

# **Recommendations for Professional Compliance Review Process**

Presented to the Association of Visual Language Interpreters of Canada

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## RECOMMENDATIONS FOR AVLIC PCRП

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## INTRODUCTION

This document sets out a proposal for a new and restructured Professional compliance review process (PCRП) for the Association of Visual Language Interpreters of Canada (AVLIC). The PCRП would replace the current Dispute Resolution Process (DRP) and address concerns and complaints regarding the professional conduct of an AVLIC member. Under a proposed new name, the Professional compliance review process is based on the guiding principle that an effective compliance and concern/complaint resolution process must be aligned with AVLIC’s vision, mission, and core values, while respecting the Association’s constitution and bylaws. The process must also be one that is legally sound and meets the expectations and objectives of the community it is designed to serve.

### Consultation and Assessments

The PCRП proposed in this document arises from the assessment of the strengths and challenges of the current DRP; it is based on information that members, consumers, stakeholders and legal counsel have provided about the changes that should be made to the current process. This assessment was done using multiple sources of information. First, a review was made of existing documents pertaining to the design, implementation and unfolding of the current process.

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Interviews were conducted with the initial developers of the DRP, members of the DRP implementation committee, current and past AVLIC Presidents, DRP Coordinators, Internal Resource Persons (IRPs), Presidents of national Deaf associations and representatives from sign language interpreting agencies. Recommendations offered by AVLIC legal counsel, George K. Bryce, in his 2009 commentaries and proposed revisions were also considered.

In addition, data were gathered through a survey sent to AVLIC members and to the Deaf community at large, as well as to other consumers of interpreting services. The survey was undertaken in January and February 2014, and completed on February 10, 2014. (See tables 1 and 2 for distribution of respondents).

<b>Categories</b>	
Interpreter member	226
Interpreter non-member	16
Deaf or HH consumer	60
Employer	7
Other <ul style="list-style-type: none"> <li>• Former Deaf interpreter (1)</li> <li>• Former interpreter (1)</li> <li>• Student (8)</li> <li>• Other (8)</li> </ul>	18
Total number of responses	346
<b>Total number of 'complete' responses</b>	<b>327</b>

*Table 1. Categories of respondents to 2014 survey*

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<b>Place of residence (complete responses)</b>	
British Columbia and Yukon	55
Prairies (Alberta, Saskatchewan, and Manitoba) and NWT	75
Ontario North (Thunder Bay, Sudbury, Sault St. Marie, and Ottawa) and Nunavut	29
Ontario South and Quebec	120
Atlantic Canada (Maritimes and Newfoundland)	47
Unidentified	1
<b>Total</b>	<b>327</b>

*Table 2.* Place of residence of respondents to 2014 survey

Those interviewed about the state of the current process were also asked for their vision of a redesigned process. Furthermore, nine town hall meetings, in which interpreters and consumers of interpreting services participated, provided information on a shared vision for an optimal process. (See table 3 for distribution of town hall meetings).

<b>Chapter</b>	<b>Description</b>
1. ASLIA (Alberta - Edmonton)	7 interpreters and 12 deaf participants.
2. AVLI-NB (New Brunswick)	Town hall did not take place.
3. MAPSLI (Nova Scotia)	Town hall did not take place due to inclement weather on several occasions where meeting had been scheduled. Electronic responses received.

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4. MAVLI (Winnipeg)	7 interpreters and 7 deaf participants; plus facilitators and note takers.
5. NAVLI (Newfoundland)	3 interpreters and 2 Deaf community members were involved in the organization and hosting of an educational town hall.
6. OASLI Hamilton	6 interpreters and 3 deaf participants.
7. OASLI Thunder Bay TH for the Deaf community	Led by 2 Deaf leaders at CHS. 11 deaf participants. Electronic responses received from interpreters.
8. OASLI Toronto	16 interpreters and 9 deaf participants.
9. Regina (no Affiliate Chapter)	2 interpreters and 17 deaf participants.
10. Saskatoon (no Affiliate Chapter)	11 Deaf participants. None of the interpreters attended though they were invited.
11. SLINC (Ottawa): Hosted separate meetings for the Deaf and interpreting communities.	Deaf community Town hall: 30 deaf participants. Interpreting community Town hall: 14 members.

*Table 3.* Distribution of town hall meetings

The dispute resolution processes of eight organizations or associations were examined to identify elements that could be beneficial to AVLIC's future approach to addressing concerns/complaints regarding compliance with its CoEGPC. Research in this area also included a review of the principles of restorative justice and restorative practice. Since interpreters are often contracted through agencies, representatives from sign language interpreting agencies were interviewed as to the type of partnership they might want to form with AVLIC in addressing concerns about the professional conducts of the interpreters with whom they contract.

In order to ensure that the redesigned process coincides with the vision of AVLIC members and other stakeholders, two or three volunteers from each town hall meetings have been invited to review the present document and to participate in videoconferencing consultation/advisory groups. Feedback from these groups and

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from AVLIC's Board of Directors will be considered before the document is sent to AVLIC members for ratification. Finally, legal counsel reviewed earlier drafts of this report to ensure that the proposed new process would be legally sound.

### **AVLIC'S Mission Statement**

According to its website, AVLIC's mission is to advance the profession of interpreting and to support its members by:

- I. Serving as the national representative for professional interpreters in Canada
- II. Working in close partnership with Canadian Deaf organizations for the future benefit of Canadian Deaf people who use Sign Languages and the profession of interpreters whose working languages include a Sign Language
- III. Supporting the efforts of Affiliate Chapters to advance the profession of interpreting in their regions
- IV. Supporting and collaborating with programs designed to facilitate the education and training of interpreters
- V. Providing professional development and a national forum for discussion of issues pertinent to the field of interpreting
- VI. Upholding and promoting the Code of Ethics and Guidelines for Professional Conduct
- VII. Providing and promoting the Canadian Evaluation System
- VIII. Providing and promoting the Dispute Resolution Process for AVLIC members and the individuals they serve.

The proposed PCRP set out in this report is aligned with AVLIC's mission statement; it is designed to further the Association's commitment to the interpreting profession and consumers of interpreting services in Canada.

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### **AVLIC's Values and Qualities of the PCRP**

AVLIC's core values are also set out at its website:

*AVLIC believes that people have the right to interpreters who are professional, competent and ethical. AVLIC is guided in all its activities by the beliefs that:*

- I. Collaboration, cooperation and mutual, transparent communication between the Deaf community and Sign Language interpreters at a local, regional and national level across Canada are essential*
- II. The Association and its members will work with each other collegially, respectfully and with professional integrity*
- III. The Association will be responsive to its members.*

Complementary to these values, the different stakeholders (as described above) have indicated that the proposed PCRP should reflect the following qualities:

- The process should be trustworthy and transparent;
- The process should be fair and neutral (i.e. ethical behaviour should be assumed until proven otherwise; both sides of a story should be considered in an impartial fashion, etc.);
- The process should be confidential, within the bounds of the law and AVLIC's bylaws;
- There should be clarity of purpose, structure, outcomes, roles, timelines, and guidelines within the process;
- The process should be accessible and available in both English and ASL;
- The objective of the process should be restorative rather than punitive, with no hidden agenda or fear of reprisal;
- A team approach should be taken to address concerns about the conduct of a member and to work toward a mutually agreeable resolution;

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- The process should be enforceable in keeping with legal principles;
- The process should be culturally respectful and mindful of power differentials;
- The process should be timely and efficient;
- The process should be sustainable (given the costs that can be incurred by mediation, training and education or if a matter must proceed to formal adjudication).

