

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 404

, Approved and Ordered July 11, 2022



Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that

- (a) the attached Judicial Officers (Legal Proceedings) Indemnity Regulation is made, and
- (b) the Excluded Employees (Legal Proceedings) Indemnity Regulation, B.C. Reg. 62/2012, is amended by adding the following section to Part 1:

Coverage for judicial officers

- 9.1** (1) In this section, “**judicial officer**” has the same meaning as in the Judicial Officers (Legal Proceedings) Indemnity Regulation.
- (2) Despite section 9 (2), an employee who is a judicial officer is not eligible for coverage under this regulation in relation to a proceeding described in section 7 (1) [*eligible proceedings*] of the Judicial Officers (Legal Proceedings) Indemnity Regulation.



Minister of Finance



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Financial Administration Act*, R.S.B.C. 1996, c. 138, s. 72

Other: OIC 211/2012

R10570617

JUDICIAL OFFICERS (LEGAL PROCEEDINGS) INDEMNITY REGULATION

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PART 1 – INTERPRETATION

Definitions

- 1 (1) In this regulation:
 - “**Act**” means the *Financial Administration Act*;
 - “**administrator**” has the meaning given to it in section 2 (1);
 - “**conduct**” includes an act or omission;
 - “**fitness proceeding**” means an examination, investigation or inquiry under the *Provincial Court Act* respecting the fitness of a judicial officer;
 - “**government finance official**” means the Executive Director of the Risk Management Branch of the Ministry of Finance;
 - “**government legal official**” means the individual designated under section 3 (1) or, if none is designated, the Deputy Attorney General;
 - “**judicial officer**” means
 - (a) a judge,
 - (b) a judicial justice,
 - (c) a justice of the peace, or
 - (d) a former judge, judicial justice or justice of the peace;

“legal expenses”, in relation to a proceeding, means legal fees, disbursements and other expenses incurred by or on behalf of a judicial officer in relation to the proceeding;

“proceeding” means

- (a) a proceeding within the meaning of the *Provincial Court Act*, the Supreme Court Civil Rules or the Court of Appeal Rules,
- (b) a prosecution, or
- (c) a fitness proceeding or other administrative proceeding;

“prosecution” means

- (a) a prosecution for an offence under an enactment of British Columbia or Canada, or
- (b) a proceeding for criminal contempt;

“relevant conduct”, in relation to an indemnity, means conduct in relation to which the judicial officer is involved in the proceeding covered by the indemnity;

“review proceeding”, in relation to a proceeding, means

- (a) a review or appeal of the proceeding, or
- (b) a review or appeal of a review proceeding for the proceeding;

“standard terms” means sections 1 to 20 of the Schedule.

- (2) Unless a contrary intention appears, words and expressions used in this regulation have the same meaning as in the *Provincial Court Act*.

Administration of regulation

- 2 (1) The administrator for an indemnity under this regulation is
 - (a) the chief judge, or
 - (b) if the chief judge is disqualified under subsection (2), one of the following judges, not disqualified under that subsection, who is named by the chief judge to administer the indemnity:
 - (i) a current or former judge;
 - (ii) a current or former justice of the Supreme Court.
- (2) A person may not give or otherwise administer an indemnity under this regulation for a proceeding if
 - (a) the person is or is reasonably anticipated to be
 - (i) a party, third party or accused in the proceeding, or
 - (ii) required to give evidence in the proceeding, or
 - (b) a reasonable apprehension of bias would arise were the person to give or otherwise administer the indemnity.
- (3) Without limiting subsection (2), the chief judge may not give or otherwise administer an indemnity under this regulation for a fitness proceeding.

Government legal official

- 3 (1) The Deputy Attorney General may designate an employee of the government to serve as the government legal official for the purposes of this regulation.

- (2) A designation under subsection (1) may be general or limited in one or more of the following ways:
 - (a) to an indemnity or class of indemnities;
 - (b) to one or more provisions of this regulation or terms of the indemnity.

Application to other indemnities

- 4 Nothing in this regulation affects the power to give, to a judicial officer or other person, an indemnity under section 72 of the Act in compliance with another regulation under that section.

PART 2 – INDEMNITIES

Indemnity

- 5 Subject to this Part, the administrator may, on behalf of the government, give to a judicial officer an indemnity under this regulation for a proceeding if
 - (a) the proceeding is eligible under section 7,
 - (b) the judicial officer has requested the indemnity under section 8, and
 - (c) if applicable, the government legal official has been consulted under section 9 in relation to the proceeding.

