

► Preamble

Usually, teachers first become aware that they have a potential legal problem when parents complain about an incident involving their children. In the not too distant past, a simple explanation would end the incident. That is not necessarily so today! Too often these complaints end up in the hands of the police and teachers find themselves the subjects of investigations. In some cases, teachers are accused of slapping, punching, or in other ways physically abusing students. In other cases, teachers are accused of touching students or being physically involved with students for purposes of sexual gratification.

In recent years, a number of teachers have been sued for damages, along with school boards and the Minister, for alleged negligence related to injuries to students. Other teachers have been investigated by the Human Rights Commission when it has been alleged that they discriminated against students.

These are all career-threatening situations. What should teachers do when they first realize that they are under the scrutiny of the law?

Regardless of the legal problem, you should inform immediately those educational authorities and support groups that have to know, namely:

- 1) the Principal
- 2) the Superintendent
- 3) the NBTA Executive Director — 452-1721

If an incident with a student takes place and the police want to question you, it is imperative that you take the following action:

- if the incident is merely a fabrication and there is no truth to the allegation, give that information to the police immediately; there is nothing to be gained by being evasive.
- if there was an incident, it does not necessarily follow that you are guilty of an offence. However, before you answer questions or give a statement to the police, you are well advised to seek legal counsel — that is most easily accomplished by informing District authorities and contacting NBTA.

► Common Assault

Most often the complaint centers on an accusation that the teacher struck, slapped or otherwise physically abused a student. On a few occasions each year, the parents push the complaint to the point where the police investigate and sometimes the crown prosecutor decides to lay an assault charge.

The best advice, although admittedly simplistic, is that teachers should not “lay hands” on a student except in emergency situations. That is the only certain way to avoid possible assault charges. On the other hand, if an incident with a student takes place and the police want to talk to you, it is imperative that you immediately inform the Principal, Superintendent, and the NBTA. In many cases over the years, assault charges have been avoided by early intervention during the investigative stage.

► Allegations of Sexual Involvement with Students

The New Brunswick Teachers’ Association has never and will never condone the sexual abuse of children. Parents, and teachers in particular, operate in a trust relationship with students — to abuse that is reprehensible. In the case of teachers, such behaviour is unethical, in addition to being an offence under the Criminal Code of Canada.

On the other hand, teachers are in an unusually vulnerable occupation and there are examples of exaggerated and sometimes fabricated allegations of improper conduct. Like other citizens, teachers have a right to presumed innocence until the contrary is proven.

Should you find yourself being investigated by police in relation to allegations of sexual misconduct with students, we advise that you follow the procedures outlined for common assault.

Teachers may not receive help from their School Districts, the Department of Education, or the Department of Justice should they be charged under the Criminal Code of Canada. NBTA, on the other hand, may provide legal assistance at the discretion of the Executive Committee, providing that the alleged offence is within the scope of employment of teachers and the teacher has acted in good faith.

► Civil Suits

Rarely do teachers find themselves in court as a respondent in a civil action where that action is directly related to their employment as teachers. That is not to say that there are few instances of litigation involving teachers, but most of these cases have been settled out of court by the employers. In such actions, the suits are usually against the teacher, School District, and the Minister. Since the employer is vicariously liable, should the teacher be found negligent, (where a student injury has taken place, as one example) the Department of Justice usually provides legal counsel for the teacher and settles any claims (in or out of court). The exact policy of the New Brunswick government is as follows:

Personal Liability Protection Policy Statement

The Employer will defend, negotiate or settle claims in which an employee’s negligence is alleged and also will pay damages when necessary, provided the employer is satisfied that the employee has acted in good faith and provided that the employee has acted within the scope of his employment. Whenever the Employer does defend an employee pursuant to the aforementioned, the Employer shall have the general conduct of the action.

This policy is further conditional upon:

- a) the co-operation of the employee with the Employer in all matters, except in a pecuniary way, relating to the defence of the claim or in the prosecution of any appeal, including, when requested by the Employer, attending all meetings, hearings and trials, assisting in effecting any settlement, securing and giving evidence;
- b) the employee not assuming any obligation, admitting any liability or taking any steps to compromise the defence of the claim without the prior written approval of the Employer; and
- c) the claim not being covered by any policy of insurance effected directly or indirectly for the benefit of the employee.

