

9.1 Employee Indemnification and Legal Assistance Policy

Policy Statement

The Province of Nova Scotia recognizes that employees should be able to perform their duties in the knowledge that their employer will protect them from liability arising out of the performance of those duties done in good faith.

Definitions

CROWN

Her Majesty in the right of the Province of Nova Scotia also known as the employer.

DEPARTMENTS

Any department, office or public service entity established by the Province of Nova Scotia, as identified under Category I in Appendix I-A of the Corporate Administrative Policy Manuals Policy.

DUTIES

The employee's work as defined within their respective job description and/or other tasks that have been authorized by the employee's manager/supervisor.

GOOD FAITH

The carrying out of one's duties which are performed honestly, openly and without malice or ulterior motive, even if the performance is done negligently or results from an error in judgment.

EMPLOYEE

All civil servants whose terms and conditions are set out in accordance with the *Civil Service Act* and regulations, other direct employees of the Province of Nova Scotia, including all bargaining unit employees, per diem Crown Attorneys, and including former employees and the estates of former employees.

INDEMNIFICATION

Compensation to or on behalf of an employee for financial losses incurred by them in respect of civil, criminal or administrative actions or proceedings to which they are made a party as a result of duties performed or not performed by the employee during the course of their employment.

LEGAL ASSISTANCE

The provision of legal representation and advice by the Department of Justice or another approved outside legal counsel.

Policy Objectives

The objectives of the policy are to

- Provide indemnification and any required legal services for employees who in the course of their duties and acting in good faith are made a party to a civil, criminal, administrative or investigative actions or proceedings.
- To protect the interests of the Crown in relation to potential or actual liability arising from acts or omissions of an employee.

Application

This policy applies to all civil servants whose terms and conditions are set out in accordance with the *Civil Service Act* and regulations, other direct employees of the Province of Nova Scotia including all bargaining unit employees, per diem Crown Attorneys, where the action or proceeding resulted from their employment, as well as former employees and the estates of former employees.

Policy Directives

CRITERIA

Employees who meet the following criteria will be eligible for indemnification and/or legal representation:

- the employee's actions or omissions were within the scope of their duties and authority
- the employee acted in good faith
- the employee reasonably believed that their conduct was lawful

NOTIFICATION AND DETERMINATION OF ELIGIBILITY

In order to be eligible for indemnification and/or legal assistance, employees must inform their immediate or in the case of former employees, their immediate past supervisor at the earliest opportunity after becoming aware of any alleged act or omission arising during the course of their duties that may give rise to the need for legal counsel or to a claim against them, their employer or the Crown. The notification must include details identifying:

- Relevant and related events
- A description of the incident / event

- A list of persons who are directly involved and / or potential witnesses
- Details regarding charges (or accusations) against the employee
- Any actions taken to correct the situation

The supervisor will inform their Deputy Head. The employee's Deputy Head shall consult with the Deputy Head of the Department of Justice as to whether the employee meets the requirements of this policy for indemnification and/or legal assistance. In the event that the employee's Deputy Head and the Deputy Head of the Department of Justice cannot agree on the eligibility of the employee, the Deputy Head of the Department of Justice shall decide.

The Deputy Head will also notify the Risk Management Manager of the Province.

PROVISION OF LEGAL ASSISTANCE

Employees may be eligible to receive legal assistance under certain circumstances which include the following:

- They are charged with a criminal or provincial offense.
- They may be subject to a penalty, including an administrative penalty.
- They are sued or threatened with a civil action.
- They are required to be a witness at a trial as a result of a work related duty.
- They are required to appear before a judicial inquiry or other inquests.
- They are interviewed by the police or other authorities in circumstances that may lead to charges against the Crown.
- They are subject to disciplinary proceedings of their professional organization for issues related to professional conduct during the course of their duties.

If legal assistance is to be provided, the Department of Justice will normally provide such assistance. The Department of Justice may assign outside counsel in accordance with Approval and Acquisition of Private Sector Legal Services Policy in the Corporate Administrative Policy Manual – Common Services.

If the provision of outside counsel is approved in accordance with this policy, conditions regarding payment such as maximum reimbursement will be determined by the Department of Justice based on the prevailing average rates charged by legal counsel in the particular area of the province.

Employees are responsible for cooperating with assigned legal counsel.

Employees may choose to obtain outside legal counsel at their own discretion and at their own expense. If an employee wishes to decline representation by the Department of Justice, a written confirmation must be submitted.

The Crown shall have conduct of any proceedings for which legal assistance has been provided under this policy.

The Crown reserves the right to recover any indemnification or other costs by way of subrogation or other avenues.

Any decision to indemnify an employee under this policy does not preclude a department from taking disciplinary action against the employee if appropriate.

Accountability

PUBLIC SERVICE COMMISSION

The Public Service Commission is accountable for providing advice and assistance to departments on the application of this policy.

DEPARTMENT OF JUSTICE

The Department of Justice is accountable for providing advice to departments and in providing legal assistance as appropriate under this policy.

DEPUTY HEADS

Deputy Heads are responsible for ensuring that employee requests for consideration under this policy are reviewed promptly and addressed as provided for in this policy.

MANAGERS/SUPERVISORS

Managers/supervisors are responsible for ensuring that employees are informed of this policy and its related processes.

EMPLOYEES

Employees are responsible for informing their managers/supervisors of events or incidents arising during the course of their employment that may give rise to a claim against them or the Crown or for a need for legal assistance.

Employees are responsible for cooperating with assigned legal counsel.

Monitoring

The Public Service Commission and the Department of Justice will be responsible for monitoring the effectiveness and consistent application of this policy.

References

- *Civil Service Act*
- General Civil Service Regulations
- *Highway Workers' Collective Bargaining Act*
- 2.1 Approval and Acquisition of Private Sector Legal Services Policy (Manual 300 Common Services, Corporate Administrative Policy Manuals)
- 1.2 Corporate Administrative Policy Manuals Policy (Manual 100 Management Guide, Corporate Administrative Policy Manuals)

Enquiries

For further information or questions about this policy, please contact:

Policy and Planning
Public Service Commission
Email: PSC-Policy-Inquiries@novascotia.ca

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