Standard terms

- 6 An indemnity under this regulation may be given only on
 - (a) the standard terms, and
 - (b) any additional terms that are
 - (i) consistent with the standard terms, and
 - (ii) approved by the government legal official.

Eligible proceedings

- 7 (1) A proceeding is eligible for an indemnity under this regulation if
 - (a) the proceeding is listed under subsection (2),
 - (b) the proceeding has been commenced or is reasonably anticipated, and
 - (c) the proceeding is a fitness proceeding or the involvement of the judicial officer in the proceeding relates to the judicial officer's office.
- (2) The following proceedings are listed for the purposes of subsection (1) (a):
 - (a) a proceeding brought by a person other than the judicial officer, if the judicial officer is or is reasonably anticipated to be
 - (i) a party, third party or accused in the proceeding, or
 - (ii) required to give evidence in the proceeding;
 - (b) a proceeding brought by the judicial officer for the purpose of protecting the safety, privacy or reputation of the judicial officer, if the proceeding is necessary to
 - (i) protect the judicial officer from significant risk or impact, or
 - (ii) ensure that the administration of justice is not brought into disrepute;

- (c) a review proceeding for a proceeding listed in paragraph (a) or (b).
- (3) Despite subsections (1) and (2), the following proceedings are not eligible for an indemnity under this regulation:
 - (a) an appeal of an order of the judicial officer;
 - (b) an application for judicial review of an exercise of statutory power by the judicial officer, if the judicial officer has no standing to make submissions on the merits;
 - (c) a dispute in relation to the remuneration, allowances, benefits or other terms and conditions of the judicial officer's employment.

Request for coverage

- 8** A request for an indemnity under this regulation must be
 - (a) made in the form and manner specified by the chief judge, and
 - (b) signed by the judicial officer making the request.

Consultation with Attorney General

- 9** (1) This section does not apply in relation to
 - (a) a fitness proceeding, or
 - (b) a review proceeding for a fitness proceeding.
- (2) For the purposes of section 5 (c), the government legal official must be given
 - (a) written notice of the proceeding, and
 - (b) a reasonable amount of time to indicate whether the Attorney General intends to bring, defend or intervene in the proceeding.

Decision on request for coverage

- 10** (1) If the administrator decides to give an indemnity under this regulation to a judicial officer, the administrator must give the judicial officer written notice of the decision.
- (2) A notice under subsection (1)
 - (a) must specify the proceeding for which the indemnity is given and the date on which coverage begins, which may be the date the indemnity was requested under section 8 or an earlier date,
 - (b) must state that the indemnity is given on the standard terms and set out any additional terms imposed in accordance with section 6 (b), and
 - (c) may specify previous indemnities for the purposes of sections 12 (1) (b), 13 (1) (b) (ii) (B) and 14 (b) (ii) (B) of the Schedule.
- (3) If the administrator decides not to give an indemnity under this regulation to a judicial officer, the administrator must give the judicial officer a written notice that sets out the reasons for the decision.

PART 3 – GENERAL

Notice of coverage

- 11** (1) If the administrator gives an indemnity under this regulation, the administrator must give written notice of the indemnity to
- (a) the government legal official, and
 - (b) the government finance official.
- (2) A notice under subsection (1) must include a copy of the notice under section 10 (1) in relation to the indemnity.

Notice of termination

- 12** (1) If an indemnity is terminated under section 6 or 7 of the Schedule, the administrator must give written notice of the termination to
- (a) the government legal official, and
 - (b) the government finance official.
- (2) A notice under subsection (1) must indicate whether the judicial officer is subject to a repayment obligation under the indemnity and, if so, specify the term of the indemnity that imposes the obligation.

Notice of repayment obligation

- 13** If the administrator receives a notice under section 12 (1) (a), 13 (1) (a), 14 (a), 16 (1) (a) or (2) (a) or 18 (1) of the Schedule, the administrator must give a copy of the notice to
- (a) the government legal official, and
 - (b) the government finance official.

SCHEDULE

STANDARD TERMS OF INDEMNITY

PART 1 – COVERAGE

Period of coverage

- 1** Coverage under the indemnity begins on the date specified in the notice under section 10 (1) [*decision on request for coverage*] of the regulation and ends at the end of the day on the earlier of the following, as applicable:
- (a) the date coverage is terminated by section 6 of this Schedule;
 - (b) the date specified in the notice under section 7 of this Schedule.

