



ASSOCIATION DES EMPLOYÉS DU NORD QUÉBÉCOIS (CSQ)

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ASSOCIATION OF EMPLOYEES OF NORTHERN QUEBEC

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**Policy on the defence of rights of employees
represented by AENQ**

Updated version of September 16, 2018

Policy on the Defence of Rights of Employees represented by AENQ

1- General Principles

It is AENQ's firm intention to provide the employees it represents with the best defence possible within the limits of its financial capacity and with proper regard for the statutory powers of its assemblies, its legal obligations and its policies.

The Labour Code requires AENQ to defend employees in the certified units that it represents in the exercise of their rights under the collective agreements, the Labour Code and the Canada Labour Code.

AENQ's by-laws go beyond this rigid legal obligation by stipulating that the goal of AENQ is the "...defence and the promotion of the professional, economic and social interests of its members, the negotiation and the application of the collective agreements, all this taking into account the characteristics of Aboriginal contexts, including the ones arising from the James Bay and Northern Quebec Agreement."

The defence of employees, within the framework of the application of the collective agreement, clearly involves significant costs for AENQ, but those costs are justified. In applying the collective agreement, AENQ will continue to provide representation for employees before the appropriate tribunal whenever a right is in question.

However, employees may become involved in legal proceedings, such as administrative, civil or criminal proceedings, outside the framework of the collective agreements. Employees involved in legal proceedings unrelated to the collective agreement may request financial assistance from AENQ.

It may happen that the services of an expert may be useful in a particular case. Employees wishing to have recourse to an expert's services may also request financial assistance from AENQ.

As the human and financial resources available to AENQ are limited, the Association will pay from a special fund the legal costs of representing employees who become involved in actions not related to the collective agreement, in accordance with the following guidelines.

2- Eligibility criteria

A. In the case of actions not related to the collective agreement

The Executive Committee must consider the following elements when deciding whether or not to pay a member's legal costs:

- the incident is related to the employee's job or duties;
- the incident occurred during or as a result of the employee's duties;

- the possible impact of the incident on the employee's continuing employment;
- the benefit for all employees covered by the bargaining certificate;
- the extent of the employee's responsibility in the matter;
- the potential economic consequences for the employee;
- the relevant elements of the employee's past history;
- the provisions of Sections 4, 5, and 6 of the present policy;
- the possibility that the employee has been "framed" or is the object of a conspiracy.

B. For an expert opinion in the case of actions related or unrelated to the provisions of the collective agreement

Fees for an expert opinion are those incurred by recourse to the professional services of a doctor, a lawyer specialising in another field than labour law (taxation, immigration, etc.), an accountant or any other specialist providing services that are not customarily provided by the Association.

While AENQ is never obliged to provide the services of an expert in pursuit of an action, it may from time to time do so and assume the related costs, in whole or in part. However, AENQ will never assume the costs for more than one expert per specialty for a given case.

The Executive Committee should consider the following elements in taking a decision to assume the cost of an expert opinion in the case of a member:

- the need for an expert in order to evaluate the chances of success of a case;
- the need for an expert in order to present satisfactory evidence;
- the benefit of all employees covered by the bargaining certificate;
- respect for the provisions of Sections 4, 5, and 6 of the present policy.

In order to be considered by the Executive Committee, a request must include all information necessary to make a decision, including a summary of the reasons for the request and an estimate of the costs of the expert opinion.

3- Types of involvement

AENQ will not assume any cost nor offer any support in the case of incidents that are not related to the performance of an employee's assigned duties and/or if the events at the origin of a suit are of a strictly personal nature.

A. Administrative commissions and tribunals (not related to the application of the collective agreement)

Even if it is not a party to the dispute, AENQ will, upon approval by the Executive Committee and subject to the criteria in Section 2 of this policy, assume the defence of employees in one of its bargaining units who make a request. The Executive Committee may decide to help an employee involved in proceedings unrelated to rights provided for in the collective agreement, and this in conformity with the present policy.

Notwithstanding the above, industrial-accident and occupational-disease cases will be assumed by AENQ, unless the Executive Committee, considering the eligibility criteria in Section 2 of the present policy, decides otherwise.

B. Civil suits

Suits brought against an employee

Under the terms of collective agreements, the employer must assume the case of an employee whose civil responsibility might be at issue because of the actual performance of his or her duties.

If the employer assume the case, AENQ, after Executive Committee decision, can take the legal means needed to ensure that the employer respect their commitment and assume it properly.

Suits brought by employees

When there is no recourse to the grievance procedure, the Executive Committee can decide to assist an employee who is initiating civil proceedings associated with the performance of his or her duties.

Personal suits between employees

AENQ will not become involved in civil suits between two employees.

AENQ will not pay any costs related to a judgement brought against an employee by a tribunal as a result of a civil action.

C. Criminal suits

As the parties to the dispute are the Crown and the employee, AENQ has no strict obligation in the case of a criminal trial.

AENQ may become partially or completely involved if and only if the Executive Committee, having studied the matter, determines that responsibility arises from the fact or the circumstance of performance by the employee of his or her duties, or if responsibility is associated with the position or the duties of the employee.

AENQ will render a decision after studying the case and the opinion of its legal advisor. The Executive Committee will then decide whether or not it will assume the employee's defence in conformity with the present policy.

Under no circumstances will AENQ pay any fines for employees who are found guilty by a criminal court.

AENQ will not become involved when an employee admits his or her guilt.

4- General provisions

In all of the cases provided for in Section 3 of this policy, the Executive Committee of AENQ can terminate financial assistance at any time.

An employee can request an interview with the Executive Committee before it takes a decision about defending his or her rights, and another to request review of a decision not to initiate or to terminate a proceeding. The Executive Committee can decide that such interviews be conducted by telephone.

When it decides not to assume the defence of an employee, the Executive Committee will ask for the written recommendation of the resource person responsible.

The fact of declaring an employee eligible for support under the terms of this policy does not imply any obligation to continue that support until such time as the case is concluded.

5- Control of the dossier

In any case in which AENQ is assuming costs, the Association will ensure that it maintains control of the dossier, primarily by:

- exercising its decisional and supervisory powers;
- ensuring the cooperation of the employee involved;
- choosing the resource person or lawyer, OR accepting, in writing, the employee's choice;
- periodically evaluating the dossier and its progress.

6- Terms and conditions of support

In all cases, the employee must sign an agreement with AENQ.

The employee who deceives AENQ regarding his or her involvement in a case or who willingly hides facts that are relevant to it must reimburse all of the costs actually incurred by AENQ.

AENQ will not reimburse any loss of salary for the employee involved in the proceedings covered under this policy.

In cases where AENQ accepts to support an employee:

- financial support is limited to a maximum percentage of 80% of legal costs, as well as 100% of travel and subsistence costs, to a maximum amount of \$10,000;
- AENQ may advance the amount required for legal costs within the limits set in the preceding line. The terms and conditions for reimbursement of the advance will be included in the agreement;
- NQTA financial support superior to 80% or \$10,000 may be approved by the Executive Committee under exceptional circumstances.