This proposed PCRP reflects AVLIC's core values and applies the qualities that were identified by the stakeholders.

### **PURPOSE AND PHILOSOPHY OF THE PCRP**

The underlying principles behind the PCRP, as described in this report, are that:

1. problems, issues, concerns, or complaints are best addressed by direct communication between the parties, with a mutual commitment to develop and maintain professional relationships; and
2. the individuals involved in a complaint should play the central role in any attempt to work through the issue.

The PCRP described in this report is designed to uphold ethical and professional standards of conduct among interpreters for the wellbeing of the individuals and communities they serve. For the PCRP to function optimally, all parties must respond with good will when a concern or a complaint is brought forward.

AVLIC encourages those who have a concern about the professional conduct of a member to first attempt resolving the issue informally with the member and to do so with or without AVLIC's assistance. AVLIC also recognizes that alternatives must

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be offered when direct communications do not resolve the concern or are not practical or possible in the circumstances.

It is important that the person with a concern or a complaint, as well as the member in question, feel that they have been heard, empowered and supported throughout the process. This means that a concern or complaint must be satisfactorily assessed. It also means that, if the complaint is substantiated, the member will be encouraged to take remedial actions to change the problematic behaviour and align their professional conduct with the CoEGPC.

According to Leonard, Duren, Reiman (2007):

*Mediation is a foreign concept for most Deaf individuals. In fact, mediation is likely to be viewed as an extreme measure, as another method of oppression (the outcome of which will automatically favor the hearing person), or at least as a culturally unfamiliar way to manage a conflict. Therefore the “normalization” of mediation is an important concept. By explaining the process of mediation (addressing any fears of an oppressive procedure), placing mediation within a continuum of dispute resolution alternatives, and validating clients’ reasons for being part of a mediation, mediators can ease Deaf participants discomfort and thus heighten the likelihood of an effective and egalitarian process” (p. 6).*

Consequently, it is important that the proposed PCRP facilitate a dialogue between the person with a concern/complaint (PwC) and the concerned member and support both of them to find a mutually acceptable resolution.

According to the CoEGPC, AVLIC members must ensure that their professional conduct is ethically sound. They also have a responsibility to the interpreting profession and to the community they serve to address issues that reflect negatively on the profession. As stated in the CoEGPC, (1.2.6):

*Members are accountable to AVLIC and to their local Affiliate Chapter for their professional and ethical conduct. Further, members are responsible to discuss and resolve, in a professional manner, issues arising from breaches of ethical or professional conduct on the part of individual colleagues after they are observed. In the case where these breaches are potentially harmful to others or chronic, and attempts to resolve the issue have not been successful, such conduct should be*

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*reported to AVLIC and/or their local Affiliate Chapter in a manner directed by the appropriate grievance procedure.*

Consequently, the proposed PCRP is designed to help interpreters, consumers and others who have concerns regarding the professional conduct of an AVLIC member to seek AVLIC's involvement in resolving their concern or complaint.

So long as a complaint is not frivolous or made in bad faith, AVLIC will follow up on all concerns or complaints brought to its attention. The PCRP gives AVLIC members the opportunity to demonstrate that their professional conduct is aligned with the CoEGPC. In situations when this might not be the case, the PCRP then requires the member whose professional conduct has been sub-standard to take remedial actions to address the situation.

Despite the fact that the PCRP is primarily designed to address matters regarding compliance with the CoEGPC, someone who brings a concern to AVLIC that is a non-CoEGPC-related issue may also benefit from AVLIC's assistance in resolving such a concern. Consequently a protocol to deal with such concerns is offered within this document as Appendix A "Suggested Protocol to Address a Non-CoEGPC Concern".

## DEFINITIONS

The following defined words and terms will be used in this report:

ADJUDICATION PANEL: Three-member panel working with legal counsel when a citation has been issued against a member *as a last resort* to address an unresolved complaint regarding ethical conduct. The adjudication panel would conduct an adjudication of the allegations set out in the citation.

ADVOCATE: A person who represents and supports a person with a concern/complaint or the member involved in the PCRP.

AFFILIATE CHAPTER: A provincial or regional association of interpreters that has been recognized by AVLIC as having similar aims and objectives.

AGENCY: A signed language interpreting agency in Canada.

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THE BOARD: The AVLIC Board of Governors as prescribed by bylaw ##.

## CODE OF ETHICS AND GUIDELINES FOR PROFESSIONAL CONDUCT

(CoEGPC): The Code of Ethics and Guidelines for Professional Conduct as adopted and published by AVLIC.

COMPLAINT: Formal statement of a concern regarding the professional conduct of an AVLIC member signed by a PwC (or initiated by AVLIC) and bringing forward a matter related to the CoEGPC to be then investigated, resolved or adjudicated under the PCRP.

CONCERN: A concern regarding the professional conduct of an AVLIC member, whether or not it relates to the CoEGPC, that has not been formalized as a written complaint.

INTERPRETED EVENT: Any communication between deaf and hearing persons where signed language interpretation services are utilized.

JURISDICTION: Matters over which AVLIC and its Affiliate Chapters have the authority to investigate, resolve or adjudicate.

MEMBER: An AVLIC member in good standing.

PERSON WITH A CONCERN OR COMPLAINT (PwC): Any person (or organization) who has a concern regarding the professional conduct of an AVLIC member. When the concern becomes a formal complaint, the acronym refers to a 'Person with a Complaint.' This includes but is not limited to a Deaf or hearing consumer of interpreting services or an advocate, a member (as per AVLIC's membership obligation 1.2.6), a non-member interpreter, or another individual or organization.

PROFESSIONAL COMPLIANCE TEAM: A standing Team appointed by the AVLIC Board to receive concerns, oversee the investigation and resolution of complaints through remedial actions; however, if a complaint cannot be so resolved, the Team issues a citation based on the recommendations of a Conduct Review Team.

