



## **19.04—Legal Advice, Assistance, and Aid to Individual Members**

### **1. Advice**

Advice of a practical and legal nature is available to members from local officials and BCTF staff assigned to locals, on any matter arising out of the member's employment. Where required in the opinion of staff or the president of the local, members may be referred to the Federation's legal staff for specific legal advice.

### **2. Legal assistance and legal aid**

In sections 3–9 of this procedure:

a. "Legal assistance" means the provision of services to a member by a Federation staff lawyer or other qualified administrative staff member in accordance with this procedure.

b. "Legal aid" means the authorization of funding for outside legal counsel at the legal aid rate to assist in the payment of legal fees in accordance with this policy.

c. "Legal aid rate" means the fee rate and rules with respect to approvals and disbursements established in sections 3.d. and 6 of this procedure.

d. "Member" means an active member of the Federation, and includes a person who was an active member at the time the circumstances leading to the request for legal assistance arose, provided that:

i. no former member who subsequently became a member of an organization that provides, or ought reasonably to provide, assistance in respect of the matter may be granted legal aid or legal assistance; and

ii. the circumstances of the loss of active membership may be considered as a relevant factor by staff in considering applications under this procedure.

iii. no more than two years has passed since the individual ceased to be an active member. Where the merit of the case is strong, legal aid may be granted for criminal matters more than two years after the loss of active membership. (Jun13 Ex, p.11)

e. "Matters arising directly out of the member's practice of the teaching profession" are those which involve work related activities on or off school property. Legal aid or legal assistance may be granted in exceptional cases where the member's only connection to the complainant is via employment. (Jun13 Ex, p.11)

"Practice of the teaching profession" means teaching in a position which requires membership in the Federation. (Jun13 Ex, p.10)

"Staff" means lawyers employed by the Federation (including, where appropriate, general counsel), or other qualified members of the administrative staff, who have been specified by general counsel to be responsible for the administration of particular areas of this procedure.

### **3. Criminal matters**

The Federation may provide legal aid to members, in matters arising directly out of the member's practice of the teaching profession, in accordance with the following policies:

a. Upon request by a member, staff may, subject to b. below, provide legal aid to assist the member in respect of legal representation costs up to plea, or determination of guilt or innocence by the trier, in defence of any criminal investigation or criminal charge.

b. Staff may decline to provide or continue legal aid in circumstances which, in the opinion of staff, in accordance with the criteria listed in 19.04.4.a.i and ii., is not in the best interests of the Federation to provide legal aid. (Aug 12 Ex,p.9)(Jun13 Ex, p.12)

c. Where legal aid has been granted under a. and the member is found guilty or pleads guilty, staff may give the member notice that subsequent funding in respect of sentencing is denied.

d. The grant of legal aid does not cover expenses in respect of pre-trial applications pursuant to the *Charter* unless specifically approved in advance by general counsel.

e. Staff may, prior to considering an application under this section, request the member or member's representative to provide an estimate of the legal costs expected to be encountered, and/or may authorize legal aid expenditures only to a specified level, after which further expenditures must be approved by general counsel.

f. Where legal aid has been granted and the member discharges counsel originally retained, or due to actions of the member, that counsel will no longer agree to represent the member, staff may make further funding conditional on the member assuming responsibility for costs wasted, or may, with notice to the member, discontinue funding.

#### **4. Other legal matters**

##### **a. General principles of assistance**

i. In determining whether or not to grant or continue legal assistance or legal aid funding under section 4 of this procedure staff may have regard to all the circumstances of the matter, including the legal merits of the case, the nature of the individual's interest in question, the effect of the case on the Federation and its membership, and the reasonable use of the Federation's resources. Staff may consider the amount of legal aid or assistance already provided by the Federation and may decline further assistance where the amount exceeds what is reasonable to provide for one member. (Jun13 Ex, p.12)

ii. Staff shall determine the form of assistance given the member, including the selection of counsel, and has the discretion to terminate assistance upon notice to the member where circumstances warrant. The member must follow the reasonable advice of counsel. The member must also provide any information staff considers necessary for administering the provision of legal aid. (Jun13 Ex, p.12)

(iii) Where outside counsel is employed, such counsel shall be instructed by the Federation. (Aug 12 Ex, p. 8)

##### **b. Disciplinary and Professional Conduct Board ("commissioner")**

Staff provides legal assistance and/or legal aid to members facing proceedings or investigations against them by the commissioner in accordance with the following guidelines:

i. Legal assistance or legal aid will not be granted or continued where the member has:

- on substantially the same allegations been finally found or pleaded guilty and convicted on a criminal charge; or
- been dismissed by the employer and the dismissal has not been grieved or the dismissal has been finally determined against the member.

Where staff believe there are compelling reasons for continuing assistance despite this rule, the member's application for further assistance may be approved by general counsel.

ii. Where the member has resigned employment subsequent to the allegations which are the subject of the Disciplinary and Professional Conduct Board proceedings, legal assistance or legal aid shall not be granted or continued without the approval of general counsel.

iii. That members who have faced criminal charges that have arisen directly out of the member's practice of the teaching profession, and who have had the charges dropped, dismissed, or who have been found not guilty of those charges, may apply to have their legal defence costs reimbursed after the conclusion of criminal proceedings if the member used a BCTF-approved lawyer. (Jan 10 RA, p.14)

iv. Subject to b.i and b.ii, staff provides legal assistance or grants legal aid to defend the member when the member has received a citation to appear at a disciplinary hearing.

v. The Federation shall not be responsible for any fines or costs levied against the member by the council.