As in other legal cases, it is imperative that the Principal, Superintendent, and the NBTA be informed immediately of the impending lawsuit.

► Discretionary Authority of NBTA Executive Committee

The New Brunswick Teachers’ Association has a “duty to represent” its members providing that members are acting “within scope of employment” and in “good faith”. The Executive Committee of NBTA must have sufficient discretionary authority to exercise both its responsibility to the profession and its duty to individual members.

► Appeals to a Higher Court

The decision of the Executive Committee to provide legal assistance to a teacher does not automatically approve legal assistance for purposes of appealing a conviction. The teacher may apply to the Executive Committee for legal assistance to pursue an appeal.



► When Teachers have been Assaulted

The Executive Director is authorized to provide legal consultation to a teacher who has been assaulted by a student, parent or non-student, providing that the assault is in relation to his/her duties as a teacher. The purpose of the consultation must be to explore the advisability of laying information with the police and to reassure teachers that their legal interests will be protected.

Policy Statement

Index No: 712

Subject: **Legal Assistance to Teachers - Criminal Matters**

Date of Adoption: April 8-9, 1987

Reaffirmed: October, 2001

Authority: Board of Directors

► Investigations

The Executive Director is authorized to seek legal advice on behalf of a teacher involved in a preliminary investigation, which, in the opinion of the Executive Director, could result in a charge being laid. The Executive Director is further authorized to arrange a meeting with a lawyer if that teacher has been asked to submit, to the police, a statement about an incident which could affect a criminal case.

Should more than a single legal consultation be required, the Executive Director will bring the matter to the attention of the Executive Committee at the earliest opportunity. At the discretion of the Executive Committee, extended legal assistance may be provided to the teacher during the investigative stage.

► Criminal Charges

Any teacher who is charged under the Criminal Code of Canada and providing that the charge is in connection with his/her professional activities shall be entitled to legal assistance provided by the Association, subject only to the approval of the Executive Committee.

Where a teacher is charged with an offence related to drug use/trafficking with students or an offence related to the sexual abuse of children, legal assistance may be provided, at the discretion of the Executive Committee. Should the teacher be found guilty of such an offence, any legal expenses authorized by NBTA may be rescinded.

In addition, the teacher may face potential charges under the Code of Professional Conduct and Standards.

► Selection of a Lawyer

Should initial legal consultation be authorized by the Executive Committee, the selection of a lawyer is delegated to the Executive Director. The Executive Director will endeavour to reach agreement with the teacher but no teacher will have an absolute right to select his/her own lawyer. The teacher has the right to appeal the decision of the Executive Director to the Executive Committee.

Policy Statement

Index No: 713

Subject: **Legal Assistance to Teachers - Civil Action**

Date of Adoption: April 8-9, 1987

Reaffirmed: October, 2001

Authority: Board of Directors

► Negligence Suits Against Teachers

If a teacher has been informed that civil action, providing that it is within scope of employment, has commenced against him/her, the Principal, Superintendent and the NBTA Executive Director should be informed immediately. If the liability protection policy of the provincial government comes into play, the teacher may apply to the Executive Committee for legal assistance. Since the Department of Justice, in most instances, will provide legal counsel, the bulk of the legal expenses will be borne by the government. The Executive

Committee may authorize separate legal assistance for the teacher *only* if additional parties are co-respondents in the suit and the teacher is concerned that his/her interests may not be paramount in the case.

Policy Statement

Index No: 714

Subject: **Legal Assistance to Teachers - Harassment**

Date of Adoption: April 8-9, 1987

Reaffirmed: October, 2001

Authority: Board of Directors

Where there is a concerted effort in a community to discredit the professional reputation of a teacher, or where there is evidence of malicious intent, the teacher so affected may apply for legal assistance designed to compel the offending party or parties to desist. Such assistance may be authorized at the discretion of the Executive Committee.

Policy Statement

Index No: 715

Subject: **Legal Assistance to Teachers - Human Rights Commission**

Date of Adoption: April 8-9, 1987

Reaffirmed: October, 2001

Authority: Board of Directors

When a teacher learns that he/she is being investigated, providing that it is within scope of employment, by the Human Rights Commission in relation to allegations of discrimination, or other such allegations, the teacher may apply for legal assistance. Such assistance may be authorized at the discretion of the Executive Committee.



Legal Assistance FOR TEACHERS



NBTA Policies