

## 1.6 TESTIFYING IN COURT

### Introduction

A "Court" is a judicial body such as the B.C. Supreme Court. For the purpose of this Policy the word "Court" also includes administrative tribunals or an arbitrator whose position is governed by law. It also refers to any proceeding or activity in a Court, including proceedings or activities other than trials.

An Employee or Director may be "compelled" (legally required, regardless of their own wishes) under law to appear and testify in Court. The documents requiring such appearance and testimony are called a "Summons" or a "Subpoena".

Alternatively, an Employee or Director may volunteer to appear and testify in Court. One example of voluntary testimony is of an expert witness who is hired to assist the Court by providing special knowledge or judgement. Another is of a person who has information about an accident, a crime or a business dealing and feels obliged to "do the right thing".

An Employee or Director may be compelled to act as a witness or an expert witness to provide information considered to belong to the Association or to be confidential under the terms of the Employee's employment.

### Compelled Witnesses

An invitation or summons to testify in Court raises special questions, places an Employee in unusual circumstances, and under very serious legal obligations to the Court but also to the Association.

When Employees are compelled under the law to testify in Court, they may not choose to do so or decide how much they will say. They must testify according to their legal obligations and they must tell the truth. The evidence which they give may or may not be in the best interests of the Association or of a person with a disability.

However, depending on the circumstances, people and Associations have a right within the law to ask not to testify or to ask not to answer some questions or parts of some questions. These rights are part of the Law of Evidence under our system of law.

### Voluntary Witnesses

When Employees are asked to voluntarily act as witnesses or expert witnesses in a Court, their testimony may or may not be in the best interests of the Association or a person with a disability, and so the Association may decide to require an Employee not to testify under those circumstances. Similarly, when an Employee is asked to *voluntarily* provide information to the police or some

person or organization which is not a Court, doing so may or may not be in the best interests of the Association or a person with a disability, and so, provided it is legal to do so, the Association may decide to not to permit the Employee to provide such information under those circumstances.

### **Purpose**

The purpose of this policy is to ensure that Employees and are aware of their responsibilities as citizens to testify when required and to tell the truth. But it is also to make Employees aware that they have some rights with respect to testifying in Court, and to make them aware of their duties to the Association as their Employer to exercise those rights and to disclose any request or summons to testify to the Association well before any scheduled Court date, and to emphasize that the overarching purpose of the Association is to act in the best interests of people with disabilities.

Furthermore, the purpose is to ensure that wherever legally possible, Employees of the Association do not consent and are not required to testify in Court regarding any question that might in any way compromise the Association's purpose and duty to act in the best interests of people with disabilities, and to ensure that any information that is the property of the Association is not utilized in a Court without the Association's permission, or at least its knowledge, and to ensure so far as legally possible that it is not used in a manner inconsistent with the best interests of people with disabilities.

Furthermore, the purpose is to ensure that information that is the property of the Association is not utilized in a court of law without the Association's knowledge and permission and to ensure that it is not used in a manner that is not in the best interests of people with disabilities unless required by a court of law.

### **Policy Regarding Employees**

It is a term of their contracts of employment with the Association that Employees have a duty, both during and outside their hours and places of work, to act in a manner consistent with the best interests of the Association and of people with disabilities.

An Employee who receives a Summons or a Subpoena has a public, legal duty to the Court. However, when that happens, the Employee also has a private legal duty to the Association, as part of the contract of employment. These duties do not conflict and the Employee must fulfill both, and may not neglect either.

The same duty applies to an Employee who is considering voluntarily giving information to anyone or testifying in Court. Employees who are requested to provide information, or requested or required to testify in Court, in any matter

related to or arising out of their employment or to the business or purposes of the Association, must notify the Executive Director.

In the case of the Executive Director, the Executive Director will inform the Board of Directors.

Employees may not agree to act voluntarily as a witness or as an expert witness in any Court proceeding which might directly or indirectly affect the best interests of a person or persons with a disability unless they first notify the Executive Director in writing of their intention to do so and receive his or her prior permission in writing to do so.

The Executive Director may not agree to act voluntarily as a witness or an expert witness in a case which might affect the best interests of a person or persons with a disability without first notifying the Board of Directors in writing of an intention to do so.

Employees who become aware that information has been subpoenaed or otherwise compelled from the Association as evidence in Court, or by the police, must inform the Executive Director immediately, and only the Executive Director may provide such information or delegate the provision thereof, and where at all possible the Executive Director must notify the Board of Directors of all such requests before providing any such information or delegating the provision thereof.

Employees who become aware that information has been requested of the Association as evidence in Court in a matter which may be related to the best interests of a person or persons with a disability, must inform the Executive Director immediately, and, within the limits of the law, only the Executive Director may determine whether such information shall be made available, and the Executive Director must will notify the Board of Directors of all such requests before making any such decision.

### **Policy Regarding Directors**

It is a term of their agreement to serve as Directors that Directors of the Association have a duty to act in a manner consistent with the best interests of the Association and of people with disabilities, and that they place that duty above their other interests.

Directors have a greater responsibility than Employees to identify and fulfill those duties, because Directors are not subject to the same degree of control and supervision as Employees.

By law, Directors must always act in the best interests of the Association and must always put the interests of the Association above their own personal or business interests.