



PREFACE

- 28.1 This policy reflects the organization position that the Staff of the Non-Public Funds, Canadian Forces (NPF), its employees and its volunteers, as well as the interests of the Crown should be protected from potential or actual liability arising from the acts or omissions of NPF employees or volunteers occurring while they were acting within the scope of their duties or in the course of their employment, in good faith and not against the interests of the Crown and/or the organization.

APPLICATION

- 28.2 This policy applies to all NPF employees and volunteers.

APPROVAL AUTHORITY

Associate Director General (Assoc DG)

OPI

Director Labour Relations and Compensation (DLRC)

ENQUIRIES

- 28.3 All inquiries on the interpretation and application of this policy are to be directed to the HRM or the RMHR and when required, forwarded to the Office of Primary Interest (OPI).

DEFINITIONS

- 28.4 The following vocabulary is used throughout this policy:

Employee (Employé): an individual employed (or formerly employed) by the Staff of Non-Public Funds, Canadian Forces (NPF).

Indemnification (Indemnisation): payment or reimbursement of amounts paid as a result of a judgment or a cost award against an NPF employee or volunteer or as a result of a monetary settlement of a claim or an action made or brought against an NPF employee or volunteer that is pre-approved by the approval authority based on the Department of Justice Canada's recommendation.

Legal Assistance (Services juridiques): means the provision of legal representation and advice by the Department of Justice Canada or another approved outside legal counsel.

Volunteer (Bénévole): an individual who provides services directly to or on behalf of the organization, without compensation or any other thing of value in lieu of compensation, other than reimbursement for expenses actually incurred.

- 28.5 The objectives of this policy are to:
- a. protect NPF employees and volunteers from personal financial losses or expenses incurred while they were acting within the scope of their duties or in the course of their employment, in good faith and not against the interests of the Crown and/or the organization;
 - b. protect the Crown and/or the organization's interests and its potential or actual liability arising from the acts or omissions of its employees and volunteers.

GENERAL POLICY

- 28.6 Employees and volunteers may be eligible to receive legal assistance under certain circumstances which include, but are not limited to the following:
- a. they are named or likely to be named as defendant to a legal claim or action;
 - b. they may be subject to a penalty, including an administrative penalty;
 - c. they are threatened with a legal action or made a party to an action, either as a defendant or otherwise;
 - d. they are required to be a witness at a trial as a result of a work related duty;
 - e. they are required to appear before a judicial inquiry or other inquests; or
 - f. they are interviewed by the police or other authorities in circumstances that may lead to charges against the organization.

ELIGIBILITY

- 28.7 NPF employees and volunteers who incur cost and/or the need for legal representation due to their own actions or omissions will be eligible for indemnification and/or legal representation if those actions or omissions meet the following criteria:
- a. the employee's and/or volunteer's actions or omissions were within the scope of their duties and authority;
 - b. the employee and/or volunteer acted in good faith; and
 - c. the employee and/or volunteer did not act against the interests of the Crown and/ or the organization.
- 28.8 In exceptional circumstances and in circumstances other than those described above in para 28.7, a request for indemnification or legal assistance may be approved if the Assoc DG, on advice and recommendations from the Labour Relations Office and the Department of Justice, determines that it would be in the organization's best interest to approve the request.
- 28.9 The following requests are not eligible for legal assistance or indemnification:
- a. matters arising while the requestor was engaged under a contract for services;
 - b. an action or claim initiated by an employee unless it forms part of a legitimate defence to a legal claim, action or charge for which legal assistance was approved under this policy; and
 - c. an internal investigation or an internal administrative recourse mechanism including grievances or disciplinary proceedings.

APPLICATION PROCESS

- 28.10 In order to be eligible for legal assistance and/or indemnification, NPF employees and/ or volunteers must inform their immediate 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 or the organization.
- 28.11 The Chief Financial Officer (CFO) is to be notified immediately of potential cases to ascertain coverage under the Consolidated Insurance Program (CIP).
- 28.12 The notification must include details identifying:
- a. relevant and related events;
 - b. a description of the incident/event;
 - c. a list of persons who are directly involved and/or potential witnesses;
 - d. details regarding charges (or accusations) against the employee and/or volunteer; and
 - e. any actions taken to correct the situation.

LEGAL ASSISTANCE

- 28.13 Upon request by the Employer, the employee and/or volunteer must authorize the Department of Justice, or such other person as may be designated by them, to defend him/ her in the context of a claim or action by using the required authorization form available at Annex A.
- 28.14 When requesting to be represented by private counsel, the employee and/or volunteer must state the reasons for such a request and provide the name and proposed fee schedule of the preferred counsel.
- 28.15 The employee and/or volunteer must refrain from retaining private counsel until the Division Head has recommended the request and then had it approved by the Assoc DG. An employee and/or volunteer who instructs counsel to begin work without the requisite approval may not receive approval for legal assistance or indemnification for the resulting expenses.

