



McMaster University Faculty Association

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Policy for MUFA Members Legal Support

A. Purpose

Consistent with its purpose of representing and protecting the interests of all faculty members and senior academic librarians of McMaster University, the McMaster University Faculty Association will, in specific circumstances, provide members with financial support for legal representation in internal University processes. This document sets out the main procedures and conditions for providing financial support for legal services for MUFA members.

B. Eligibility Criteria

In determining whether to provide or continue to provide financial support for legal representation of MUFA members, MUFA will consider:

- i. Whether the case involves principles that affect all or a significant proportion of faculty and/or senior academic librarians at McMaster, including whether the case is likely to establish an important precedent;
- ii. Whether the case involves the violation or abridgment of core rights, including academic freedom, discrimination, and human rights protected under the Ontario *Human Rights Code*;
- iii. Whether the case involves serious matters affecting a member's employment interests, including dismissal;
- iv. Whether the case involves a significantly flawed application of University policy;
- v. the merits of the case and the likelihood of success;
- vi. the financial cost to MUFA and its members;
- vii. the interests of the members of MUFA as a whole; and
- viii. any other relevant factors.

In making decisions with respect to financial support for legal representation, MUFA will not act in a manner that is arbitrary, discriminatory or in bad faith. At the same time, however, MUFA has limited financial resources and reserves the right to consider and weigh all of the factors above, including cost implications and the interests of the membership as a whole, in deciding whether or not to provide members with financial support for legal representation.

MUFA reserves the right to withdraw financial support should it be determined that it is in the best interest of the membership to do so.

C. Procedures

1. A MUFA member seeking financial support for legal representation will make an application to MUFA's Special Enquiries and Grievances (SEG) Committee by submitting a completed *MUFA Legal Intake Form*. A template for the Intake Form will be provided to the member.
2. Using the criteria set out above, the SEG Committee will make a recommendation as to whether or not the member's case merits financial support, based on the criteria established in this *Policy*. This recommendation, together with relevant supporting material, will be brought to the Executive for a vote. The recommendation should include a summary of the case, the grounds on which the recommendation was made (with respect to the criteria in the Policy) and, where possible, an estimate of the cost. Every effort will be made to maintain the anonymity of the member, as well as the confidentiality of the case.
3. A member will be provided with financial support for legal representation in their case if the member's request is approved by a majority of the MUFA Executive. The reasons for the decision of the Executive shall be recorded.
4. The SEG Committee will report the decision of the Executive back to the member. If funding is not approved, the SEG Committee will give the reasons the Executive refused to provide financial support.

D. Appeal

1. A unanimous decision by the MUFA Executive to refuse financial support is not subject to appeal. If a majority of the Executive votes not to provide financial assistance to a member but the decision is not unanimous, a member may appeal the decision within 14 calendar days. In such case the appeal will be heard by a single faculty member who will make a final and binding decision. The decision of the faculty member on appeal is not subject to further appeal. In no case, however, will MUFA be required to provide financial support to a member where such a decision would require MUFA to exceed its budget for financial support for legal representation.
2. The MUFA Executive will appoint a rotating list of three faculty members to hear appeals of decisions regarding financial support as set out in paragraph D.1. Faculty members appointed to this role will be individuals who have held the position of past-president or another role on the MUFA Executive and who would have some knowledge of MUFA's budgeting and grievance processes. Faculty members appointed to this role will serve two-year terms.

E. Conditions of Representation

1. Only MUFA members are eligible for financial support for legal representation. MUFA will only provide financial support for legal representation in internal McMaster University processes.
2. Members are expected to make full disclosure of information to MUFA and to cooperate reasonably in processing the matter.
3. If MUFA decides to provide financial support for legal representation to a member, it reserves the right to withdraw financial support for any reasons set out in this *Policy*, or for reasons that might include: if it determines that it is no longer in the interests of MUFA to continue, if the member is unwilling to follow legal advice from the law firm retained by MUFA as to the appropriate conduct and/or resolution of the case, if the member does not fully disclose all relevant information, for internal MUFA budgetary reasons, or for any other cogent and compelling reason.
4. Where MUFA provides financial support for a member's legal representation and the matter is resolved by way of a monetary settlement or award, the member agrees to reimburse MUFA for up to 30% of the award or MUFA's share of the member's legal fees, whichever is less. MUFA retains the right to waive this clause, including where the monetary settlement or award is for lost income. In appropriate circumstances, MUFA may seek reimbursement for legal costs from the University Administration in the course of a dispute.
5. MUFA has an obligation to its staff and officers to provide a work environment free of harassment. Members are under an obligation to communicate with officers and staff of MUFA in a respectful and courteous manner. MUFA reserves the right to terminate its financial support of the member if there is non-compliance with this obligation.
6. MUFA collects its members' personal information in order to provide its members with appropriate representation. Personal information shall be collected and handled in accordance with MUFA's *Confidentiality Policy*, which is available upon request.
7. Members shall be advised that discussion among MUFA staff, external counsel, the SEG Committee, and the MUFA Executive may occur in compliance with the terms of the *Policy* and MUFA's *Confidentiality Policy*. Cases may also be discussed by the SEG Committee and the Executive Committee in a manner which protects the confidentiality and, where possible, anonymity of the member.

