



LEGAL SNAPSHOT

By **Victoria Girling**, Vice-president
STERLON Underwriting Managers Ltd

As the CPCO legal benefits plan administrator, STERLON tries to provide some interesting updates to members. Often, when members seek assistance from the Telephone Legal Advisory Service at 1-888-STERLON, they believe that an issue has to be legal. This is not the case. Many of the calls that are made deal with issues that could potentially become legal if not handled correctly. Early advice is crucial. All calls are confidential. Do not hesitate to make the call, because it can often alert you to matters that you may not have considered.

Ontario College of Teachers

Until recently, whenever a complaint was filed against a member, the College requested a written response to the allegations as part of the investigation process. Based on this response and the investigation by the College, the investigation committee of the College made a determination whether or not the matter needed to be referred to the discipline committee or the fitness to practice committee. This process did not involve the member in any attendance before the College. Assistance in drafting the response was and is provided under the legal benefits plan.

The College has now developed a dispute resolution program to promote the resolution of complaints it deems suitable in the public interest, and allows the complainant and the member to play a more active role in determining the outcome. A College representative also participates in the process. This is a voluntary process: either party may choose to withdraw at any time or the College representative may stop the process if it is proceeding in a manner that is inconsistent with the public interest. The investigation and hearing process is suspended during this period, but if the parties do not reach agreement or either party withdraws from the process, the College deals with the complaint as though the dispute resolution has not occurred. If the matters are resolved, the complainant and member sign a memorandum of agreement (MOA) outlining the terms to which they have agreed. A committee of the College must ratify the MOA and then its terms become final and binding. The committee could also request changes to the MOA to ensure that the public interest is protected.

This entire process is confidential and participation occurs without prejudice to the parties. No one who participates in dispute resolution may repeat or use any of the information they obtain during the process. If the process is unsuccessful, neither the College representative nor the committee that rejected the MOA will take part in the subsequent consideration of the complaint.

Recent decision of the Ontario College of Teachers

We have been encouraged to see the investigation committee in a recent decision state that “allegations, even if proven true, do not rise to professional misconduct, incompetence or incapacity.” This makes it clear that issues are being raised by complainants that do not fall within the mandate of the College and are better dealt with at the board level. This is useful information that other members may be able to rely upon if they face similar accusations.

Human Rights Tribunal

The tribunal gave a recent interim decision that stated that it would not deal with a matter brought before it if the same matter is already being dealt with as an ongoing grievance under a collective agreement. The Supreme Court of Canada has affirmed that grievance arbitrators have the power and responsibility to implement and enforce the substantive rights and obligations of human rights. The Supreme Court thus confirmed that human rights tribunals are not the only decision-makers that can decide human rights claims. In such a scenario the tribunal’s normal approach is to defer to the other proceeding, pending completion of the grievance proceeding.

Workplace Harassment

Members are encouraged to familiarize themselves with their own board policies relating to this issue. Some policies restrict actions to those that are consistent with the Human Rights Code, while others have a broader application and deal with other forms of conduct. Members in some boards are facing harassment charges based on the way they interact with an employee where they may show displeasure with that employee by shrugging, raising an eyebrow, turning away, failing to chat or glaring, to name a few responses.

Transfers

Members are cautioned to consider all the ramifications that arise if they are transferred between the elementary and secondary panels or seconded. Members are encouraged to contact 1-888-STERLON immediately to obtain legal advice on whether the member can challenge the transfer or ensure they receive their full contractual entitlement and/or protection.

This article was prepared by STERLON Underwriting Managers Ltd., the administrators of CPCO’s legal benefits plan, as a service to CPCO members.