### **c. Civil litigation**

i. When requested by a member, staff may provide legal aid to commence, continue or defend civil litigation in respect of a matter arising directly out of the member's practice of the teaching profession where no other forum is appropriate and the member has no other institutional source of funding.

ii. Civil legal aid is subject to the following:

(1) unless there are compelling reasons to the contrary, members involved in civil litigation with other members shall not be provided with legal aid;

(2) legal aid shall not be granted to file and prosecute a civil suit unless in the opinion of staff the member has suffered significant and wrongful damages;

(3) in the event of a successful outcome or settlement, court-awarded costs or a reasonable portion of the settlement shall be used to offset legal aid paid by the Federation;

(4) in the event of an unsuccessful outcome the Federation shall be responsible for adverse court-awarded costs, but shall in no event be responsible for damages, fines, or any portion of a settlement;

(5) legal aid shall not be granted where there has been a final determination against the member based on substantially the same allegations in another legal proceeding;

(6) an application for legal aid to defend civil proceedings shall not be considered while any other legal proceedings based on substantially the same allegations are outstanding, unless staff believes there are compelling reasons to do so, in which case the request may be approved by general counsel; and with the approval of general counsel, legal aid may extend to defending a favourable decision appealed by the opposing party.

### **d. Human rights complaints**

The Federation may provide legal assistance or legal aid to a member in matters arising directly from the member's practice of the teaching profession where:

i. In the opinion of staff no other means of proper defence is available, legal assistance or legal aid may be granted to a member facing a complaint under human rights legislation.

ii. In exceptional circumstances, where there is no alternative means of pursuing the matter, staff may provide legal assistance or legal aid to a member to initiate a human rights complaint.

iii. With the approval of the general counsel, legal assistance or aid may include judicial review to defend a favourable tribunal decision.

### **e. Employment Insurance and Worksafe/WCB matters**

Staff may provide legal assistance or legal aid as appropriate to assist members in dealing with employment insurance or Worksafe/WCB issues arising directly from their employment. With the approval of general counsel, legal aid may extend to include judicial review to defend a favourable tribunal decision.

## **5. Appeals of judicial and quasi-judicial decisions**

a. Where legal assistance or legal aid has been granted under this procedure and a decision or verdict favourable to the member has been obtained which is then appealed by the opposing party, unless otherwise specified in this procedure staff will generally continue legal assistance or legal aid to defend the appeal.

b. Where legal assistance or legal aid has been granted under this procedure and the decision or verdict is unfavourable to the member, any request for further legal aid or assistance must be referred to the Executive Committee.

## **6. Legal aid funding rate and conditions**

Where staff authorizes legal aid under this procedure, the following applies:

- a. The maximum hourly rate for which the Federation is responsible is established periodically by the Executive Committee. The current rate is a maximum of \$235.00 per hour. (May 22 Ex, p. 8)
- b. The authorization for legal aid assumes one lawyer on the file and includes payment of reasonable and necessary disbursements. The following disbursements require pre-approval of staff:
  - i. single disbursements over \$1,000;
  - ii. aggregate disbursements over \$5,000; and
  - iii. travel costs of the member or witnesses from outside BC.
- c. Unless there are compelling reasons to the contrary, no member shall be reimbursed for legal costs in any action or appeal commenced by the member without prior approval under this procedure.

#### **7. Travel and accommodation**

Travel and accommodation expenses for members shall be paid in accordance with Federation procedure 10.1.

#### **8. Legal aid and legal assistance process**

- a. Applications for legal aid or legal assistance shall be in writing from the member and directed to staff.
- b. Where the application for legal aid is not approved, staff shall inform the member of the rights of appeal within the Federation under section 9 of this procedure.

#### **9. Member appeals**

- a. Within 60 days of notification that legal assistance or legal aid is denied, an active member may appeal the decision to the Executive Committee by notifying general counsel of such appeal in writing pursuant to by-law 5.19. Where the application of a former member is refused, the member may request general counsel to place the matter before the Executive Committee, and general counsel may do so at her or his discretion. (Aug 12 Ex, p. 9)
- b. Where a member appeals to the Executive Committee, both the member and staff who made the decision appealed from shall forward relevant documents to the Executive Committee, and the member may provide written argument. The member may seek information about the appeal process through the local or directly from Federation staff but neither the local nor the Federation will provide representation for the appeal. (Aug 12 Ex, p. 9)
- c. The Executive Committee may decide the matter on the basis of the written material before it, or alternatively may consider the matter at a scheduled meeting with the member and staff present.
- d. Where the Executive Committee considers only the written material, staff who made the decision appealed from shall not be present.
- e. Where the Executive Committee decides to conduct an oral appeal, it shall hear from the member and/or a representative of the member, staff who made the decision appealed from, and the member shall have the right to make final comments. When the Executive Committee deliberates on the appeal, neither the member nor staff shall be present.
- f. All consideration of legal aid requests by the Executive Committee shall be in committee, with Executive Committee members only, and all information in connection with them shall be treated in strict confidence.
- g. Where there is an oral appeal, the commitment of the Federation extends to the travel and accommodation expenses, where applicable, of the member and representative at Federation rates but does not extend to any fees or other charges by the representative.
- h. The decision of the Executive Committee is final and binding. (May 04 Ex, p. 1)  
May 08 Ex, p. 9)