

# Information

The Law Society  
of British Columbia



## Compulsory Professional Liability Indemnification

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### What is compulsory professional liability indemnification?

The Law Society, through its wholly-owned subsidiary, the BC Lawyers Indemnity Association, provides compulsory professional liability indemnity coverage and trust protection coverage for Law Society members.

A lawyer must not practise law in BC unless the lawyer has paid the annual indemnity fee, or is exempt from coverage: see section 30(7) of the Legal Profession Act and Law Society Rules 3-39 and 3-43. See below for discussion of who is exempt from the requirement to maintain compulsory liability coverage.

The Law Society's indemnification program is managed by the Lawyers Indemnity Fund.

### What is the nature of the indemnity coverage?

The compulsory indemnification policy provides:

- Professional liability indemnity coverage (for negligence) (Part A) to protect lawyers if they are liable for negligence and ensure that clients receive compensation to which they are entitled;
- Trust protection for dishonest appropriation (Part B) to ensure that innocent members of the public do not suffer a financial loss through theft by a BC lawyer; and
- Trust shortage liability (Part C) to provide some protection for lawyers if they fall victim to the “bad cheque” or other “social engineering” scams, helping ensure that clients do not suffer a financial loss.

Professional liability indemnity coverage provides each covered lawyer with \$1 million of coverage for each error, to an annual maximum of \$2 million for all errors reported during the year. There is a deductible of \$5,000 for the first paid claim and \$10,000 for each subsequently paid claim within three years of the report date of the first claim.

Trust protection coverage offers an annual aggregate, profession-wide coverage of \$17.5 million. Each claimant may recover up to \$300,000 per claim. If the claim arises out of the lawyer’s inter-jurisdictional practice, different limits apply.

Trust shortage liability coverage provides a limit of \$500,000 per error, and per lawyer and firm annually, a profession-wide annual aggregate of \$2 million, and a deductible of 35% of the client trust fund shortage (reduced by the amount of any overdraft). Coverage is contingent upon compliance with the Law Society's client identification and verification rules.

The Lawyers Indemnity Fund section of the Law Society website at [lawsociety.bc.ca](http://lawsociety.bc.ca) includes the compulsory indemnity policy and information about coverage and indemnification issues.

### **Is additional indemnification coverage available?**

Lawyers can increase the limits of their coverage by purchasing [excess insurance](#) privately. [Commercial insurance](#) that protects lawyers from risks not covered by the compulsory policy is also available.

Firms may purchase optional business innocent covered party coverage ("BIC") from the Law Society. This optional coverage is designed to protect innocent lawyers in firms who may face claims that are otherwise not covered because the business interest of another lawyer at the firm triggers Exclusion 6.2 of the compulsory indemnification policy, the "business exclusion" clause. The coverage will apply when partners are unaware, despite reasonable and regular enquiries, that another lawyer in the firm was providing legal services when the business exclusion would apply. Please contact the Lawyers Indemnity Fund at 604.682.8911 or by email at [indemnity@lif.ca](mailto:indemnity@lif.ca) for an application form or further information on BIC.

### **What is the annual indemnity fee?**

The basic annual indemnity fee for the compulsory indemnification policy, set under section 30(3)(a) of the Legal Profession Act, is \$1,890 (\$1,800 plus GST) for the year. The fee is prorated on a monthly basis for lawyers who join the program mid-term. A 50% discount is allowed to lawyers who practice part-time. See below for more information on the part-time discount.

The indemnity fee must be paid in two equal annual installments:

- The first installment on or before November 30 of the year preceding the year for which it is paid;
- The second installment on or before June 30 of the year for which it is paid.

A member who has not paid the indemnity fee and who is not exempt is prohibited from practicing law: see section 30(7) of the *Legal Profession Act*.

## How do I apply for indemnification coverage?

To apply for indemnification coverage for full-time practice, you should submit the following:

- Application for Indemnification for Full-time Practice; and
- The prorated indemnity fee as set out in Schedule 2 of the Law Society Rules.

If you are applying to change your indemnity coverage from part-time to full-time practice, you should submit the difference between the discounted and non-discounted fees on a prorated basis.

If you are currently exempt from the requirement to maintain indemnification coverage or are indemnified for part-time practice and are now applying for indemnification coverage for full-time practice, you will be subject to the Law Society's returning to practice rules. The conditions of returning to practice vary depending on the length of time you have been engaged in the practice of law and the period of time you have been absent from practice. Please see the information sheet *Returning to practice* for more information on the returning to practice rules.