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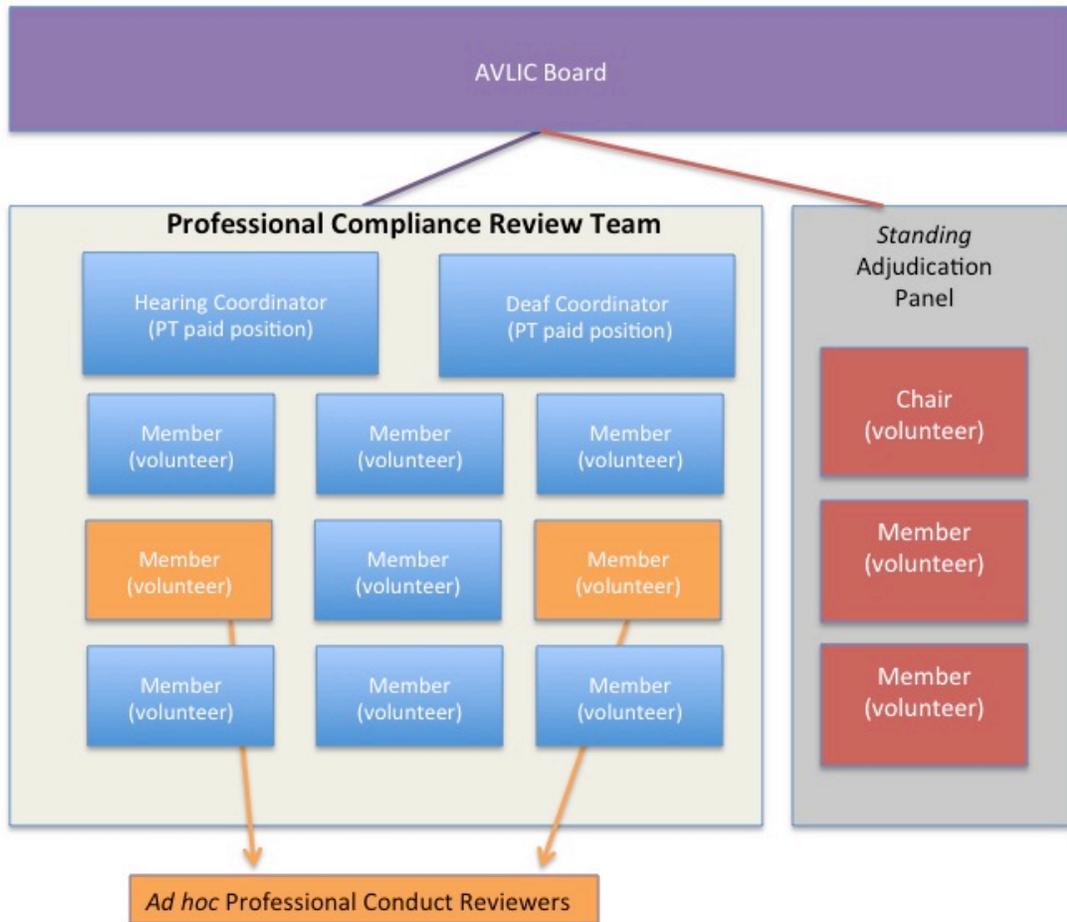
PROFESSIONAL CONDUCT REVIEWERS: Two members of the Professional Compliance Team who have been assigned by the Committee to help a PwC and a member resolve a concern informally or, when the concern has been submitted as a complaint, to investigate the complaint and try to resolve it with various remedial actions.

REMEDIAL ACTIONS: Actions that a member takes or agrees to take to align their professional conduct with the CoEGPC in response to a concern or complaint. Remedial actions can range from acknowledgment of misalignment, to a letter of apology, to mentoring with Deaf leaders or experienced interpreters, professional and ethics training, coaching on interpersonal effectiveness, etc.

ORGANIZATION: Refers to a business that hires AVLIC members on a regular basis, rather than when members are contracted for isolated events (i.e., conferences). An organization may be a school board, university, hospital, etc.

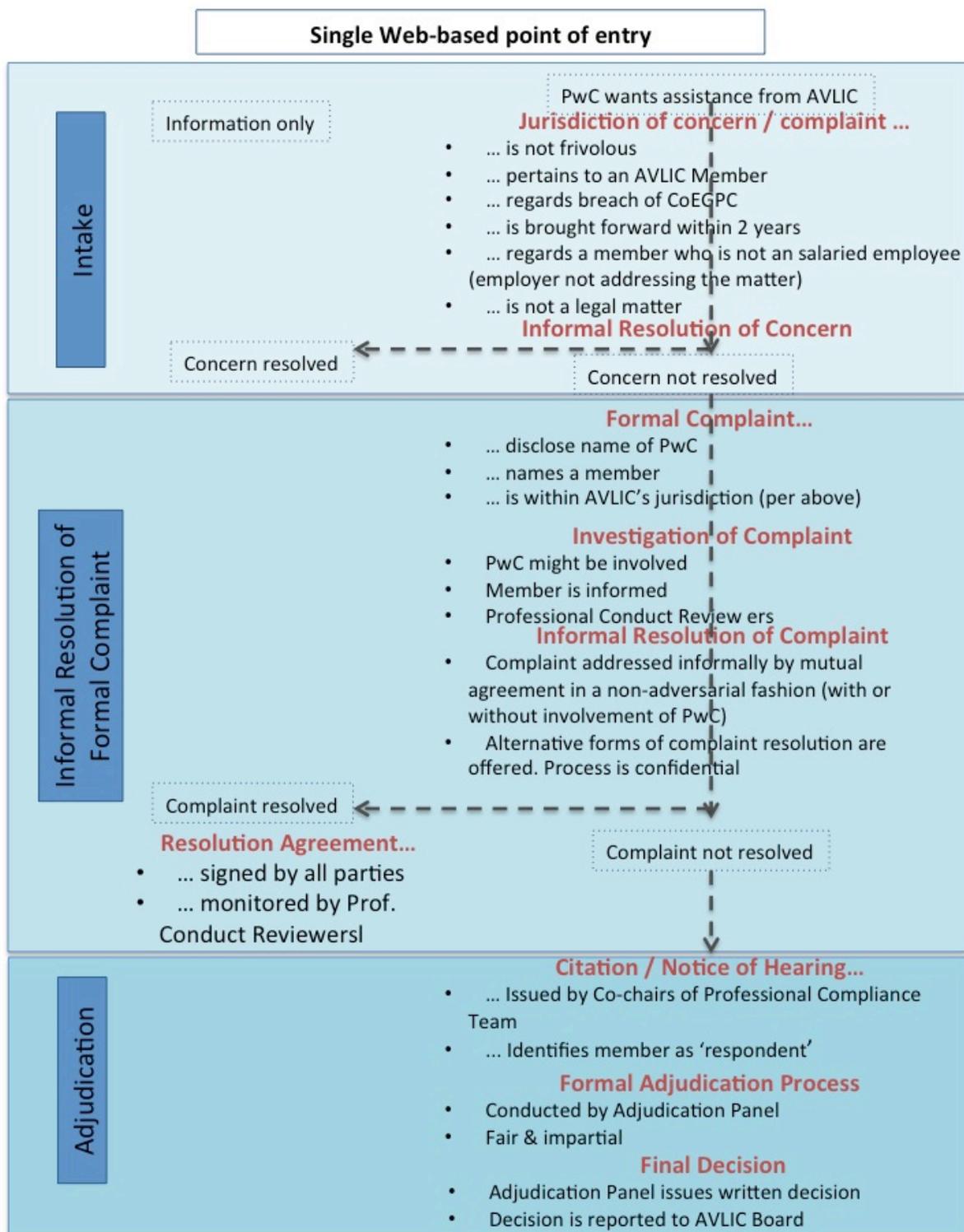
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**PCRp GOVERNANCE STRUCTURE**



## RECOMMENDATIONS FOR AVLIC PCR

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**PROFESSIONAL COMPLIANCE REVIEW PROCESS FLOW**

## RECOMMENDATIONS FOR AVLIC PCRP

**GENERAL RECOMMENDATIONS**

Based on the consultations, research and assessments undertaken as outlined above, the following are the general recommendations concerning the major elements of the proposed Professional compliance review process (PCRCP). These recommendations reflect the interests and opinions of the stakeholders who participated in the consultation process.