Scope of coverage

- 2** Subject to this Schedule, the indemnity covers
- (a) legal expenses in relation to the proceeding,

- (b) monetary payments required under a settlement agreement in relation to the proceeding, and
- (c) monetary awards against the judicial officer made in the proceeding.

Limitations on coverage – general

- 3** The indemnity does not cover legal expenses, monetary payments or monetary awards to the extent that they relate to
- (a) a review proceeding for the proceeding, or
 - (b) the indemnity itself, including, without limitation,
 - (i) the request for the indemnity, and
 - (ii) the administration of the regulation or the indemnity.

Limitations on coverage – duplicate coverage

- 4** The indemnity does not cover legal expenses, monetary payments or monetary awards to the extent that they are covered under
- (a) another indemnity, or
 - (b) a policy of insurance or other agreement, arrangement or award.

Limitations on coverage – suspension if impugned conduct

- 5**
- (1) Subject to subsections (2) and (3), the indemnity does not cover legal expenses incurred, monetary payments made or monetary awards made after the date on which, in the proceeding,
 - (a) relevant conduct of the judicial officer is found to have been dishonest, malicious or otherwise in bad faith, or
 - (b) the judicial officer is convicted of an offence.
 - (2) If a finding is overturned in a review proceeding, the indemnity covers the legal expenses, monetary payments and monetary awards that the indemnity would have covered but for the finding.
 - (3) If a conviction is overturned on appeal, the indemnity covers the legal expenses, monetary payments and monetary awards that the indemnity would have covered but for the conviction.

Termination of coverage – impugned conduct

- 6**
- (1) The indemnity terminates on the date on which, in the proceeding,
 - (a) relevant conduct of the judicial officer is admitted by the judicial officer, or conclusively found to have been, dishonest, malicious or otherwise in bad faith, or
 - (b) the judicial officer pleads guilty to or is finally convicted of an offence.
 - (2) For the purposes of this section,
 - (a) a finding is conclusive if the finding has not been overturned in a review proceeding and the time to commence every available review proceeding has elapsed, and

- (b) a conviction is final if the conviction has not been overturned on appeal and the time to commence every available appeal has elapsed.

Termination of coverage – other grounds for termination

- 7 (1) The administrator may give written notice to the judicial officer terminating coverage under the indemnity if the judicial officer
 - (a) is no longer involved in the proceeding, or
 - (b) has breached a term of the indemnity.
- (2) The administrator must give written notice to the judicial officer terminating coverage under the indemnity if the administrator determines that the proceeding is not eligible under section 7 [*eligible proceedings*] of the regulation.
- (3) A notice under subsection (1) or (2) must
 - (a) specify the date on which coverage is terminated for the purposes of section 1 (b), which may be the date of the decision to terminate coverage or a later date, and
 - (b) set out the reason for the decision to terminate coverage.

PART 2 – ACCOUNTABILITY

Legal expenses

- 8 The indemnity does not cover legal expenses unless the legal expenses are
 - (a) incurred under a retainer agreement certified under section 9, and
 - (b) set out in bills certified under section 10.

Legal expenses – retainer agreements

- 9 A retainer agreement is certified for the purposes of section 8 (a) if the government legal official certifies that the agreement specifies
 - (a) hourly rates for each individual retained that are consistent with the hourly rates paid by the Attorney General in comparable circumstances for legal services performed by persons external to the government, and
 - (b) a maximum amount that may be claimed that is consistent with the principle that the expenditure of public funds should not exceed an amount that is proportionate to the consequences and complexity of the proceeding.

Legal expenses – review of bills

- 10 A bill is certified for the purposes of section 8 (b) if
 - (a) the judicial officer certifies that the bill
 - (i) is issued for legal expenses incurred under a retainer agreement,
 - (ii) is consistent with the retainer agreement and otherwise in order, and
 - (iii) reflects the instructions of the judicial officer, and
 - (b) the government legal official certifies that the bill is
 - (i) issued for legal expenses incurred under a retainer agreement, and
 - (ii) consistent with the retainer agreement and otherwise in order.

Settlements

- 11** (1) A monetary payment required under a settlement agreement is not covered under the indemnity unless, before the judicial officer enters into the agreement, the government legal official certifies the amount of the payment.
- (2) The government legal official may certify an amount under subsection (1) if satisfied that the proceeding could, in the absence of a finding that relevant conduct of the judicial officer was dishonest, malicious or otherwise in bad faith, result in a monetary award against the judicial officer that is equal to or greater than the amount.

