

**LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA  
POLICY MANUAL**

<b>SECTION</b>	Members' Policies
<b>POLICY</b>	Members' Legal Assistance (Indemnification) Policy

**Objective**

If a legal issue arises in the discharge of a Member's parliamentary functions, the Member is encouraged to consult the Law Clerk and Parliamentary Counsel, Office of the Clerk. Depending on the situation, the Member may be referred to outside counsel. This policy establishes the criteria and approval process for reimbursement or payment by the Legislative Assembly of legal fees and other costs of legal proceedings incurred by a Member in relation to a matter that has arisen in the discharge of the Member's parliamentary functions.

**Authority**

Policies affecting Members of the Legislative Assembly are approved by the Legislative Assembly Management Committee, as per *Policy 1000 – Legislative Assembly Policy Framework*.

**Key Definitions**

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

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

**"LCPC"** means the Law Clerk and Parliamentary Counsel of the Legislative Assembly;

**"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;

**"Member"** means a sitting or former Member of the Legislative Assembly;

**"parliamentary functions"** means the duties and activities that relate to the role of a Member, namely, participation in activities related to the proceedings and work of the Legislative Assembly and its committees, and activities undertaken in representing a Member's constituency or constituents, but does not include the following:

- a) activities related to the private interests as defined in the *Members' Conflict of Interest Act* (R.S.B.C. 1996, c. 287) of a Member or a Member's immediate family;
- b) activities related to the administration, organization and internal communications of a political party, including participation in a party leadership campaign or convention,

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solicitations of contributions and solicitations of membership to a political party;

- c) activities related to the re-election or recall of a Member;
- d) activities designed, in the context of a federal, provincial or municipal election, or any other local election, to support or oppose a political party or an individual candidate;
- e) activities that are related to a meeting of a constituency association, as defined in the *Election Act* (R.S.B.C. 1996, c. 106), and that are carried out for nomination, electoral or sponsorship purposes or that relate to soliciting contributions or membership,

and for greater certainty does not include the activities of a Member undertaken in the Member's capacity as a Parliamentary Secretary or member of the Executive Council;

**"pre-established rates"** means the pre-established hourly rates for outside counsel as set out in Appendix "A";

**"Subcommittee"** means the Subcommittee on Administration and Operations of the Legislative Assembly Management Committee.

- 1. Application** .01 This policy applies to all Members.
- 2. Eligibility Criteria** .01 A Member may be indemnified in respect of legal fees incurred or costs of a legal proceeding – either by reimbursement to the Member or direct payment to outside counsel – if all the following criteria are met and the Subcommittee determines that indemnification is appropriate and reasonable in the circumstances:
  - a) the Member did not initiate (or does not intend to initiate) the legal proceeding;
  - b) the legal proceeding concerns a matter arising in the discharge of the Member's parliamentary functions; the Member's conduct was not dishonest, malicious or in bad faith;
  - c) the Member has provided the Legislative Assembly with an opportunity to defend the case and has not compromised the Legislative Assembly's defence;
  - d) if the request is in respect of an appeal of a decision of a court, tribunal or other judicial body, it would be in the interest of the Legislative Assembly to provide coverage;
  - e) the legal proceeding is not in respect of a dispute with another Member or caucus, with the Legislative Assembly, or with officers or employees of the Legislative Assembly;

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f) the Member has complied with this policy.

.02 Despite section 2.01(f), Members may be eligible for indemnification in respect of legal fees under this policy (with the necessary adjustments) in respect of an internal investigation, review or dispute resolution process of the Legislative Assembly if the Subcommittee determines it is appropriate at the outset of such an internal investigation, review or dispute resolution process or upon application by a Member.

.03 A Member is ineligible for indemnification for legal fees incurred or costs of a legal proceeding if either of the following apply – both of which is a term and condition of an indemnification payment – and must return to the Legislative Assembly all amounts paid under this policy, unless the Subcommittee determines indemnification is appropriate in whole or in part in the circumstances:

- a) a judgment or decision is given against a Member in a legal proceeding; or
- b) a decision is made against the Member by the Legislative Assembly or one of its committees including the Legislative Assembly Management Committee with the benefit of information that may become available to it, the Member is required to reimburse the Legislative Assembly.

**3. Confidentiality**

.01 All requests made under this policy shall be treated as confidential, subject to the reporting requirements set out in this policy.

**4. Making a Request  
– Legal Fees**

.01 A Member who wishes to apply for indemnification in respect of legal fees, having become aware of the commencement or the threatened commencement of any legal proceeding against the Member, must make a request by writing to the LCPC at the earliest opportunity

- a) describing the circumstances, including how the legal proceedings arose in the exercise of their parliamentary functions, and
- b) demonstrating that the eligibility criteria are met.