## What is the part-time indemnification discount?

### ***Lawyers in private practice***

Part-time lawyers receive a 50% discount on the annual indemnity fee. You may apply for the part-time discount if you are engaged in the private practice of law (any professional services for which the indemnification policy extends coverage), related professional services and activities that further those services for an average of 25 hours per week or less. The terms "related professional services" and "activities that further those services" included but are not limited to:

- Practice management;
- Administration and promotion;
- Professional duties or representation on bodies such as the Law Society, the Canadian Bar Association, the Continuing Legal Education Society and other organizations.

To be eligible for the discount, you should be continuously employed on a part-time basis. You may occasionally practice more than 25 hours per week, as long as on average, over consecutive six-month periods (January to June; July to December), you practice 25 hours per week or less.

You may not apply for the discount if:

- You practice full-time for a portion of the year and do not practice at all for a portion or the balance of the year;

- You have had a professional liability insurance or indemnity claim in the past five calendar years in any jurisdiction for which an indemnity payment has been made.

### ***In-house lawyers***

In-house lawyers are also eligible for a part-time discount. The same principles apply to an in-house lawyer as with a private practice lawyer, but the application of the principles will look a little different.

For an in-house lawyer, the information provided on your application is a two-step process. First, you must determine which of your legal services would be covered under the Policy, and then how many hours you spend on those services. For example, claims against you by your employer, or a related organization, which employs you, at which you work as a seconded lawyer, or at which you are a partner, are excluded under the Policy. Accordingly, the time during which your advice is to your employer (or seconding organisation or partnership) should not be included in your activities set out on your part-time discount application form. However, the time you spend on activities which may give rise to a claim against you by a third party as well as the activities listed above should be included. You will find the forms to apply for coverage here: [full-time](#) and [part-time](#).

### **How do I apply for the part-time discount?**

To apply for indemnity coverage for part-time practice, you should submit the following:

- Application for Indemnification for Part-time Practice; and
- Prorated indemnity fee as set out in Schedule 2 of the Law Society Rules.

If you are applying to change from full-time to part-time practice, you will receive a refund of the prorated portion of the indemnity fee.

The discount reduces each of the two installments, which are payable in November and June. If you apply for and pay the discounted fee in November, the discount will be automatically applied to your June installment, unless you notify the Law Society of a change in your practice status.

If you are currently exempt from the requirement to maintain indemnification coverage and are applying for indemnification coverage for part-time practice, you will be subject to the Law Society's returning to practice rules. The conditions of returning to practice vary depending on the length of time you have been engaged in the practice of law and the period of time you have been absent from practice. Please see the information sheet *Returning to practice* for more information on the returning to practice rules.

## Who is exempt from the requirement to maintain indemnification coverage?

You are exempt from the requirement to maintain indemnification coverage if you are a non-practising or retired member, or you fall within one of the exemptions set out in Law Society Rule 3-43, and you submit a completed Application for Exemption from Indemnification. Otherwise, you must maintain indemnity coverage under the compulsory policy.

Please refer to Rule 3-43 to determine whether or not you are exempt. Generally, you will fall within Rule 3-43 if you:

- are employed by or seconded to one of the following and are opting to claim an exemption:
  - a federal, provincial, territorial or municipal government department or a Crown corporation;
  - a society, association, partnership or corporation, other than a law firm;
  - a trade union; or
  - a regulatory body.
- provide research and opinion services to an indemnified member and have no client contact whatsoever (includes law professors rendering research and opinion services to government).
- are not engaged in the practice of law at present (for reasons including a sabbatical, maternity or parental leave, or unemployment).
- are engaged in the practice of law for no fee, gain or reward, whether direct or indirect, from the person(s) for whom the service(s) is provided.
- reside\* outside of British Columbia and are not engaged in the practice of BC law.
- reside\* outside of British Columbia in a Canadian jurisdiction, are a member of that jurisdiction's law society, are entitled to practise law in that jurisdiction, and maintain the full professional liability insurance or indemnification coverage required in that jurisdiction.
- are a Canadian Legal Advisor authorized to practise law in BC and maintain full professional liability insurance coverage required by the Barreau du Québec that extends to your practice in BC.

\*Resident has the meaning with respect to a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada).

## How do I apply for an exemption?

To apply for an exemption from the requirement to maintain indemnification coverage, you should submit an Application for Exemption from Indemnification.

If you have paid the indemnity fee for the current practice year and become exempt, you will receive a refund of the prorated portion of the indemnity fee. If your circumstances change, contact a Member Services Representative as soon as possible.

### **I'm currently an exempt lawyer. Do I have the option of paying the indemnity fee?**

If you are an in-house lawyer, you have the option of paying the indemnity fee. Please contact a Member Services Representative for more information.