PART 3 – REPAYMENT AND OTHER OBLIGATIONS

Serious misconduct

- 12** (1) If, in the proceeding, relevant conduct of the judicial officer is admitted by the judicial officer, or conclusively found to have been, dishonest, malicious or otherwise in bad faith or the judicial officer pleads guilty to or is finally convicted of an offence, the judicial officer must
- (a) give written notice to the administrator within 7 days after the admission, finding, plea or conviction, as the case may be, and
 - (b) pay to the government the sum of the amounts paid under the indemnity and, if applicable, the amounts paid under a previous indemnity that is specified in the notice under section 10 of the regulation.
- (2) For the purposes of this section,
- (a) a finding is conclusive if the finding has not been overturned in a review proceeding and the time to commence every available review proceeding has elapsed, and
 - (b) a conviction is final if the conviction has not been overturned on appeal and the time to commence every available appeal has elapsed.

Monetary awards

- 13** (1) If a monetary award in favour of the judicial officer is made in the proceeding, the judicial officer must
- (a) give written notice to the administrator of the monetary award within 7 days after the award is made, and
 - (b) either
 - (i) assign the monetary award to the government, or
 - (ii) pay to the government the lesser of
 - (A) the amount of the monetary award, and
 - (B) the sum of the amounts paid under the indemnity and, if applicable, the amounts paid under a previous indemnity that is specified in the notice under section 10 of the regulation.

- (2) If a monetary award against the judicial officer is made in the proceeding, the judicial officer must give written notice to the administrator within 7 days after the award is made.

Settlement agreements

- 14** If the judicial officer enters into a settlement agreement, in relation to the proceeding, that provides for a monetary payment to the judicial officer, the judicial officer must
 - (a) give written notice to the administrator of the settlement agreement and the amount of the monetary payment within 7 days after the judicial officer enters into the agreement, and
 - (b) either
 - (i) assign the monetary payment to the government, or
 - (ii) pay to the government the lesser of
 - (A) the amount of the monetary payment, and
 - (B) the sum of the amounts paid under the indemnity and, if applicable, the amounts paid under a previous indemnity that is specified in the notice under section 10 of the regulation.

Ineligible proceeding

- 15** If the indemnity is terminated under section 7 (2) [*termination of coverage for ineligible proceeding*], the judicial officer must pay to the government the sum of the amounts paid under the indemnity.

Duplicate coverage

- 16** (1) If the judicial officer is eligible for coverage described in section 4 [*limitations on coverage – duplicate coverage*] in relation to the proceeding, the judicial officer must
 - (a) give written notice to the administrator of that coverage, and
 - (b) pursue payment under that coverage.
- (2) If the judicial officer receives payment under coverage described in section 4 in relation to the proceeding, the judicial officer must
 - (a) give written notice to the administrator of the payment, and
 - (b) pay to the government the lesser of
 - (i) the amount of the payment, and
 - (ii) the sum of the amounts paid under the indemnity.

Amounts to be paid are debts to government

- 17** An amount that the judicial officer is required under this Part to pay to the government is a debt due to the government, payable on demand.

PART 5 – OTHER MATTERS

Duty to give notice and information

- 18** (1) The judicial officer must give written notice to the administrator within 7 days after the judicial officer
- (a) has reason to believe that the proceeding is not eligible under section 7 of the regulation,
 - (b) learns that a final decision has been made in the proceeding, or
 - (c) ceases to be involved in the proceeding.
- (2) On request by any of the following persons, the judicial officer must give the person any information or records that the person determines are necessary to administer the indemnity in accordance with the regulation and the terms of the indemnity:
- (a) the administrator;
 - (b) the Deputy Attorney General, or a person designated by the Deputy Attorney General.

Limited waiver of privilege and confidentiality

- 19** The judicial officer waives, in relation to the request, proceeding and indemnity, solicitor-client privilege and any duty of confidentiality in favour of the judicial officer to the extent necessary for
- (a) a person to administer the indemnity in accordance with the regulation and the terms of the indemnity,
 - (b) a person to comply with section 16 [*access to information, documents or things*] or 17 [*summons and requests*] of the *Auditor General Act*, and
 - (c) the government to publish the following information, for each fiscal year, about indemnities given under the regulation:
 - (i) the number of indemnities given in the fiscal year;
 - (ii) the nature of the proceedings for which the indemnities are given in the fiscal year;
 - (iii) the sum of the amounts paid in the fiscal year under all of the indemnities given under the regulation;
 - (iv) for each indemnity under which coverage ends in the fiscal year, the sum of the amounts paid under the indemnity.

Survival of waivers and other terms

- 20** Part 4 and this Part survive the termination of the indemnity.