**Change of Name**

AVLIC members and other stakeholders recognized that the designation 'Dispute Resolution Process' did not describe the intended complaint resolution and compliance process. In order to better reflect the reality that the process is more concerned with ethical conduct more than with the resolution of disputes, it is recommended that:

- 1. The current name "Dispute Resolution Process" (DRP) be changed to "Professional compliance review process" (PCRCP).**

Separate recommendations on the governance structure for the PCRCP and the appellation of those who will administer this process will be addressed below.

**Proper Legal Foundation**

To minimize the risks that the PCRCP is challenged in court, the process should rest on a proper legal foundation. For example, as per the request of members, consumers of interpreting services and other stakeholders, possible outcomes of the proposed process are that a member's membership could be terminated, or that some other type of disciplinary action (remedial or otherwise) could be imposed. To ensure that a court of law does not find these outcomes of the PCRCP to be *ultra vires* (beyond authority), they must be clearly authorized within the bylaws.

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Another example is when a member is presented with a formal request to engage in the PCRP based upon a complaint, and is then asked to disclose what otherwise would be confidential client information. Privacy legislation allows such disclosures if it is authorized by law in the form of approved bylaws. In turn, such a bylaw requirement would protect the member who is thus required to make such a disclosure.

Therefore, it is recommended that:

**2. AVLIC's current bylaws be revised to ensure there is a proper legal foundation for the PCRP.**

To ensure the bylaws are correctly worded, it is further recommended that:

**3. Legal counsel be retained to prepare the required amendments to AVLIC's bylaws in accordance with the *Canadian Not-For-Profit Corporation Act*.**

If the PCRP as proposed in this report is eventually accepted by AVLIC, the final version of this report would then constitute the Association's instruction to legal counsel to prepare the necessary bylaw amendments so as to ensure the proper legal foundation for this new process.

Set out in Appendix B of this report is a proposed framework or outline of the bylaws that would be needed to support the PCRP.

### **Policies, Procedures and Training**

While the new bylaws would provide the required legal foundation for the PCRP, it will also be necessary to prepare more detailed policies and procedures to ensure that the necessary guidance is in place so that these new bylaws are properly applied. It is not possible to set out such details in this report. Therefore, it is further recommended that:

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- 4. AVLIC develop a separate set of *PCR* Policies and Procedures to flesh-out the necessary guidance and details to support the new PCR bylaws;**
- 5. AVLIC ensure that all those involved in the PCR are properly trained in complaint investigation and resolution techniques.**

The Bylaw Framework in Appendix B identifies where specific policies and procedures could provide more detail guidance on the application of particular bylaws.

Recommendations are provided below on matters pertaining to training development of those involved in implementation and ongoing provision of the PCR. As well, in line with the wishes of those whose input informed this document, recommendations for the training of the membership in general and of the public served by AVLIC's members are also offered below.

#### **Resources for an Adjudication Hearing**

If at the end of the complaint investigation and resolution processes it was not possible to resolve a substantiated complaint, it may then become necessary to issue a citation against the member. The details of this "last step" are described further in this report. A key factor is that AVLIC be prepared for this hopefully rare, but necessary step in the process.

An adjudication hearing is a formal legal process whereby a panel would adjudicate the matters set out in an issued citation; this step can be expensive. Therefore, it is recommended that:

- 6. AVLIC set aside sufficient resources to fund a formal complaint adjudication process should it become necessary to take that final step.**

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In order for AVLIC to take on regulatory responsibility for the profession, it must establish a legal contingency fund of at least \$25,000 to ensure that there would be sufficient financial resources to fund an adjudication hearing. This amount is needed to cover the costs of room rental, transportation and related costs for the adjudication panel, hiring legal counsel to prosecute the citation and separate legal counsel to advise the panel during the adjudication process.

### **Affiliate Chapter Complaint Investigation and Adjudication**

To date, one affiliate chapter, the West Coast Association of Visual Language Interpreters (WAVLI), has established its own complaint investigation and adjudicative bylaws, policies and procedures, and has set aside funds to this purpose. While the BC chapter did this to obtain occupational title protection under BC's *Society Act*, other provincial chapters may want to take similar steps in the future for their own reasons. To ensure that a confusing patchwork of different bylaws, policies and procedures governing complaint investigation, resolution and adjudication does not evolve across Canada, it is recommended that AVLIC establishes an agreement with its affiliate chapters regarding the following:

- 7. If an affiliate chapter develops its own complaint investigation and adjudicative bylaws, policies and procedures, such rules and processes should be substantially similar to the AVLIC's PCRП;**
- 8. If an affiliate chapter has developed its own rules and processes, it must promptly inform AVLIC and obtain a letter confirming that its rules and processes are substantially similar to AVLIC's PCRП;**
- 9. AVLIC must establish an agreement with affiliate chapters who have title protection as to the consequences for AVLIC membership in cases when the affiliate chapter rules that the membership of one of their members be suspended or revoked;**

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- 10. If AVLIC receives a complaint about a member from an affiliate chapter, that complaint would be directed to that provincial association for investigation and resolution under its process; that only if its rules and processes have been found to be substantially similar to AVLIC's PCRП.**

**Membership Accountability**

According to its Website, AVLIC "expects its members to maintain high standards of professional conduct in their capacity and identity as an interpreter." The Association has therefore adopted a Code of Ethics and Guidelines for Professional Conduct. The CoEGPC is "intended to provide direction to interpreters for ethical and professional decision-making in their day-to-day work." It is also the mechanism by which the public is protected in the delivery of service. It is therefore recommended that,

- 11. As a foundational requirement for membership in AVLIC, all applicants must agree in writing that they will adhere to AVLIC's Bylaws and the CoEGPC once they become members.**

AVLIC membership resting on this requirement provides employers and contracting agencies the assurance that the interpreters they hire or contract with have sufficient competencies. They can be assured that the interpreters have agreed to uphold a code of ethics and apply recognized practice standards as well as have accepted to cooperate with AVLIC in the investigation and resolution of complaints. Therefore, it is recommended that:

- 12. AVLIC should partner with agencies and encourage them to only hire or contract with interpreters who are AVLIC members in good standing.**

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**Participation and Cooperation as a Condition of Membership**

A comment often received from our research refers to less than positive or collaborative attitudes evidenced by some members when asked to participate in the current DRP. For the PCRП itself to be effective and meaningful and for AVLIC's process to be supported by the Deaf community at large, a member must agree to participate in the PCRП and cooperate fully with the Association during the investigation and resolution of a complaint, as well as in the adjudication phase as may be required.

