



POLICY ON REPRESENTATION SERVICES

Effective date: October 30, 2023

This policy updates and replaces Protocol no. 1, Redress Representation and CAPE, dated April 22, 2014, and Protocol no. 2, Protocol on Member Representation, dated June 18, 2014.

1. Purpose, scope, and guiding principles

The objective of this policy is to provide direction on matters of representation of members, all while ensuring consistency in the delivery of representation services to members of the Canadian Association of Professional Employees (CAPE).

This policy describes the role CAPE and its officials will play in member representation. CAPE is committed to providing appropriate professional resources to assist its members in redress processes. The representation of members on labour relations and employment related issues is the sole responsibility of the Labour Relations Officers (LRO) which will be carried out based on the guiding principles found in this policy.

CAPE will represent and advocate for the rights and interests of its members within the confines of its obligations under the *Federal Public Sector Labour Relations Act (FPSLRA)*, and the *Parliamentary Employment and Staff Relations Act (PESRA)*. After reviewing the facts of the matter, relevant legislation and applicable case law, the collective interests of the membership and financial constraints, the Association will decide whether to offer representation and if so, the parameters of that representation.

2. Definitions

Advisor: The role a Labour Relations Officer can play on certain files, which is limited to providing advice, guidance, and informal assistance.

Arbitrary: A conduct that generally refers to instances in which a bargaining agent has not sufficiently investigated or handled a member's case or grievance

or has not adequately considered the member's interests. It can also refer to incidences of serious negligence.¹

- Bad faith: Actions made in bad faith are generally described as those motivated by personal feelings of hostility or ill will toward a member. The term may also include deceitful or dishonest conduct.²
- Discriminatory: Conduct refers to the biased and unfair treatment of a member based on illegal or prohibited grounds as outlined in the Canadian Human Rights Act.³
- Representative: The role a Labour Relations Officer can play on certain files, which entails representing a member and advocating on their behalf.

3. Authority and responsibility

- 3.1 The Director, Representation Services and Education (DRSE), has the responsibility of ensuring the representation of CAPE members in redress procedures. This policy is revised periodically as required and posted on CAPE's website.
- 3.2 The responsibility of representation in labour relations and employment related matters rests with CAPE Labour Relations Officers, who report to the DRSE.
- 3.3 Pursuant to section 187 of the *FPSLRA*, and the PESRA, CAPE has a general duty of fair representation to all members of its bargaining units. The Association must represent individual members transparently and in a manner that is not arbitrary, discriminatory or in bad faith, while also considering the collective interests of all the members in the bargaining unit for whom a collective agreement was negotiated.

4. Eligibility

- 4.1 CAPE representational services are provided to all CAPE members, subject to its Constitution and By-laws, policies, representation history, financial resources and to applicable case law.

¹ FPSLREB. *What do "Arbitrary", "Discriminatory", and "Bad faith" mean?* <https://shorturl.at/CGHO2>

² Ibid.

³ Ibid.

5. Representation and decision-making authority

- 5.1 Once a commitment is made to represent a member, CAPE will assume accountability and authority over the matter.
- 5.2 CAPE reserves the right to reassess its decision to provide representation on a matter at any time.
- 5.3 A member will need the approval and representation of CAPE in order to pursue an issue pertaining to the application and/or interpretation of a collective agreement.
- 5.4 Matters not related to the collective agreement can be pursued by a member without the approval or involvement of CAPE⁴.
- 5.5 If a member wishes to be represented by another party at their own cost, including legal counsel, on matters that do not pertain to the application and/or interpretation of a collective agreement, CAPE will accept the member's choice and will dissociate itself, and withdraw its representation services.
- 5.6 Once an LRO has appropriately assessed the individual merits of an issue brought to their attention, they will determine whether to provide representation services.
 - 5.6.1 After that decision has been made, the LRO will act as a representative in the following instances:
 - collective agreement grievances (including NJC grievances);
 - grievances involving disciplinary actions;
 - classification grievances;
 - staffing complaints;
 - worker's compensation appeals; and
 - other types of grievances, on a case-by-case basis.
 - 5.6.2 In other matters, including but not limited to the following, the LRO will act strictly as an advisor:
 - personal harassment complaints;
 - workplace violence complaints under the *Canada Labour Code*;
 - Public Service Commission or Deputy Head investigations on appointments;

⁴ See *FPSLRA* at subsection 208(4) and *PESRA* at subsection 62(2). See also *Cavanagh v. Canada Revenue Agency*, [2014 PSLRB 21](#).

- political activity investigations;
- reintegration into the workplace;
- administrative investigations; and
- other matters, on a case-by-case basis.

5.6.3 Should any of the matters mentioned under 5.6.2 involve human rights considerations, such as assistance with the duty of accommodate in the context of a reintegration to the workplace, the DRSE may assign an LRO to assist the member beyond an advisory role.

5.7 The LRO may consider initiating an informal process before filing a formal redress procedure and may do so again at any time during the formal process.

5.8 The LRO will carefully consider the information provided by the member, then advise the member and determine whether CAPE will proceed with the matter.

5.9 If the LRO determines that it is not in the best interest of the member or the membership in general to proceed with the matter, they will inform the member of any applicable options of self-representation and of seeking representation from another party (see 5.5), at their own cost. The LRO will provide their decision to the member in writing.