APPROVAL PROCESS

- 28.16 Division Heads will ensure that timely responses are provided to employees and/or volunteer who are requesting legal assistance or indemnification under this policy. Division Heads will also ensure that claims or threats of actions are acted upon quickly and that dispute resolution mechanisms are considered, as appropriate.
- 28.17 The Division Head shall consult with the Labour Relations Office as to whether the request meets the eligibility requirements of this policy for indemnification and/or legal assistance. In the event that the employee and/or volunteer's Division Head and the Labour Relations Office cannot agree on the eligibility of the employee and/or volunteer, the Assoc DG shall decide, on advice from the Labour Relations Office and the Department of Justice.
- 28.18 The Division Head may seek the advice of any officials who may have knowledge of the facts prior to making this decision. The decision should be made before legal counsel engages with the employee and/or volunteer to avoid a potential conflict situation, which would be detrimental to the interests of the employee and/or the organization.
- 28.19 Approval for legal assistance will normally be granted where an employee and/or volunteer is requested or compelled to appear in connection with a parliamentary proceeding, a commission of inquiry, an inquest or other similar proceedings providing the following criteria are met:
- a. that it is in the organization's best interest to have the employee and/or volunteer appear; and

- b. that the matter concerns events where the employee and/or volunteer was acting within the scope of his or her duties, or in the course of employment.
- 28.20 In cases where there is a conflict of interest between the organization and the employee and/or volunteer, decisions whether to authorize payments for private legal assistance will be made by the Assoc DG on advice and recommendations from the Department of Justice, with respect to the appropriateness of engaging such private counsel and only after the employee and/or volunteer's legal matter has been determined, either by the appropriate legal body or privately. Such consultation must include the name of the proposed private counsel as well as the private counsel's proposed fee schedule. If it is determined, upon advice and recommendations from the Department of Justice that this source of assistance is appropriate, then the Division Head may provide written authorization to the employee and/or volunteer including the selection of private counsel, the limits of NPF's commitment, (in terms of both total expenditures and the approved fee schedules), and of the requirement for the Department of Justice to review accounts.
- 28.21 For each subsequent stage of the judicial process, including appeals, or for any significant change in the circumstances related to the employee and/or volunteer's legal matter, a new request for payment of legal assistance and indemnification is to be made and assessed in accordance with the considerations set out in this policy.
- 28.22 A prior decision denying a request for legal assistance or indemnification on the grounds that the matter did not meet the eligibility criteria may be reconsidered where a court or tribunal has concluded its proceedings and new evidence or information is able to demonstrate that the matter did meet the eligibility criteria.
- 28.23 Retroactive approval may be granted where the employee and/or volunteer has made the request as soon as possible after the event where:
- a. it was practically unreasonable (or reasonably impractical) for the employee and/or volunteer to obtain approval from their Division Head in advance; and
 - b. the need for legal services was immediately necessary to protect the employee and/or volunteer's interest.

PROVISION OF LEGAL ASSISTANCE

- 28.24 If legal assistance is to be provided, the Department of Justice will normally provide such assistance. The Department of Justice may assign outside counsel.
- 28.25 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.
- 28.26 Employees and/or volunteers are responsible for cooperating with assigned legal counsel.
- 28.27 In cases where two or more employees or volunteers are named as defendants to the same claim or action and in the absence of a conflict of interest or representation, the same counsel is to conduct the employees and/or volunteers' defence.

INDEMNIFICATION

- 28.28 Indemnification may be provided when the employee and/or volunteer meets the eligibility criteria.
- 28.29 The organization reserves the right to recover any indemnification or other costs by way of subrogation or other avenues.
- 28.30 Where the organization is liable as a result of incidents involving employees and/or volunteers, no claims to recover such liability are to be made by the organization against the employees and/or volunteers provided that the criteria in para 28.7 were met.

28.31 Any decision to indemnify an employee under this policy does not preclude the Employer from taking disciplinary action against the employee, as appropriate.

TERMINATION AND RECOVERY OF LEGAL ASSISTANCE

28.32 Legal assistance will be terminated if at any time during or after the proceedings the Employer determines that the employee and/or volunteer did not meet the eligibility criteria or did not otherwise continue to qualify for legal assistance in consideration of the employee's and/or volunteer's exceptional circumstances.

28.33 If legal assistance was approved for an employee and/or volunteer who met the criteria, but it was subsequently established that the employee and/or volunteer did not act in good faith, or it was determined that the employee and/or volunteer did not act within the scope of their duties or in the course of their employment, or did not act in the interests of the organization or of the Crown, the Employer may initiate a recovery claim or action for an amount equal to the legal assistance provided or the indemnification paid, and this amount shall constitute a debt owing to the Employer.

LEAVE

28.34 When an employee is required to attend a parliamentary proceeding, commission or inquiry, an inquest or other similar proceedings, he or she shall use Jury Duty and/or Court Leave to secure their attendance.