Further, although its primary purpose of the PCRП is to be restorative rather than punitive in nature, the process must have enforcement capabilities (i.e. be a "system with teeth"). The PCRП must have the means to resolve complaints and determine clear and meaningful remedial actions with appropriate sanctions for non-compliance.

For these reasons, it is recommended that:

- 13. It be a condition of membership that an AVLIC member must participate in and cooperate fully throughout the PCRП; failure to do so will have further consequences.**
- 14. If a member resigns during an investigative, resolution or disciplinary process, a bylaw should make it clear that those processes may continue and final decisions may be made without the further or direct participation of the (former) member.**

Of course, before a member can be asked to participate in and cooperate with an investigation or a subsequent proposed resolution, the subject member needs to have information about the nature of the complaint. Therefore, it is recommended that:

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- 15. A member who is the subject of a formal complaint must (i) be informed within a reasonable period of time about the complaint, and (ii) be given an opportunity to respond to the issues raised therein.**

The details as to what information about the complaint should be provided to the member and when such information should be so provided can be addressed in the more detailed *PCRCP Policies and Procedures*.

AVLIC members generally also need to understand that participation in and cooperation throughout a complaint investigation, resolution or adjudication process is a foundation for on-going professional practice. Therefore, it is recommended that:

- 16. Members must complete, at least once every 4 years, mandatory educational segments on the CoEGPC and the PCRCP as a condition of the renewal of their membership.**

These educational segments could be offered by AVLIC through workshops given either on-line or in person. Educational components would evidence restorative practice, which aims to effect primary prevention before problems have occurred.

### **Supporting Persons with Concerns/Complaints**

One consistent theme that emerged from the stakeholder consultations is the need to provide information to and support for persons who have concerns about a members conduct (PwC) or who are prepared to file a formal complaint. Therefore, it is recommended that:

- 17. AVLIC provide easy to use and understandable information about the PCRCP and how anyone can access this process, even if they do not want to file a formal complaint.**
- 18. PwC be encouraged and supported to resolve their concerns informally with the member, with or without AVLIC assistance; however, they must always have the option to proceed to file a formal complaint.**

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**19. Appropriate support and information be provided to those persons who contact AVLIC with a concern or with a formal complaint, in particular to help these PwC articulate their concern so that it can be given due consideration.**

**20. Every PwC be given meaningful opportunities to participate in the investigation, resolution or adjudication of their complaint, and to ensure that their voice is heard and considered by the subject member and AVLIC's Professional Compliance Team and Adjudication Panel.**

While it is important that PwC are supported through the PCR P, it is also important to note that the PwC does not have the authority to direct AVLIC to take or not take certain actions. Ultimately, it will be up to the AVLIC to make the final decisions.

**Receipt of Complaints**

If a concern cannot be resolved informally and the matter proceeds to the point where a formal complaint is to be filed, it is important that the mechanisms to receive a complaint are clear and straightforward. Therefore, it is recommended that:

**21. There be a single point of entry for submitting a concern or complaint, such as through a Web-based form or uploaded ASL video. This single point of entry should also serve to address inquiries about the PCR P.**

While facilitating the receipt of a complaint through a single entry point is helpful, it is also important that a complaint contain certain essential information. Without this sort of information there may be little the AVLIC can do about the situation. Therefore, it is recommended that:

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**22. A complaint must (a) disclose the name of the PwC, (b) name a member or allow a member to be identified, (c) describe conduct that, if proven, could constitute improper conduct or conduct unbecoming or indicate a specific breach of the CoEGPC, (d) be within jurisdiction, (e) not regard a matter that is already being addressed in another legal forum or should be addressed in another forum, and (f) must be filed within two years of the events taking place.**

Certain of these requirements speak to what are known as jurisdictional issues. While the recommended *PCRП Policies and Procedures* can provide further guidance on these issues, it is useful to highlight certain ones that may need to be set out in the bylaws themselves.

**Jurisdictional Issues**

Complaints about the conduct of any professional often raise “jurisdictional issues”. An obvious example is whether or not one is a member. Therefore, it is recommended that:

**23. A concern or complaint brought forward to AVLIC about the professional conduct of an interpreter be only considered if the matter concerns the conduct of an identifiable interpreter who is also an AVLIC member.**

## RECOMMENDATIONS FOR AVLIC PCRPP

Though it would seem in the public's best interest that the PCRPP apply to members and non-members alike, this would not be a legally sound practice since AVLIC does not have the jurisdiction to accept or respond to complaints/concerns that are filed against someone who is not and has never been, or is no longer a member of the Association. Therefore, AVLIC must inform the PwC that it will not be pursuing the complaint further. AVLIC could recommend or suggest that the PwC may be able to pursue other avenues to deal with the concerns about the non-member's conduct. Furthermore, in the future, AVLIC might wish to enter into partnership with organizations such as the Canadian Association of the Deaf (CAD) to help those who have concerns about a professional interpreter who is not an AVLIC member.

In addition, caution should be exercised in assuming that the Association could simply forward a concern complaint to a non-member for their consideration, to be addressed by that non-member outside the Association's PCRPP processes. Sending the non-member either a copy of the originating complaint or a summary of the complaint could breach the PwC's privacy rights. Information may be revealed in the original complaint that should not be forwarded to someone who is not a member of AVLIC since the non-member would not be bound to the investigative and resolution bylaws, which would likely include the duty to keep such information confidential. Consequently, AVLIC should not become the source of an information breach.

## RECOMMENDATIONS FOR AVLIC PCRП

On the other hand, if there is information in the complaint/concern that AVLIC believes could be useful to bring to the awareness of a non-member, then – before forwarding the complaint or a summary thereof – AVLIC must first obtain the permission or consent of the PwC to so notify the non-member. If the complainant agrees to the disclosure of their personal information as set out in the complaint to a non-member AND allows AVLIC to take that step on their behalf, then sending the non-member that information should not expose the Association to liability for breach of the complainant's privacy. *So long as the complainant has agreed to the Association taking this step, then such a disclosure can be made.* It is highly recommended AVLIC should make it clear to both parties that it is simply bringing the complaint to the non-member's attention and would *not* be pursuing the matter further.

This point raises two further issues: 1) If a complaint relates to an issue that took place when a former member was an active member of the AVLIC but where he/she has since resigned or let his/her membership expire. In this instance, AVLIC does have jurisdiction to investigate the complaint since it is against someone who is no longer a member. AVLIC's jurisdiction to investigate and try to resolve a complaint continues only so long as a person remains a member throughout those processes. However, AVLIC could approach the former member to ascertain if they would want to participate voluntarily in the PCRП even though they have no legal obligation to do so.

