, school districts, and partners are working collaboratively, identifying opportunities in employment and labour matters, attendance support and wellness, facilities, transportation, and procurement. More information is available on the [Service Delivery Project website](#).

2. What was the recommendation of the Legal Services Working Group?

In Phase 1, a Legal Services Working Group was established as part of the Service Delivery Project to review the legal services used by school districts and the related expenses. The working group included representatives from the Ministry of Education, Schools Protection Program, BC Public School Employers’ Association (BCPSEA), school districts and legal counsel from BC School Trustees Association (BCSTA). In February 2014, the group released a report which recommended establishing a labour litigation risk pool to improve effectiveness, coordination and cost efficiency for labour and employment matters.

3. What is the Employment Practices Liability Program?

The Employment Practices Liability Program will provide a coverage agreement and a labour litigation pool for the purpose of improving efficiency and increasing cost effectiveness of employment and labour matters for union and exempt staff. The Program is effective July 1, 2015.

4. Who is administering the Employment Practices Liability Program?

BCPSEA will administer the Program and provide services directly to school districts on behalf of the Schools Protection Program and the Ministry of Education.

5. What is the Schools Protection Program?

The Schools Protection Program (SPP) originated and is administered and delivered by the Risk Management Branch of the Ministry of Finance, in conjunction with the Ministry of Education. This self-insured program has been in existence since March 1, 1987 as a response to a hard insurance market (*liability insurance crisis*) of the mid 1980's. SPP and similar programs have saved hundreds of millions of dollars in premiums. The Employment Practices Liability Program will be part of the overall SPP portfolio of insurance coverage agreements.

6. What are the objectives of the Employment Practices Liability Program?

The Employment Practices Liability Program goals are to:

- Achieve economies of scale on legal costs;
- Improve coordination of employment and labour issues across the sector;
- Ensure employment and labour issues are litigated in the most cost effective manner;
- Minimize duplication of legal services; and
- Increase the predictability of costing for school districts.

7. How is the Employment Practices Liability Program funded?

The Program will be funded with a small surplus of funds within the Schools Protection Program Liability Pool for the coverage term beginning July 1, 2015 and ending June 30, 2016. The Ministry is also providing additional funding to BCPSEA to ensure there are dedicated resources available to deliver and manage the Program. In each subsequent year, the costs of coverage will be actuarially estimated with premiums collected annually from boards of education by the Ministry and transferred to the Program.

8. How is the Employment Practices Liability Program expected to save money for school districts?

The Program will ensure we are working to reduce duplication in legal services and expenses across the sector. The model we have now sees multiple districts seeking external advice and guidance on similar or even the same issues, and often from the same individual or firm. The Program is not only about achieving savings but it is also about reducing duplication, better coordination, and a more strategic use of information to support the sector provincially. We also expect that, over time, there will be even further savings through cost avoidance (i.e. not having to go to arbitration, etc.).

Through the Schools Protection Program, school districts have the opportunity to access reduced legal rates compared to what most are paying now. We expect that most, if not all, districts should achieve some efficiencies through this process.

9. What coverage is included in the Employment Practices Liability Program?

The Employment Practices Liability Program has a detailed Coverage Agreement similar to the general liability insurance. Provincial and local contract grievances are now both covered under the Program. Districts are required to report all grievances (to be determined) promptly. BCPSEA will review the reported grievances, monitor progress, confirm coverage and, where required, obtain or provide legal services to the district.

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In summary, the coverage agreement is designed to protect the school districts from legal expenses arising from losses in four areas:

- A. Employment Practices Wrongful Acts including:
 - Wrongful termination of employment;
 - Harassment;
 - Discrimination;
 - Violation of any Federal or Provincial Human Rights Statutes;
 - Wrongful deprivation of career opportunity or failure to promote;
 - Invasion of privacy, employment related defamation; and
 - Failure of a district to create, apply or enforce employment related policies or procedures at work.
- B. Grievance Management:
 - For all employees governed by a collective agreement (i.e. teachers, support staff). Legal services required to manage provincial or local grievances up to and including arbitration.
- C. Exempt Employee Litigation:
 - Any civil action pertaining to the terms and conditions of employment with any school district by any employee who is not governed by a collective agreement.
- D. Legal Action:
 - Grievance of a violation or alleged violation of any collective agreement by BCPSEA or a district;
 - Any civil action or Labour Relation Board application filed by BCPSEA in response to actions or inactions of any bargaining unit which threaten management rights of a district.