.02 A Member may make an initial application for an amount up of \$5,000 to enable the Member to obtain legal counsel in respect of a legal proceeding. The Member may make a subsequent application for an increase if the need arises.

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.03 A request must be made by a Member before incurring legal fees. It is highly recommended that a Member not sign a legal retainer before a request has been made and approved.

.04 Despite section 4.03 a request in respect of legal fees already incurred may be approved if special circumstances justify the delay in the Member making the request.

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

.01 A Member may make an application for indemnification in respect of costs of a legal proceeding with the Subcommittee by writing to the LCPC at the earliest opportunity

- a) describing the circumstances, including how the legal proceedings arose in the exercise of their parliamentary functions, and
- b) demonstrating that the eligibility criteria set out in this policy are met.

**6. Consideration of Requests**

.01 Upon receipt of an application for indemnification from a Member, the LCPC is to consider the request against the eligibility criteria and request any additional information from the Member 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 maximum amount of \$5,000. 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. A decision of the LCPC may be appealed to the Subcommittee whose decision is final.

.03 For all other requests, the LCPC must prepare a submission for the *in camera* consideration of the Subcommittee. 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.

.04 The Subcommittee may grant an application from a Member in whole or in part. All decisions of the Subcommittee are final.

.05 The LCPC must inform a Member on the decision in writing and, in cases of approval, liaise with the Member to ensure that all invoices are provided to the LCPC for prompt payment.

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**7. 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 a Member that are greater than the pre-established rates or the approved amount, or costs of a legal proceeding greater than the approved amount, are the personal responsibility of the Member.
- .03 A Member who is ineligible for indemnification under section 2.03 must repay the Legislative Assembly all amounts paid under this policy, unless the Subcommittee determines indemnification in whole or in part is appropriate in the circumstances.
- .04 A Member 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 Member by a court, tribunal or other judicial body in relation to the legal proceeding.
- .05 If it becomes known after a Member's request has been granted and payments made that the legal proceeding relates in whole or in part to the activities undertaken in the Member's capacity as a Parliamentary Secretary or member of the Executive Council, the Member must repay the Legislative Assembly the full amount, unless waived in whole or in part in appropriate circumstances as determined by the Subcommittee.

**8. Process – Payment**

- .01 Payments pursuant to an approved request for indemnification may be made by reimbursement to a Member or direct payment to a Member's outside counsel at the time of approval or at any stages as agreed upon between a Member and the LCPC.
- .02 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.
- .03 Reimbursements to a Member or direct payments to a Member's outside counsel 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 Member that the services listed therein have been received and the accounting is accurate.

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**9. Absence of LCPC** .01 In the absence of the LCPC or when there is no LCPC, the Clerk of the Legislative Assembly has the authorities granted to the LCPC and may carry out the responsibilities of the LCPC under this policy.

**10. Reporting** .01 Payments made under this policy by the Legislative Assembly may be included in the amounts published annually in the Public Accounts. When payments (total aggregate) of more than \$25,000 are made to an individual or organization, the name of the payee and the amount paid to them are published. The purpose of the expense (including Member's identity and matter) is not disclosed as the amount paid for any given legal matter is not disclosed.

.02 For greater certainty, payments made under this policy by the Legislative Assembly are not disclosed as part of the proactive disclosure of contractual services by the Legislative Assembly for the payments are not made pursuant to a contract that is subject to *Policy 3100 – Procurement and Contract Management*.

.03 The LCPC shall report annually to the Subcommittee on the following:

- a) the total amount of funds approved and paid under this policy;
- b) any other matter concerning the administration of this policy.

**Contact** General questions regarding this policy may be directed to the Office of the Clerk at [OfficeoftheClerk@leg.bc.ca](mailto:OfficeoftheClerk@leg.bc.ca).

Questions regarding this policy in relation to a specific matter may be directed to the LCPC.

**References** *Policy 3100 – Procurement and Contract Management*

Approved and authorized by the Legislative Assembly Management Committee on June 16, 2020.
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POLICY HISTORY	
Version 1	June 16, 2020

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**APPENDIX "A"**

The following hourly rate caps apply for the remuneration of outside counsel under the *Members' Legal Assistance (Indemnification) Policy*. These caps, which are effective as of the date of approval of the policy by the Legislative Assembly Management Committee, increase annually at the rate of the annual Consumer Price Index as determined by B.C. Stats.

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.*