6. Reference to adjudication and decision-making authority

6.1 CAPE's ability to refer a grievance to adjudication is limited by legislation. Pursuant to section 209 of the *FPSLRA* and section 62 of the *Parliamentary Employment and Staff Relations Act (PESRA)*, a grievance pertaining to the interpretation and/or application of a provision of the collective agreement or an arbitral award, or a grievance related to a disciplinary action resulting in termination, demotion, suspension, or financial penalty, can be referred to adjudication.

6.2 Cases over which the Federal Public Sector Labour Relations and Employment Board does not have jurisdiction may be the subject of a judicial review application.

6.3 The DRSE will decide whether CAPE will refer a case to adjudication and/or to judicial review to the Federal Court, if applicable.

6.4 The LRO will advise the member of CAPE's decision, which will include any applicable representation options that do not involve CAPE.

- 6.4 The LRO will inform the proper administrative authority of its decision and copy the member on such correspondence. In cases not involving the application or interpretation of the collective agreement, the member will then be entirely responsible for their representation, including communicating with the proper authorities.
- 6.4 As per subsection 209(2) of the *FPSLRA* and subsection 62(2) the *PESRA*, in matters arising from the interpretation and/or application of the collective agreement, CAPE must not only approve the filing of the grievances and provide representation through the grievance process but must also approve the referral of such grievances to adjudication and provide representation at adjudication⁵.
- 6.5 If CAPE decides not to proceed with the grievance and/or decides not to refer the matter to adjudication, the grievance will be considered withdrawn, and the matter will be closed.

7. Matters involving two members

- 7.1 In matters involving a conflict between two members, CAPE will provide assistance to both members.
- 7.2 In such cases,
- 7.2.1 the first member to contact CAPE will be provided with the service of the LRO assigned to the department, agency or region; and
- 7.2.2 the second member to contact CAPE will be referred to the DRSE who will arrange outside representation at CAPE's expense and instruction, in accordance with this policy.

8. Matters not eligible for representation

- 8.1 Some areas where CAPE will not provide any representation or assistance include, but are not limited to the following:
- to a person who is not a member of a CAPE bargaining unit;

⁵ Also see *Cavanagh v. Canada Revenue Agency*, [2014 PSLRB 21](#), where the Public Sector Labour Relations Board (as it then was) confirmed that a bargaining agent's approval and agreement to represent the grievor must continue through the entire process for the grievance to be adjudicable.

- on a matter that occurred when the member was appointed to a position outside of a CAPE bargaining unit and/or in an excluded position;
- if CAPE is not provided with the relevant information and/or documentation in a timely manner;
- on matters that are not within the jurisdiction or authority of CAPE;
- during the informal discussion process related to a staffing complaint;
- if it was not involved in the exchange of information process, unless upon review, it is determined that the member has a case that can be reasonably argued before the FPSLRB; and
- to a member who is seeking a reclassification into a bargaining unit that is not represented by CAPE.

9. Exceptions to this Policy

- 9.1 The DRSE may choose to make exceptions to this policy, if those exceptions are in the best interests of CAPE and its membership.

10. Complaint Process

- 10.1 If a member feels that their matter has been dealt with in an arbitrary or discriminatory manner, or if bad faith was demonstrated during the process, they may, after having discussed the issue concerning their representation with the CAPE LRO assigned to their department, agency or region, submit a complaint.
- 10.1.1 The complaint must be made in writing to the Executive Director not later than fifteen (15) calendar days after the day the substantive action or circumstance giving rise to the complaint occurred.
- 10.1.2 The Executive Director will provide the member with a written decision, usually within fifteen (15) calendar days from the time the complaint is filed.
- 10.2 Where the decision of the Executive Director is not satisfactory to the member, the member may submit the complaint in writing to the President.
- 10.2.1 The complaint must be submitted in writing to the president not later than fifteen (15) calendar days after the day the decision of the Executive Director is received by the member.

10.2.2 The President will provide the member with a written decision usually within fifteen (15) calendar days from the time the President receives the complaint.

10.3 The decision of the President shall be final.

10.4 A member also has the option of pursuing any matter relating to their representation by CAPE using the recourse provided under the *FPSLRA* or the *PESRA*.

10.4.1 Any member who wishes to pursue this recourse is responsible for ensuring they meet the applicable time limits or deadlines set out in the *FPSLRA* or the *PESRA*.

10.4.2 Should a member participate in CAPE's Complaints Process, the time limits and deadlines provided for in the *FPSLRA* and the *PESRA* for a member to file a complaint under either Act are not suspended.

Member Complaint Form (Policy on Representation Services)

To be completed by the member

A	Surname	Given Name(s)	Telephone No.
	Collective agreement (EC, TR, LoP or OPBO.)	Personal E-mail Address	
B	Alleged grounds for Complaint (More than one option may be selected) See Schedule A for Definitions		
	<input type="checkbox"/> My matter was dealt with in an arbitrary manner. <input type="checkbox"/> My matter was dealt with in a discriminatory manner. Please state the ground(s): <input type="checkbox"/> Bad faith was demonstrated during the process.		
C	Please outline the chronology of events (use additional space if needed):		
	#	Date (MM/DD/YYYY)	Description of Event
	1.		
	2.		
	3.		
	4.		
	5.		
	6.		
	7.		
	8.		
9.			

D	Please explain your complaint below. Please include any supporting documentation. (Use extra pages if needed.)	
E	Corrective measure requested:	
	Date (MM/DD/YYYY)	Signature

SCHEDULE A

Definitions

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⁷ Ibid.

⁸ Ibid.