### **How can I obtain more information?**

If you have any questions about obtaining compulsory professional liability indemnification, please contact:

Member Services  
Law Society of British Columbia  
8th Floor, 845 Cambie Street  
Vancouver, BC V6B 4Z9

Tel.: 604.605.5311  
BC Toll-free: 1.800.903.5300  
Fax: 604.687.0135  
Email: [memberinfo@lsbc.org](mailto:memberinfo@lsbc.org)

For information on the provisions of the policy, indemnification overage issues or reporting potential indemnity claims, please see the Lawyers Indemnification Fund section of the Law Society website at [lawsociety.bc.ca](http://lawsociety.bc.ca).

*The information in this package is based on the Law Society Rules as they exist at this time. You must comply with the Rules that are in effect at the time you apply and with any changes in the Rules that may occur while you are in the process of applying for compulsory professional liability indemnification coverage or an exemption from the indemnification coverage requirement. If you have any questions about obtaining compulsory professional liability indemnification coverage, contact a Member Services Representative at the Law Society of British Columbia.*

# LAW SOCIETY RULES

## Division 5 – Indemnification

### Compulsory professional liability indemnification

- 3-39** (1) A lawyer must maintain professional liability indemnity coverage on the terms and conditions offered by the Society through the Lawyers Indemnity Fund and pay the indemnity fee under Rule 3-40 [*Annual indemnity fee*], unless the lawyer is exempt or ineligible under Rule 3-43 [*Exemption from professional liability indemnification*].
- (2) A lawyer is bound by and must comply with the terms and conditions of the professional liability indemnification policy under subrule (1).
- (3) As soon as practicable, the Executive Director must notify all governing bodies of any change to professional liability indemnification under this division that affects the limits of liability or scope of coverage.

[heading and (3) amended 04/2017; heading and rule amended 12/2019, effective 01/2020]

### Compulsory trust protection indemnification

- 3-39.1** (1) A lawyer must maintain trust protection indemnity coverage on the terms and conditions offered by the Society through the Lawyers Indemnity Fund and pay any fee for trust protection indemnity coverage set under Rule 3-40 [*Annual indemnity fee*].
- (2) A lawyer is bound by and must comply with the terms and conditions of trust protection indemnity coverage maintained under subrule (1).

[added 04/2017; heading and rule amended 12/2019, effective 01/2020]

### Annual indemnity fee

- 3-40** (1) The indemnity fee to be paid under section 23 (1) (c) [*Annual fees and practising certificate*] is calculated as follows:
- (a) the appropriate base assessment as specified in Schedule 1; plus
  - (b) any surcharge for which the lawyer is liable under Rule 3-44 [*Deductible, surcharge and reimbursement*]; minus
  - (c) any credit to which the lawyer is entitled under Rule 3-42 [*Indemnity fee credit*].
- (2) If a lawyer undertakes, in a form approved by the Executive Committee, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time indemnity fee specified in Schedule 1.
- (3) Subject to subrule (6), a lawyer is not eligible to pay the part-time indemnity fee under subrule (2) for 5 years in practice after the Society pays an indemnity claim in respect of the lawyer.
- (4) For a lawyer who does not give the undertaking referred to in subrule (2), the appropriate base assessment is the full-time indemnity fee specified in Schedule 1.
- (5) For the purpose of this rule,

- (a) the average number of hours per week that a lawyer engages in the practice of law and associated activities is calculated over successive 6 months periods, beginning on the effective date of the undertaking referred to in subrule (2), and
  - (b) “**associated activities**” includes practice management, administration and promotion and voluntary activities associated with the practice of law.
- (6) The Executive Director may, in the Executive Director’s discretion, reduce the time that a lawyer is not eligible under subrule (3) to pay the part-time indemnity fee or, in extraordinary circumstances, allow the lawyer to pay the part-time indemnity fee despite subrule (3).

[heading and (1) to (4) and (6) amended 12/2019, effective 01/2020]

## Payment of annual indemnity fee by instalments

**3-41** (1) A lawyer must pay the indemnity fee in two equal annual instalments as follows:

- (a) the first instalment on or before November 30 of the year preceding the year for which it is paid;
  - (b) the second instalment on or before June 30 of the year for which it is paid.
- (2) A lawyer who fails to pay the second instalment by the date prescribed in subrule (1) must immediately cease the practice of law in accordance with section 30 (7) [*Indemnification*] and surrender to the Executive Director his or her practising certificate and any proof of professional liability indemnity coverage issued by the Society.

[heading and rule amended 12/2019, effective 01/2020]

## Indemnity fee credit

**3-42** (1) The Benchers may approve an annual indemnity fee credit and set the conditions that a lawyer must meet to be entitled to the credit.

- (2) When a lawyer is entitled to an annual indemnity fee credit, the first instalment of the indemnity fee payable by the lawyer is reduced by the amount of the credit.

[heading and rule amended 12/2019, effective 01/2020]

## Exemption from professional liability indemnification

**3-43** (1) A lawyer is exempt from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee if the lawyer is not engaged in the practice of law, other than providing pro bono legal services, anywhere as a member of the Society.

