

Coverage Information



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The Benefit and Business Exclusion (Exclusion 6)

This information sheet explains what claims are excluded from coverage by Exclusion 6.1—the “benefits exclusion” and Exclusion 6.2 – the “business exclusion,” in the [BC Lawyers Professional Liability Indemnification Policy](#)¹ (the “Policy”). This information is intended only as a guide. The wording of the Policy governs any claim or potential claim.

Definitions

These defined terms are used in this document:

- **Family** means the licensee’s spouse, children, parents or siblings
- **Colleagues** means the licensee’s firm, partners, apparent partners, MDP partners, associates or associate counsel

Exclusion 6.1 - the “benefit exclusion” explained

The Policy excludes coverage for a claim where a payment could benefit you, your Family or your firm. Exclusion 6.1 most often arises when you act for yourself or Family on a personal matter, but not always. For example:

- You act for your father in a personal injury action leading to a settlement. Your father talks to his neighbours months later and develops settler’s remorse. He sues you alleging professional negligence in the handling of his claim resulting in an improvident settlement. This claim would not be covered as payment of it would directly benefit your father.
- Your spouse borrows funds from a business associate and you prepare and register a mortgage over the matrimonial home to secure the debt. The mortgage goes into default and there is insufficient equity to repay the debt. The business associate sues your spouse for the shortfall, and you, claiming she relied on you qua licensee to provide appropriate

¹ www.lif.ca/your-policy/

security for the loan. There would be no coverage for this claim as the payment of it would directly benefit your spouse by discharging their obligation to repay the loan. It would also benefit you on the basis that a financial gain to your spouse would be to your indirect advantage.

The exclusion may also apply when you act for a client unrelated to you, such as an in-law, step or other relationship that falls outside of Family. For example:

- You are acting for a business that owes you, your Family or your firm a debt (not legal fees), but does not have sufficient funds to pay. Payment of a claim to the business will constitute a benefit to you if the business is now able to repay the debt.
- You act for your brother-in-law on a matter where payment of any claim directly or indirectly benefits your sister.

Due diligence

When a client relationship will trigger Exclusion 6.1, you should not act, but your colleagues may act without triggering Exclusion 6.1.

Acting for yourself, friends, family or colleagues presents an undue risk for several reasons:

- Your personal interest may lead to more casual or less thorough service, acting outside of your expertise, acting in a conflict, or acting with clouded judgment.
- You may experience additional social pressure, potential conflicts with your firm, and unmanageable client expectations.
- LIF's ability to successfully defend a claim could be compromised by your desire to assure the claimant's recovery.
- Your legal services in relation to an arms-length trust, where you are also a trustee, increases the risk of claims. More information on this risk is provided in [Executors, trustees and other fiduciaries](#)².

Read '[About to act for family or friends? \(Resist, it's just too risky\)](#)'³ before agreeing to act.

² www.lif.ca/your-policy/what-activities-are-covered-and-what-are-not/executors-trustees-and-other-fiduciaries/

³ www.lif.ca/risk-management/practice-management-wellness-risks-and-tips/acting-for-family-and-friends/

Exclusion 6.2 - the “business exclusion”

The Policy does not apply to a claim connected to an organization where you, your Family and your Colleagues have effective management or control, or beneficial ownership in an amount greater than 10%. Defence and indemnity coverage are excluded for both you *and* for any Colleague and firm vicariously liable for your error.⁴ On business matters when there is no coverage, refer your client to other counsel.

Effective management or control, or beneficial ownership of an organization, depends on the particular circumstances present at the time the services were rendered and the claim is advanced. Some factors relevant to determining effective management or control are:

- Are you, your Family or Colleague an officer or director of, or employer in, the organization? If so, how many other directors does the organization have?
- Do the other directors look to you for guidance and generally accept the advice you provide?
- Do you, your Family or Colleagues have sufficient ownership or influence to elect a majority of the Board of Directors or maintain de facto control of the organization?
- Do you, your Family or Colleagues have day to day management of the organization’s affairs?

An example of beneficial ownership is:

- You and your spouse own all the shares of Holding Co, which owns 50% of the shares of ABC Co, which in turn owns 25% of the shares of DEF Co. Any claim arising from your provision of legal services to ABC Co or DEF Co would not be covered.

Application to trusts

Although the definition of ‘organization’ is very broad, it does not include trusts. As a result, you can provide legal services to your partner’s family trust, for instance, without concern that the relationship itself might trigger Exclusion 6.2. However, there may still be circumstances associated with a trust where Exclusion 6.2 may apply. For example:

- You, your Family or your Colleagues own, control or manage ABC Co. You and your sister are the sole contingent beneficiaries of FamTrust Co, a trust set up by your father who has rolled all the shares of ABC Co into it. Any claim arising from you providing legal services to ABC Co would not be covered.

⁴ Condition 6.3 of the Policy extends limited coverage for a licensee’s former partners (although not the licensee) in circumstances where, for example, the licensee acts for an organization and later moves in-house, acquiring beneficial ownership in an amount greater than 10% or effective management or control of the organization.

Due diligence

Your firm should implement a due diligence process to try and discover whether any of the partners, associates or associate counsel are providing legal services in circumstances that would trigger the application of Exclusion 6.2. Asking licencees at your firm these two questions will aid in identifying risks that may not be covered by the Policy:

1. To the best of your knowledge and understanding, are you providing legal services to any organization in which you, your family or any other licencee practising at any office of the firm, separately or together, has or had effective management or control or beneficial ownership in an amount greater than 10%? Yes / No
2. To the best of your knowledge and understanding, is any other licencee at our firm providing legal services to any organization in which that licencee, that licencee's family or any other licencee (including you) practising at any office of our firm, separately or together, has or had effective management or control or beneficial ownership in an amount greater than 10%? Yes / No

While asking these questions may not succeed in disclosing all potentially offending activities, if any offending activities are disclosed, the firm will need to decide whether or not to continue providing the services, given that coverage will not be available.

Optional business innocent covered party (BIC) coverage

BIC coverage may be purchased from the Law Society. The BIC endorsement provides coverage to licencees who may be vicariously liable for another licencee's acts when the licencee providing the services has no coverage under Part A of the Policy because of the operation of Exclusion 6.2. BIC coverage **does not** apply to Exclusion 6.1, the benefit exclusion. More information is available on the LIF website: [LIF - Business Innocent Covered Party Endorsement - information sheet](#)⁵.

Lawyers Indemnity Fund

Coverage for any claim or potential claim is determined by the Policy wording. If you would like our position on the application of the Exclusion 6 to a particular set of circumstances, please contact one of our [advance ruling advisors](#)⁶. Depending on the nature of your question, we may ask you to send us a detailed description of the circumstances in writing.

⁵ www.lif.ca/LIF/media/Shared/docs/indemnity/BIC-info-sheet.pdf

⁶ www.lif.ca/about-us/our-people/contact-us-by-types-of-inquiries/