2) If a complaint raised concerns about a current member's conduct before he/she became a member of AVLIC? The general rule here is that a regulatory body does not have the jurisdiction to investigate a current member for conduct that took place before that person became a member of the body. However, there are two exceptions to this rule:

## RECOMMENDATIONS FOR AVLIC PCR P

First, if the events in question raise concerns about the truthfulness of the information the member provided at the time of application, then the Association could investigate the member in relation to providing false information on registration. This would entail that AVLIC investigate the complaint about pre-membership conduct so as to determine that such conduct was not properly disclosed.

Second, if the current member agrees to participate in the Association's investigation of her/his pre-membership conduct. The current member would not be required by the bylaws to participate in an investigation and resolution of pre-membership conduct. However, they could consent to participating in such a process.

In summary, so long as the subject of the concern or complaint is an identifiable AVLIC member, the substance of that concern or complaint must also be one that, if it is proven, would then constitute a breach of the CoEGPC. If this threshold is not met, there would be no breach of the code or standards that would support any subsequent resolution. Therefore, it is recommended that:

**24. The PCR P be focused on addressing a concern or complaint only where, if it is substantiated, it would likely constitute a potential breach of the CoEGPC.**

**25. In turn, a separate process be used to deal with non-CoEGPC matters.**  
*(See Appendix A: Suggested protocol to address a non-CoEGPC concern).*

## RECOMMENDATIONS FOR AVLIC PCRCP

In order to (i) promote AVLIC's values of "collaboration, cooperation and mutual, transparent communication between the Deaf community and Sign Language interpreters" and (ii) to assist AVLIC members in "working with each other collegially, respectfully and with professional integrity", it must be possible to identify the person or organization that has expressed a concern or filed a complaint. Except in rare situations, the anonymity of a PwC cannot be maintained in a transparent and fair process. In most cases, to proceed with the PCRCP, a PwC must be willing to disclose their identity to the subject member. Therefore, it is recommended that:

**26. The PCRCP not accept or respond to anonymous concerns or complaints.**

The *PCRCP Policies and Procedures* should ensure that a PwC knows that, if they do not want their identity to be disclosed to the subject member, their concern is not likely to proceed further (to become a formal complaint) and the file may then be closed.

An exception to this general rule could arise in a situation where the general nature of the concern or complaint is already a matter of public record and an anonymous complaint has been received that provides a specific example of that general problem. Details on this issue can be set out in the *PCRCP Policies and Procedures*.

Fairness also requires that a concern or a complaint about a member's conduct be brought forward in a timely fashion and not after a length of time that would make it difficult for all concerned to have a clear recollection of the events in question. Therefore, it is recommended that:

**27. A time limit be placed on when a concern or complaint can be brought forward and that this limit be set at 2 years after the interpreted event.**

## RECOMMENDATIONS FOR AVLIC PCRP

When a concern has been reported, prior unreported concerns that are similar in nature can also be investigated even if they occurred beyond the three-year limitation period. How such matters are to be handled can also be detailed in the recommended *PCRPP Policies and Procedures*.

On the other hand, rather than setting a time limit for reaching a final outcome in response to a concern or complaint, it is recommended that concerns or complaints be addressed as expeditiously as possible, and without imposing any specific time limit for resolution that might then negatively impact on the fairness of the process. The *PCRPP Policies and Procedures* can set out proposed timelines; flexibility is usually more important than adherence to a set schedule.

Other jurisdictional issues arose from our consultations. For example, as a matter of law, employers are vicariously liable for the errors and omissions of their employees. Therefore, if an interpreter is a salaried employee of an organization, AVLIC may need to put its investigation of a complaint on hold or defer to an employer's investigation or resolution of that same complaint before taking further action under its PCRPP.

Further, if the salaried employee is covered under a collective agreement that has been established between the employing organization and a trade union, AVLIC may need to put its PCRPP on hold until such time as the matter has been resolved under the provisions of that collective agreement. Therefore, it is recommended that:

**28. Where the member is a salaried employee or the complaint is the subject of a collective agreement, AVLIC's investigation of the complaint not proceed until the Association is assured that the employer has addressed the matter.**

In either of these situations, AVLIC may need to establish jurisdictional agreements with agencies to address concerns arising from interpreted events when the interpreter was employed by or contracted through an agency or is covered under a collective agreement. Again, these details can be set out in the *PCRPP Policies and Procedures*.

## RECOMMENDATIONS FOR AVLIC PCRP

Similarly, the facts that led to a complaint, investigation or disciplinary action by an employer may also lead to a criminal investigation by the police, or even a lawsuit initiated by the PwC in civil court. Therefore, it is recommended that:

**29. Where the subject matter of a complaint has been or is being investigated by the police or is the subject of a legal action in court, AVLIC's investigation of the complaint not proceed until such time as the Association is assured that the criminal or civil matter has concluded.**

Detailed guidance on these legal matters and other jurisdictional issues can be set out in the *PCRPP Policies and Procedures*.

**Alternative Resolution Processes**

In keeping with the primary objectives of the PCRPP as articulated above, the emphasis will be on using processes to try to resolve a concern or complaint without having to initiate a formal adjudication hearing. This issue was often raised during the consultations and it is important to underline the wishes of the different AVLIC stakeholders here.

Those who bring forward concerns or complaints (PwC) about the professional conduct of an interpreter should be offered the option to address their concerns or complaints in a way that is fair to both the PwC and the subject member. For example, a PwC may choose to resolve the concern formally or informally and may want to be either actively or indirectly involved throughout the PCRPP. Therefore, it is recommended that:

**30. The PCRPP provide a range of alternative resolution processes to settle by mutual agreement a *bona fide* concern or complaint and to do so in an informal and non-adversarial fashion, and without the need to proceed to a formal adjudication hearing.**

## RECOMMENDATIONS FOR AVLIC PCR

**31. The rules governing the alternative forms of complaint resolution should be sensitive to the needs and circumstances of the PwC and the subject member, and be confidential.**

As such, participants in a facilitated dialogue must agree in advance that nothing stated at the meeting can be used in a subsequent legal proceeding, be this at a later adjudicative hearing, a separate administrative tribunal hearing or in a court of law. The only exception would be threats of violence or actual harm that may take place during the facilitated dialogue.

When resolution of the complaint has been achieved, a Resolution Agreement would be co-signed by the member and the Professional Conduct Reviewers or the representatives of Professional Compliance Team. If the PwC was also involved in the resolution, that person would also sign the Agreement. The original of the signed Agreement would be kept at AVLIC's office. When a complaint has been resolved, the PwC would not be permitted to re-initiate the same or substantially the same complaint against the same member unless there is a repeat of non-compliance by the member.

The Professional Conduct Reviewers would have the responsibility to monitor the Resolution Agreement and ensure that the member completes the terms in a timely fashion. Depending on the nature of the Agreement, the member may need to confirm his/her compliance to the reviewers (within the deadline). When the Reviewers have determined that the terms of the Agreement have been met, they will inform both the member and the PwC, even if the PwC was not involved in the resolution itself.

If the member does not want to enter into a Resolution Agreement (or such an agreement is not reached through facilitated dialogue or other mode of complaint resolution) or if the member does not complete the required action(s) in the agreed timeline without a valid reason acceptable to the Professional Compliance Team, the matter is then likely to proceed to a formal adjudication.