AUTHORITIES

28.35 The levels of accountability are as follows:

- a. The CEO has delegated the authority to the Assoc DG to approve payments for indemnification or legal assistance;
- b. CHRO has the delegated authority to provide advice and guidance to the Divisions and Executives on the interpretation of the policy;
- c. The Labour Relations Office is responsible for:
 - i. providing advice to Division Heads, the CEO or the Assoc. DG in respect of requests for legal assistance and/or indemnification;
 - ii. consulting with the Department of Justice as required;
- d. The Department of Justice is responsible for providing advice to the organization and in providing legal assistance as appropriate under this policy;
- e. The Chief Financial Officer is responsible for making the payment of litigation services;
- f. The Division Heads are responsible for:
 - i. ensuring that employee and/or volunteer requests for consideration under this policy are reviewed promptly and addressed as provided for in this policy;
 - ii. ensuring, in cases where two or more employees and/or volunteers are named as defendants to the same claim or action and in the absence of a conflict of interest or representation, that the same counsel is to conduct the employees and/or volunteers' defence;
 - iii. to the greatest extent possible and consistent with counsel's obligations to protect the interest of the organization, holding all communications with the employee and/or volunteer in confidence, throughout any claim or proceeding for which the Attorney General of Canada has the authority under this policy to select and instruct counsel. Any information that the employee and/or volunteer disclosed in confidence to the organization will not be used in any disciplinary or civil action against the employee and/or volunteer;

- g. Managers are responsible for ensuring that employees and/or volunteers are informed of this policy and its related processes;
- h. Employees and volunteers are responsible for:
 - i. completing the Request for Legal Assistance/Legal indemnification Form;
 - ii. informing their managers/supervisors of events or incidents arising in the exercise of their duties and during the course of their employment that may give rise to a claim against them, their employees or the organization and which may trigger a request for legal assistance or indemnification, and
 - iii. cooperating with assigned legal counsel.

REFERENCES

28.36 The following legislation and regulations are relevant to the content of this policy:

- *Financial Administration Act*
- *Crown Liability and Proceedings Act*
- *Public Service Labour Relations Act*

28.37 The following policies should be read in conjunction with this policy:

- Conflict of Interest Policy
- Values and Ethics Policy
- NPF HRPOL Leave Policy

ANNEX

28.38 The attachment listed below is part of the present policy:

- Annex A – Request for Legal Assistance/Legal Indemnification form



**HRPOL 28 – ANNEX A – REQUEST FOR LEGAL ASSISTANCE/
LEGAL INDEMNIFICATION FORM**

I, **(Employee name/Volunteer name)**, of the **(city/town/township)**, of **(name of city)** in the **(province/territory)** of **(name of province/territory)** hereby authorize the Department of Justice, or such other person as may be designated by them, or a delegate thereof, to defend me in,

(describe the nature of the action and the name of the court, tribunal, inquiry or other)

and to take such actions and conduct such proceedings as the Department of Justice may consider necessary to defend such action on my behalf and to protect the interests of the Staff of the Non-Public Funds, Canadian Forces (NPF) and/or the Crown.

I have been provided with a copy of the NPF Policy on Legal Assistance and Indemnification. I have read and understood the policy. If at any time during or after the proceedings it becomes apparent that I did not act in accordance with the eligibility criteria outlined in the policy, the approval authority may terminate legal assistance and may initiate recovery action for an amount equal to the legal assistance provided or the indemnification paid, which shall constitute a debt owing to the Crown.

Should any judgment or decision result in an award of costs to me, I hereby authorize and direct the payment of any such amounts directly to NPF.

I understand that any decision to indemnify me under this policy does not preclude the Employer from taking disciplinary action against me if appropriate.

DATED at **(location)**, this **(date)** day of **(month)**, **(year)**.

Employee's or Volunteer's Signature _____

To be added to the above if there are multiple defendants

I expressly waive solicitor-client privilege in favour of NPF and the following co-defendant(s) who is/are also represented by the Department of Justice, **(insert name(s))**, and I agree to a mutual sharing of material information with NPF (and between these co-defendants). I understand, however, that counsel representing me will treat all communications between us in confidence to the extent possible consistent with counsel's obligation to protect the interests of the organization. If information that I provided in confidence is disclosed in the interests of the organization, it is subject to the condition that it shall not be used by the organization in any disciplinary or civil action against me.

I have been informed, and I understand, that I have the right to terminate this retainer at any time and to retain and instruct private counsel at my own expense. I have further been informed, and I understand, that should a conflict arise between my interests and those of the organization (or any of the co-defendant(s) named above) at any time during this litigation, it will be necessary for me to retain private counsel. In that event, I am aware that I may apply for approval to retain private counsel at public expense under the Staff of the Non-Public Funds, Canadian Forces (NPF) *Policy on Legal Assistance and Indemnification*.