10. What are the limits to the coverage under the Employment Practices Liability Program?

The limit of liability per district inclusive of defence or legal costs is \$1,000,000 for any one claim.

An annual aggregate limit of \$10,000,000 applies for any claim that arises from substantially the same fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes, which affects multiple district's.

11. Are there any exclusions to the Employment Practices Liability Program?

The coverage is modeled to be at least as broad as what is available in the commercial insurance market place. There are several coverage exclusions, including losses arising from:

- Any act or omission committed or attempted with fraudulent, criminal, illegal or malicious purpose or intent;

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- An occurrence prior to the inception date of this coverage agreement (i.e. July 1, 2015);
- Any actual or alleged failure or refusal of a CE to:
 - (i) collect, retain, return, pay or remit taxes, pension, retirement savings or other employee benefits contributions, or union dues;
 - (ii) pay, reimburse or indemnify salary, wages, commissions, bonuses, fees, Benefits, expenses or remuneration of any kind; and
 - (iii) punitive or exemplary damages for fines
- Provincial Government initiatives, policies, practices, legislative or otherwise, which result in grievances between the parties to collective agreements or force changes to the terms and conditions of employment for any exempt employee;
- Any legal costs or defence costs incurred by BCPSEA due to the act or process of collective bargaining.

12. Who will participate in the Employment Practices Liability Program?

Participation in the Program is mandatory for all boards of education in British Columbia in accordance with the *School Act*. The Program provides coverage as outlined in the Coverage Agreement for labour litigation with unionized and non-unionized employees. The insurance program is incorporated with the existing Schools Protection Program and implemented under the authority of Section 84 of the *School Act* and Board Insurance Order, BC Regulation 474/81 and the *Financial Administration Act*.

13. How will premiums be determined?

The Employment Practices Liability Program is intended to share risks and costs across the sector. As with the School Protection Program, Risk Management Branch of the Ministry of Finance is responsible to determine the overall costs required to fund the Program; the premiums will include both the cost of covered losses as well as administrative costs. The premiums will be recovered from the school districts through an apportionment formula that is yet to be determined. The determination of the formula may consider factors including but not limited to:

- size of the school district budget;
- number of collective agreements, employees or students within each school district;
- historical cost of labour litigation; and
- number of losses reported.

14. How will my local board autonomy be accommodated?

School districts retain responsibility to make their own human resource management decisions. Coverage is only triggered after a covered incident occurs. School district staff will work with their labour relations specialist at BCPSEA to resolve grievances/disputes with their boards and union locals.

15. Will this affect local relationships?

BCPSEA will continue to work collaboratively with school districts at the local level to manage the grievance process. Local relationships should not be impacted by this new program.

16. Will legal costs go up for school districts?

It is expected that increased coordination, less duplication, and improved economies of scale will reduce the overall costs of labour litigation across the sector.

17. Will the Program control costs by rejecting Board positions or not fighting some grievances?

It is not the intention of the Program to reduce costs in this manner. The decision to proceed with grievances and arbitrations will be based on legal advice received and by school districts and BCPSEA working together.

18. Why BCPSEA? Does this change their role and responsibilities?

BCPSEA as the accredited bargaining agent currently has the legislated authority to perform this role. This model is within the scope of BCPSEA authority that currently exists. BCPSEA has the existing expertise to do this work and their mandate is to support the sector with labour relations. The Public Sector Employers Council is also supportive of this initiative.

19. Boards of Education and their staff have developed trusted relationships with certain legal counsel. How will that be accommodated?

The approved legal counsel will be established by the Risk Management Branch of the Ministry of Finance through a competitive process. In the Request for Qualifications of Outside Legal Counsel (available on BC Bid under the Ministry of Finance), a list of qualified firms and individuals in labour and employment matters will be established.

20. Can our school district access legal advice from outside the Pool?

This Program does not include any additional labour advice school districts wish to obtain from law firms in the course of managing their human resource issues. Where a district wishes to supplement its labour relations staff with outside counsel advice, they may continue to do so. However, once a grievance reaches Step (to be determined) the coverage agreement is triggered and legal advice will be provided or arranged externally by BCPSEA. All other legal advice (i.e. property matters) is at the districts' discretion.

