

Dawson Support Staff Union (D.S.S.U.)

Syndicat du personnel de soutien de Dawson (S.P.S.D.)

BYLAW No.1

THE UNION'S DUTY TO REPRESENT ITS MEMBERS

The Union's Policy for Legal Interventions and the Defence of its Members

Bylaw adopted at the General Assembly of the
Dawson Support Staff Union (DSSU)
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The Union's Duty to Represent its Members

1.0 Declaration of Principles

- 1.1 The Dawson Support Staff Union (DSSU) seeks to provide the best legal defence for its members within the limits of its financial resources and in accordance with the constitutional powers of its decision-making bodies (Executive Committee, Coordinating Council, General Assembly), its legal obligations and its bylaws.
- 1.2 In all cases, the legal obligation of the Union is limited to the defence of a member with the filing of a grievance or the member accused of a crime in conformity with the applicable collective agreement, unless legal opinions given to the Union suggest that a grievance has little or no chance of succeeding, based on a legal opinion provided by the Fédération du personnel de soutien de l'enseignement supérieur (FPSES) or the Centrale des syndicats du Québec (CSQ).
- 1.3 The Union considers it to be relevant to officially establish guidelines to determine when it will or will not intervene with legal recourse in matters related to the collective agreement, criminal or civil actions being taken against members, or civil actions being taken by members.
- 1.4 This bylaw shall entail no additional legal obligation on the part of the Union.

2.0 Legal Obligations Related to the Collective Agreement

The Union's right to represent its members in matters related to the collective agreement is derived primarily from section 69 of the Labour Code which stipulates that a certified association may exercise all the recourses which a collective agreement grants to each employee whom it represents without having to prove that the employee has assigned this claim, and from section 100 of the Labour Code which clearly states that the parties in a grievance are the Union and the Employer.

But the Union's exclusive right to represent its members is accompanied by a legislated duty to represent these members. Section 47.2 of the Labour Code summarizes this duty to represent members in the form of four prohibitions:

The Union shall not:

- **act in bad faith,**
- **act in an arbitrary manner,**
- **act in a discriminatory manner,**
- **show serious negligence,**

in respect of employees comprised in a bargaining unit represented by it, whether or not they are members. The Union's Executive Committee may not decide to terminate a procedure in progress or refuse to undertake a procedure until the members of the Executive Committee have deliberated and taken a decision. In certain cases, the Union may request a legal opinion from the Fédération du personnel de soutien de l'enseignement supérieur (FPSES) ou de la Centrale des syndicats du Québec (CSQ).

3.0 Types of Union Interventions

3.1 The Union Assumes Responsibility for a Case

The Union shall assume responsibility for representing its members, before the appropriate Court, in legal matters involving rights related to:

- the collective agreement;
- the *Labour Code*;
- the *Act Respecting Work Accidents and Occupational Illnesses*.

Even if it is not a party to the litigations, the Union shall assume the defence of its members for the various types of recourse mentioned above.

3.2 Information Only

The Union shall undertake to provide information on rights as well as available avenues of recourse for employees, but assumes no responsibility to represent its members in any recourse exercised before the following judicial bodies:

- the *Labour Standards Act*;
- the *Act Respecting Health and Safety in the Workplace*;
- the *Act Respecting Pension Plans*;
- the CSQ – SSQ group insurance contract.

3.3 No Union Intervention

The Union shall assume no legal responsibility with respect to any recourse a member may exercise before the following judicial bodies:

- the *Employment Insurance Act*;
- the *Charter of Human Rights and Freedom and of Youth*;
- the *Charter of the French Language*.

In these cases, the Union shall inform the members concerned of what avenues of recourse are available.

4.0 Obligations beyond the Scope of the Collective Agreement

4.1 Member Being Pursued in a Civil Court

A member could be pursued for damages by a student, a member of another certified bargaining unit, by a colleague or by any other person. The member's civil responsibility could be at issue because of actions committed:

- A) in the performance of his duties;

- B) outside of the performance of his duties;
- C) of a personal nature.

A) Actions Committed in the Performance of One's Duties

Such cases are covered by clauses 7-11.01 of the collective agreement, which reads as follows:

"7-11.01 The College shall agree to stand up for any employee whose civil responsibility may be at issue because of actions committed in or at times of the performance of his duties and, except for an offence of a very serious nature, to lay no claim against him in such a case."

This clause requires the Employer to defend the employee and lay no claim against him or her unless he or she is found to be responsible for gross negligence or serious fault by a civil court.

When the Union is made aware that the civil responsibility of a member could be implicated, it must ensure that the Employer is correctly fulfilling his obligations.

If, after examining the case, the Union believes that the member's civil responsibility is at issue because of actions committed in the performance of his or her duties and the Employer is unwilling to stand up for the member, the Union will defend the member and take all appropriate legal measures to ensure that the pertinent clause of the collective agreement is respected.

B) Actions Committed Outside the Performance of One's Duties

In these cases, the Union acknowledges no responsibility or obligations when private actions result in a member being pursued for damages.

C) Actions of Personal Nature between Members

Actions of a personal nature between union members are not covered by this bylaw. The Union acknowledges no responsibility.

4.2 Member Being Pursued for Civil Actions

The Union assumes no responsibility for this type of legal pursuit.

4.3 Member Being Pursued for Criminal Actions

The Union assumes no responsibility for this type of legal pursuit.

5.0 Control over Cases

When the Union acts above and beyond its obligations and assists a member in the framework of the present bylaw, it is to be expected that it can insist:

- on being involved in the case from the very beginning;
- on having a close collaboration with the employee implicated;
- on exercising control over the choice of the most relevant resources;
- on having the power to determine how to proceed with the case.

If any of the four above-mentioned points are not respected, the Union may decide to withdraw from the case. Simply put, the Union must maintain control of the case from beginning to end.

It is the Executive Committee of the Union which shall make all decisions related to the handling of cases covered by this bylaw.

6.0 Financial Support

The Union will not provide personal loans to its members.

7.0 Date When this Bylaw Becomes Effective

This bylaw was adopted by the General Assembly on June 10, 2011.

Appendix

Section 69 of the Quebec Labour Code

A certified association may exercise all the recourses which the collective agreement grants to each employee whom it represents without being required to prove that the interested party has assigned his claim.

Section 47.2 of the Quebec Labour Code

A certified association shall not act in bad faith or in an arbitrary or discriminatory manner or show serious negligence in respect of employees comprised in a bargaining unit represented by it, whether or not they are members.

Section 47.3 of the Quebec Labour Code

If an employee who has been dismissed or the subject of a disciplinary sanction or who believes he has been the victim of psychological harassment under sections 81.18 to 81.20 of the Act respecting labour standards (chapter N-1.1), believes that, in that respect, the certified association has contravened section 47.2, the employee must, if he wishes to rely on that section, file, within six months, a complaint with and apply in writing to the Commission for an order directing that the employee's claim be referred to arbitration.

Section 100 of the Quebec Labour Code

Every grievance shall be submitted to arbitration in the manner provided in the collective agreement if it so provides...

Section 2138 of the Civil Code

The mandatary is bound to fulfill the mandate he has accepted, and he shall act with prudence and diligence in performing it.

He shall also act honestly and faithfully in the best interests of the mandator and avoid placing himself in a position that puts his own interest in conflict with that of his mandator.

For a decision for disaffiliation to be valid, a referendum must receive support of the majority of members.