## RECOMMENDATIONS FOR AVLIC PCRP

The *PCR Policies and Procedures* can describe these various resolution mechanisms in more detail.

### **The Adjudication Hearing**

One of the major issues with AVLIC's current DRP is that the process lacks enforcement capabilities. Consequently, while the emphasis on the proposed PCRP will be on promoting the use of alternative ways to resolve *bona fide* complaints informally, ultimately it may be necessary to proceed to the final and more legalistic step in the process – an assessment of a member's alleged improper conduct through a formal adjudication hearing. Details on the governance structure for such hearings will be set out below; however, there are certain features of this final step that are summarized here. To that end, it is recommended that:

**32. A citation (if not also a notice of hearing) must be issued to the member, who is the subject of the complaint, to initiate a formal adjudication hearing. The citation must (a) identify the member, who is the subject of the complaint, as the respondent; (b) describe the nature of the complaint or other matters that are to be the subject of the hearing, including the particulars of any evidence in support of any allegations; (c) specify the time, date and place of the hearing; and (d) advise the respondent that the Adjudication Panel is entitled to proceed with the hearing in her/his absence.**

**33. The adjudication hearing itself must be conducted in a fair and impartial manner, and the Adjudication Panel conducting the hearing must be comprised of persons who have had no prior involvement in or knowledge of the matter.**

Again, the details of an adjudication hearing and the various rules that apply to ensure it is conducted in a fair and impartial fashion can be set out in more detailed

## RECOMMENDATIONS FOR AVLIC PCRP

*PCRPs Policies and Procedures.* Either the bylaws or these policies and procedures can address subsequent legal issues, such as:

- When a citation might be amended, severed or revoked, or joined with another citation;
- Whether the PwC and/or an advocate is entitled to attend the hearing and, if so, in what capacity;
- What information must be disclosed to the respondent member before the start of the hearing, and how far in advance of the hearing should such disclosure take place;
- What rules apply in allowing the public to attend a hearing or to hold the hearing “in camera”;
- Who can examine or cross-examine a witness attending the hearing;
- The consequences if a respondent member does not attend the scheduled hearing without the prior approval of the Adjudication Panel.
- Whether or not AVLIC can investigate a complaint against a member concerning matters that occurred outside of Canada.
- Should AVLIC investigate a complaint if a provincial association has the capacity to investigate that same complaint? (Should the Association refer such a complaint to the provincial association?)
- What should AVLIC do if the complaint involves criminal conduct? Or if the subject member is already being investigated by the police and could face criminal charges? Or charges have already been filed against the member?
- What should AVLIC do if the complainant has also initiated a claim in negligence against the member? Or starts such a claim several months after first filing the complaint with the Association?

## RECOMMENDATIONS FOR AVLIC PCR/P

- Whether or not AVLIC investigate a complaint if the complainant does not what thier identify disclosed to the subject member?

It is recommended that rather than dealing with these various jurisdictional questions in the amended bylaws, these could be addressed in supplementary policies and procedures. It is to be noted that jurisdictional issues often require a case-by-case analysis, and a decision is often dependent on the facts of each case.

At the end of the hearing, the Adjudication Panel will be expected to decide whether the allegations set out in the citation have been proven, and – if so – what the appropriate consequence or other outcome should be. Therefore, it is recommended that:

**34. The Adjudication Panel be given the clear authority to make final decisions and issue orders that reflect its findings.**

The scope of the orders that the Panel may issue can cover one or more of the following: (a) dismiss the matter;

(b) issue a reprimand to the respondent member; (c) impose limits or conditions on the respondent member, including practicing under supervision for a defined period of time, additional education, etc.;

(d) suspend the respondent's membership for a designated period of time; (e) recommend the suspension of the respondent's Certification of Interpretation for a designated period of time;

(f) fine the respondent an amount not to exceed some maximum amount;

(g) expel the respondent as a member of AVLIC; (h) assign to the respondent member the costs or part of the costs of the investigation into her/his conduct as well as the costs the adjudication hearing itself.

Once the hearing has completed, the Adjudication Panel will have one last function to perform:

## RECOMMENDATIONS FOR AVLIC PCRP

**35. The Adjudication Panel must issue within a reasonable period of time after the end of a hearing a final written report that documents its findings, decisions, orders, etc.**

It is important to note that, in terms of the adjudication process, it is the Panel not the Board that will be charged with making the final determinations. The Board should play no direct role in making any investigative, remedial or disciplinary decision. To do otherwise could compromise the independence of the PCRP and result in legal challenges.

On the other hand, the Board is responsible for the over-all administration of AVLIC and the PCRP itself. So, those who administer this program must report to the Board on the outcomes of the PCRP. Again, the details of such reports can be set out in the *PCR Policies and Procedures*.

The bylaws or the policies and procedures should also speak to what information concerning an Adjudication Panel's decisions can be made public, and how and when such information can be disclosed to the public.

Finally, the consequences of a negative decision by the Adjudication Panel on a member should also be addressed. Therefore, it is recommended that:

**36. If a member has his or her membership terminated, that former member is no long entitled to represent him/herself as a member of AVLIC or as an AVLIC certified Interpreter.****37. If the member has had his or her membership suspended, then – during the term of that suspension – the suspended member is not entitled to represent him/herself as a member of AVLIC or as an AVLIC certified Interpreter, but may only use the designation “suspended member”.**

## RECOMMENDATIONS FOR AVLIC PCRP

**RECOMMENDATIONS FOR A GOVERNANCE STRUCTURE**

The data collected from AVLIC members and stakeholders indicate a preference for a team approach to deal with concerns and complaints about the professional conduct or competence of a member. It was also deemed important to have representation from both members and deaf consumers of interpreting services within the governance structure of the PCRP.

The information in this section describes the manner in which a team approach might be employed within the PCRP. In keeping with recommendation #2, above, it is therefore recommended that:

- 38. The administrative structure of the PCRP be guided by new PCRP bylaws and *PCR Policies and Procedures*.**

**Professional Compliance Team**

It is important that there be a team of trained persons who may not only receive concerns or complaints, but who can also screen them for jurisdictional issues (see above) and make decisions as to what steps should then be taken. Therefore, it is recommend that:

- 39. A standing Professional Compliance Team be appointed to make all decisions regarding the intake and investigation of concerns or complaints, the different options as to how a complaint might be resolved, and if necessary the initiation of a formal adjudication process to address a complaint.**
- 40. The Professional Compliance Team be co-chaired by two part-time remunerated coordinators (one deaf and one hearing coordinator) reporting directly to the Board.**
- 41. The Professional Compliance Team be comprised of 10 to 12 members – representing the five geographical regions within Canada, with the exception of British Columbia where WAVLI has its own ethical**

## RECOMMENDATIONS FOR AVLIC PCRCP

**compliance process.**

To reflect the wishes of its stakeholders, AVLIC should ensure meaningful representation from both interpreters and deaf consumers on the Professional Compliance Team. This might be achieved through the appointment of DI (Deaf Interpreters) or members of the Deaf community who possess a strong understanding of the CoEGPC.