F. Representation by Legal Counsel

1. MUFA may, at its sole discretion, designate a contact person for a member seeking financial support for legal representation. The contact person may be a grievance officer, a member of the SEG Committee or of the Executive, or the external legal counsel of MUFA's choice.
2. If MUFA agrees to provide financial assistance to support a member's legal representation, MUFA and the member will jointly retain legal counsel designated by MUFA. MUFA will have sole authority to determine the terms and scope of the retainer of external counsel.

3. A member receiving financial support for legal representation from MUFA understands and agrees that MUFA will consult with the member and will provide instructions to external legal counsel on behalf of both the member and MUFA. The member understands and agrees that no information that legal counsel receive in connection with the matter can be treated as confidential as between MUFA and the member. MUFA may provide instructions to the law firm aimed at cost saving or making legal arguments it considers to be in the collective interests of its members.
4. In the event that MUFA decides to provide financial support for legal representation of a member, the member agrees to direct all inquiries concerning their case through MUFA, except where MUFA has authorized direct contact with the law firm. The member further agrees to be cooperative and timely in responding to requests from MUFA or the law firm for instructions or communications or furnishing information or documents. All communications between the member and lawyers retained by MUFA shall be disclosed to MUFA. MUFA and the lawyers it retains may communicate about the member's case in the absence of the member. MUFA will disclose to the member any communications it has with the lawyers about the member's case.
5. If a member disagrees with, or does not follow MUFA's advice, MUFA reserves the right to discontinue its advice or representation and the member may carry the legal case forward on their own. For clarity, if a conflict develops between MUFA and the member that cannot be resolved, the lawyer cannot continue to act for the member and may have to withdraw from the matter completely.
6. If a member raises an objection to the person handling their dispute (whether the MUFA contact person or the external counsel designated by MUFA), the President shall determine the validity of the objection. If the member also raises a valid objection to the President's supervision of the dispute, then the Chair of the SEG shall determine the validity of the objection.
7. A member may discontinue their agreement that the law firm retained by MUFA will act on the member's behalf for any reason, in which case the law firm will immediately cease to act on the member's behalf. In such circumstances, and if the member chooses to retain new counsel to act on their behalf, this will be at the member's own expense and MUFA will bear no responsibility for any costs or expenses incurred by the member. MUFA will not be responsible for any fees or costs incurred by the member after MUFA has advised that it has withdrawn financial support.
8. A member has the option of obtaining different legal counsel at their own expense if they do not wish to enter into a joint retainer agreement with MUFA.
9. A member understands that that the law firm and lawyers retained pursuant to this Policy have an ongoing relationship with MUFA. The member is encouraged to seek independent legal advice in respect to the application of this Policy.

H. Financial Arrangements

MUFA will typically contribute 80% of the legal fees up to a total maximum amount determined on a case by case basis and the member agrees to assume the remainder of the costs. MUFA retains the discretion to determine percentage of legal fees and the maximum amount that will

be allocated to the financial support of any individual member's legal representation, recognizing that this amount may vary having regard to the seriousness of the legal matters in dispute, the potential consequences for the individual member and MUFA members as a whole, the complexity of the matter, and MUFA's budgetary considerations, among other factors.

MUFA will pay the law firm directly for the full amount of legal fees and disbursements and then obtain reimbursement directly from the member for their portion of these costs. When billing members for their portion of the legal fees and disbursements, MUFA will provide the member with a copy of the relevant law firm invoice(s). Members are responsible for making prompt payment directly to MUFA for their portion of the legal fees and disbursements, using a payment method to be agreed upon between MUFA and the member. The law firm's legal fees will be charged in accordance with the fees negotiated by MUFA in its retainer with the law firm.

Each year, MUFA will allocate a portion of its budget to support legal representation for MUFA members consistent with this Policy. If this legal budget is depleted before the expiry of MUFA's fiscal year, MUFA reserves the right to exercise the discretion to suspend its financial support for members' legal representation for financial reasons. Should there be a considerable increase in legal support costs, the MUFA Executive may consider increasing membership dues.

MUFA and the member will sign a joint retainer agreement which outlines the terms and conditions of representation, the cost-sharing formula, means of payment, and any required initial retainer to be paid by the member.

I. Review

This Policy will be reviewed on an annual basis to improve it and revise the financial and legal arrangements as necessary. As stated, should there be a considerable increase in legal support costs, the MUFA Executive may consider increasing members dues.

Approved by the MUFA Executive

June 23, 2021

Amended July 15, 2021

Amended September 22, 2021