21. What about labour litigation in progress at July 1, 2015?

Individual school districts will be responsible for all costs incurred for labour litigation issues that are in progress prior to July 1, 2015 and for any costs incurred for legal counsel not engaged by BCPSEA as part of this program. School districts with grievances prior to July 1, 2015 are responsible for legal costs unless the employment or labour matter is a provincial issue which would then be managed through BCPSEA.

22. If my district has little or no grievances on an annual basis why should I have to pay a premium? And, how is this program going to benefit me?

Although a school district may not file a grievance within a year, another school district may file a grievance that is applicable to all school districts. These outcomes often have prejudicial value to other districts that may not ever have grievances or arbitrations that affect them directly.

In any given year, districts that have little historical experience with arbitrations may find themselves subject to arbitration with no budget to cover the cost and no certainty of the final cost. A premium provides certainty for budget planning for all school districts.

School districts, small and large, will benefit from improved coordination of labour issues across the sector through the BC Public School Employers' Association, minimize duplication of legal services, and ensure appropriate labour issues are litigated in the most cost effective manner.

23. I am a large district with a good handle on the grievance process already. Is this going to inhibit my ability to act quickly and manage my issues? How is this going to save me money, and why should I participate?

Large districts will benefit from the additional provincial coordination. It may add additional steps to their process. This is unavoidable when creating a centralised system. BCPSEA has committed to work with districts to streamline the process. The advantage for large districts is that the coordinated effort will provide additional support to small districts that would not otherwise have sufficient human resources staff to handle matters that may in turn impact larger districts.

24. Will legal services expand the scope of work to include other disciplines (e.g. land and real estate, construction contracts, Freedom of Information Requests) where the sector could benefit from shared legal services?

At this time, the scope of work will focus on implementing some of the recommendations from Phase 1.

25. Do all grievances need to be reported?

All grievances (Step to be determined) post July 1, 2015 should be reported using the online form for the claims management system. Grievances must be reported before any related costs can come from the Program.

26. Can school districts be selective on what is reported into the claims management system?

All grievances at Step (to be determined) must be reported in the claims management system in order to obtain coverage.

27. Is pre-grievance advice included in the Employment Practices Liability Program?

No, and this is where boards still maintain their autonomy to manage issues and make human resource management decisions prior to a grievance reaching Step (to be determined).

28. Recently school districts provided historical litigation information which may have included costs associated with preliminary advice. If pre-grievance is not included in the Program, how will this information be adjusted for calculating premiums?

The collection of historical litigation information is preliminary; the Ministry may need to go back to school districts to clarify or seek additional information for calculating premiums.

29. How do I access legal services through the Employment Practices Liability Program?

BCPSEA will administer the employment and labour services in accordance with the Employment Practices Liability Program Coverage Agreement. An online form will be available on BCPSEA's website to complete.

30. Who will have access to the information in the claims management system?

School districts are provided with the same access as they now have for SPP.

31. Will the SPP software be modified to accommodate the changes to the Employment Practices Liability Program?

The iVOS system will be modified to meet the data collection requirements of the new program. The changes will be completed prior to July 1, 2015.

32. Will there be an advisory committee providing feedback to the Employment Practices Liability Program?

Yes, a committee will be established.

33. How will the Program ensure transparency and fairness?

An annual report will be made available by BCPSEA to ensure transparency and fairness in making decisions and sharing information related to case management.

34. How will the Employment Practices Liability Program ensure the protection of privacy of information collected?

The collection of personal information will follow British Columbia's *Personal Information Protection Act* (PIPA) which sets out the ground rules for how information is collected, used, and disclosed.

35. Will school districts be faced with higher premiums if the number of claims or grievances increase?

The premiums are purely the actuarially determined cost of covered losses combined with administration costs flowed directly through to the school districts. If these costs increase due to a higher number of claims and grievances, higher premiums will result.

36. What will change for local issues?

BCPSEA will no longer review referrals to arbitrations solely on the basis of provincial significance to determine carriage and funding of the matter. Legal expenses related to both provincially significant and previously locally managed arbitration will both be covered under the Program.

37. How will school districts accommodate the Program if they have an existing relationship with an external legal counsel?

School districts can continue to seek advice from their desired legal counsel for matters and issues arising outside the Program. Where there is a matter falling within the coverage of the Program, BCPSEA will work with the districts to assign the most appropriate counsel.