(1.1) A lawyer may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee if the lawyer is employed by or seconded to one of the following:

- (a) a federal, provincial, territorial or municipal government department or a Crown corporation;
  - (b) a society, association, partnership or corporation, other than a law firm;
  - (c) a trade union or a similar organization;
  - (d) a regulatory body,
- and is not engaged in the practice of law, other than providing legal services to that employer or a related organization or providing pro bono legal services.



(2) A lawyer must not be exempted under subrule (1.1) if the lawyer engages in the practice of law in any way other than as described in that provision.

(3) Subrule (4) applies to a lawyer who is entitled to practise law in the jurisdiction of a governing body of which the lawyer is a member.

(4) A lawyer may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee, if, in another Canadian jurisdiction, the lawyer

(a) is resident or is deemed resident under the National Mobility Agreement, and

(b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to the indemnity coverage required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.

(5) A Canadian legal advisor may apply in the prescribed form to the Executive Director for exemption from the requirement to maintain professional liability indemnity coverage and pay the indemnity fee.

(6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Chambre that extends to the Canadian legal advisor's practice in British Columbia.

[heading amended 04/2017; (3) amended 04/2019; heading, (1), (4) and (5) amended 12/2019, effective 01/2020; (1), (2), (4) and (5) amended, (1.1) added 10/2020]

## Deductible, surcharge and reimbursement

**3-44** (1) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society's indemnification program on behalf of the lawyer:

(a) a deductible amount;

(b) any other amount that the lawyer is required to repay or reimburse the indemnity fund under the professional liability indemnity policy.

(2) If indemnity has been paid under the Society's indemnification program, the lawyer on whose behalf it is paid must

(a) pay the indemnity surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the indemnity fee, and

(b) if the payment was made under trust protection indemnity coverage, reimburse the Society in full on demand, for all amounts paid.

(3) The Executive Director may, in the Executive Director's discretion, extend the time for a lawyer to reimburse the Society under subrule (1) or (2), or pay a surcharge under subrule (2) or, in extraordinary circumstances, waive payment altogether.

[(1) amended 04/2016; (1) and (2) amended 04/2017; (1) and (2) amended 12/2019, effective 01/2020]

## Application for indemnity coverage

**3-45** (1) A lawyer may apply for indemnity coverage by delivering to the Executive Director

(a) an application for indemnity coverage, and

(b) the prorated indemnity fee as specified in Schedule 2.

- (2) A lawyer who is indemnified for part-time practice may apply for coverage for full-time practice by delivering to the Executive Director
- (a) an application for full-time indemnity coverage, and
  - (b) the difference between the prorated full-time indemnity fee specified in Schedule 2 and any payment made for part-time indemnity coverage for the current year.
- (3) The Executive Director must not grant the indemnity coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-89 [*Returning to practice after an absence*].

[heading and rule amended 12/2019, effective 01/2020]

## Confidentiality of indemnity claims

- 3-46** (1) In this rule, “**claim**” means a claim or potential claim reported under the professional liability indemnity policy and trust protection indemnity coverage.
- (2) Unless permitted by this rule, no one is permitted to disclose any information or records associated with a claim.
- (3) The Executive Director may do any of the following:
- (a) disclose information about a claim with the consent of the lawyer;
  - (b) if a claim has become known to the public, disclose
    - (i) the existence of the claim,
    - (ii) its subject matter,
    - (iii) its status, including, if the claim is closed, the general basis on which it was closed, and
    - (iv) any additional information necessary to correct inaccurate information.
- (4) For the purpose of subrule (3) (b) (iii), the status of a claim is its stage of progress through the claims handling process, including, but not limited to the following:
- (a) opened;
  - (b) under investigation;
  - (c) the stage of any litigation commenced;
  - (d) closed.
- (5) In the case of a claim under trust protection indemnity coverage, despite subrule (2), the Executive Director may do any of the following:
- (a) publish the name of a lawyer or former lawyer and the circumstances of a claim when a panel or the Benchers acting under Part 4 [*Discipline*] or 5 [*Hearings and Appeals*] or a court has found that the lawyer or former lawyer has misappropriated property of a claimant;
  - (b) disclose the name of a lawyer or former lawyer and the circumstances of a claim when
    - (i) the lawyer’s misappropriation is known to the public,
    - (ii) the claim arises from part of a scheme considered by a panel or the Benchers or a court in the written reasons for a decision, or
    - (iii) the facts are not disputed or are admitted by the lawyer or former lawyer;
  - (c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents obtained under this division that may be evidence of an offence.
- (6) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[(1) to (3) and (5) amended 04/2017; (5) amended 12/2019; (1) and (5) amended 12/2019, effective 01/2020]