

GENERAL ADMINISTRATION MANUAL

VOLUME 3: HUMAN RESOURCE POLICIES

TITLE: INDEMNIFICATION

EFFECTIVE: October 27, 1994

1.0 SCOPE

1.1 Authority

1.1.1 This policy is issued under authority of Cabinet Minute No. 94-40, dated October 27, 1994.

1.2 Application

1.2.1 This policy applies to all departments, as defined in Policy 3.1.

1.3 Purpose and Principles

1.3.1 Where criminal or civil proceedings arise out of an employee's act to which the criteria in 2.2 (a) apply, the government shall:

- a) provide the employee with legal representation;
- b) pay any damages or costs awarded against the employee; and,
- c) agree not to seek indemnity against that employee where his/her act has resulted in a judgement against the government.

1.4 Background

1.4.1 This policy reflects the Government of Yukon's recognition that, as an employer, it should protect its employees from certain financial costs arising from the performance of their duties.

1.5 Definitions

1.5.1 "Deputy head" means a person who is a deputy head within the meaning of the Public Service Act.

1.5.2 "Employee" shall include the following persons for the purposes of this policy:

- a) an employee, part-time employee, auxiliary employee, casual employee, and persons who have entered into a "contract of employment" within the meaning of the Public Service Act;
- b) persons employed under the Education Act; and,
- c) any person employed by the Government of Yukon in an employee-employer relationship.

2.0 *ROLES AND RESPONSIBILITIES*

2.1 Employees

Employees are responsible for informing their supervisors whenever an incident takes place that could give rise to the need for legal counsel or which may occasion a claim against the Government of Yukon.

An employee may request the provisions of legal counsel at public expense when any of the following relate to the performance of his or her duties, i.e. when:

- a) sued, or threatened to be sued, in the civil courts;
- b) charged with an offence;
- c) interviewed by representatives of the Crown, including local police forces and crown attorneys, in circumstances that, in the opinion of the employee or deputy head, could lead to legal proceedings against the employee or the Government of Yukon; or,
- d) required to appear before a judicial, investigative or other inquest or inquiry.
An employee requesting legal counsel at public expense in any of the above circumstances shall make a complete report of the incident leading to the request to his/her deputy head. Charges or actions initiated by employees are not covered by this policy.

2.2 Public Service Commissioner

The Public Service Commissioner shall approve or disapprove a request for the provision of legal services to any stage of the legal proceedings on the recommendation of the Department of Justice. The Department of Justice shall investigate each case and report the findings to the Public Service Commissioner. The employee's deputy head may provide comment on the scope of the employee's duties and an opinion on the merits of a request.

In deciding, the Public Service Commission shall consider the following:

- a) The employee must have been acting within the scope of the employee's duties or employment. This shall include the involvement of persons employed under the Education Act in authorized extra-curricular activities. The employee must have acted in good faith and without malice, dishonesty, gross negligence, or gross disregard or neglect of duty.
- b) In certain circumstances, the Government of Yukon, may be vicariously liable for the actions of its employees. Government liability may justify the expenditure of public funds to ensure that the defense is competently carried out. In addition, the outcome of criminal proceedings can, in some cases, affect civil proceedings arising from the same incident.
- c) Failure to assist employees who have been placed at risk in the performance of their duties may lead to reluctance on the part of other employees to expose themselves to similar risks. In such circumstances, defense of the employee at public expense may be necessary for the efficient operation of the program concerned.

The Public Service Commission may, at any time during the judicial process, reconsider and reverse an earlier decision to grant or deny indemnification based on new facts which may arise. A decision to provide legal services to an employee at public expense or to indemnify judgement costs, regardless of the outcome of proceedings, does not preclude the employing department from taking any disciplinary action deemed appropriate.

2.3 Department of Justice

The Department of Justice will assume the conduct of the litigation either through a departmental legal advisor or a private lawyer retained as an agent of the Minister of Justice. In cases where two or more employees are sued in the same action, normally their defense will be conducted by the same counsel.

If the employee elects to retain counsel on a personal basis in addition to government counsel, then, under such circumstances the employee will not be reimbursed for the costs of such personal or private counsel and in all such cases the Department of Justice shall have conduct of the proceedings.