Though they report directly to the AVLIC Board, the co-chairs (coordinators) of the Professional Compliance Team should not be current Board members. To ensure fairness and impartiality of the PCRCP, the Professional Compliance Team and the Adjudication Panel must be completely independent in the exercise of their functions.

It is recommended that the positions of Coordinator of the Professional Compliance Team be part-time, remunerated positions while other Team members would serve on a volunteer basis. These would be appointed for renewable two-year terms.

The members of the Professional Compliance Team should be well versed in the field of interpreting and deafness. They should have similar skill sets and professionalism (confidentiality, impartiality, sound judgment, etc.); they should be highly skilled in interpersonal effectiveness, ethical decision-making and conflict resolution. Furthermore, each member of the Team should be trained at AVLIC's expense in investigation techniques that are used when determining the validity of a complaint and assessing the evidence.

## RECOMMENDATIONS FOR AVLIC PCR/P

**Professional Conduct Reviewers**

To assist in its functions and ensure the timely investigation and resolution of complaints, the Professional Compliance Team should operate in sub-teams assigned to address a specific complaint. Therefore, it is recommended that:

**42. The Professional Compliance Team appoint Professional Conduct Reviewers: At least 2 members from within its ranks to investigate and try to resolve a received complaint.**

The selection of the Professional Conduct Reviewers would be based on pairing that is culturally and linguistically representative of the PwC and the member whose professional conduct is the object of the concern or complaint. Furthermore, the choice of reviewers might be subject to the preference of the PwC for someone within or outside their region.

The Professional Conduct Reviewers would undertake the following functions:

- Help a PwC resolve a concern informally and directly with the member without moving to a more formal complaint process.
- If necessary, investigate a complaint and submit a report to the Professional Compliance Team.
- Offer appropriate support to the PwC and to the member whose professional conduct is the object of a concern or complaint.
- If informal resolution has been reached, document the terms of that resolution in an agreement.
- If remedial actions form part of the agreement, monitor the situation to ensure that the member completes the outlined steps within the given time lines.

To this end, it is recommended that:

**43. The mandate of the Professional Conduct Reviewers as described above be prescribed within the bylaws.**

## RECOMMENDATIONS FOR AVLIC PCR/P

In situations where (i) a complaint is not resolved despite pursuing all reasonable avenues to do so; (ii) the member has failed to respond in a timely fashion or at all to the requests of the Professional Conduct Reviewers to participate in an investigation; or (iii) the member's professional conduct was a breach of the CoEGPC to such magnitude that the Reviewers have concluded that the person's membership should be suspended, the Reviewers may then recommend to the Professional Compliance Team that a citation be issued against that member. It is therefore recommended that:

**44. The bylaws give the Professional Conduct Reviewers the authority to recommend to the Professional Compliance Team that a citation be issued against a member.**

**45. If the Professional Compliance Team agrees with the Professional Conduct Reviewers' recommendation, the bylaws further authorize the co-chairs of the Team to issue a citation against the subject member.**

### **Adjudication Panel**

The Professional Compliance Team issuing a citation initiates a formal adjudication hearing. In turn, the citation triggers the need for a separate three-member Adjudication Panel responsible for conducting a formal process to adjudicate the allegations set out in the citation.

The Adjudication Panel would be a standing committee of AVLIC that would work in consultation with legal counsel prior to, during and after the formal hearing. The Board appoints the chair and members of the Panel; no one who has investigated or attempted to resolve the original complaint may sit on the Adjudication Panel. The Panel could be appointed from a roster of members who have volunteered to adjudicate a citation should the complaint not be resolved prior to that final step.

## RECOMMENDATIONS FOR AVLIC PCRP

Therefore, it is recommended that:

**46. The bylaws require the Board to appoint a three-person Adjudication Panel to conduct a hearing and adjudicate the allegations set out in the citation.**

**47. The bylaws would further direct that the Adjudication Panel be composed of persons who have no prior knowledge of the allegations set out in the citation and are not in a conflict of interest or biased for or against the respondent member or the PwC.**

### **Conflicts of interest / bias**

Members of the Professional Compliance Team or Adjudication Panel must excuse themselves as soon as they become aware of an actual conflict of interest or advise the chair if they believe they may be in a perceived conflict of interest. In such situations, the co-chair of Professional Compliance Team or the chair of the Board would assess the nature of the conflict and, if necessary, appoint a replacement member. Therefore, it is recommended that:

**48. The bylaws create a mechanism to identify/disclose conflicts of interest or concerns about bias, and to also provide a mechanism to resolve such problems, including the option to replace a Professional Compliance Team member or a member of the Adjudication Panel.**

## **RECOMMENDATIONS FOR IMPLEMENTATION AND ON-GOING EDUCATION**

The next section addresses recommendations for implementation of the proposed PCRP. It also involves a discussion to achieve buy-in from the community and an outline of the necessary on-going education components that must be considered for the PCRP to remain a dynamic and viable process.

## RECOMMENDATIONS FOR AVLIC PCRCP

**Implementation**

**Communication structure.** In considering the implementation of a Professional Compliance Review Process to address concerns and complaints regarding the ethical conduct of members, it is important to remain mindful that one of the serious impediments to maximum success of the DRP in the past is that its administrative structure relied exclusively on volunteers who sometimes had little contact with one another or with the DRP Coordinator. Consequently, the PCRCP must be implemented with clear communication structures whereby volunteer members are kept informed both as PCRCP service providers and as ambassadors of the process.

**Partnerships.** Given the constraints imposed by the fact that members are often employed/contracted by agencies or other organizations, which would deal with a complaint against that member as 'employer', AVLIC needs to establish a partnership agreement with bodies that provide sign language interpretation and establish a clear *modus operandi* to deal with complaints. It is recommended that AVLIC do so prior to implementing the PCRCP.

**Continuous assessment.** As for any other program, continuous assessment must be planned and put in place at the implementation phase of the PCRCP. For the process to remain dynamic and responsive to the needs of AVLIC members and the population they serve, continuous assessment must inform continuous improvement. There are numerous methods to arrive at a meaningful evaluation process. It will be critical for AVLIC to consider the manner in which it plans and deploys its assessment process as well as how it will use the data/information gathered to adjust the PCRCP as it evolves.

**Financial implications.** As mentioned throughout this document, it is imperative that AVLIC's new Bylaws be created and adopted prior to implementing the PCRCP. These must be accompanied by detailed *PCRCP Policies and Procedures* to ensure that they are properly applied. To do so has financial implications that must be closely considered (legal counsel, RFP for consultant(s) to draft *PCRCP*

## RECOMMENDATIONS FOR AVLIC PCRP

*Policies and Procedures*). In addition, to fully implement the PCRP according to the recommendations in this document entails that a contingency fund be set aside for the rare instances when a complaint is brought to adjudication. Other financial considerations involve 1) cost of implementation management (individual(s) who will oversee the implementation process) 2) remuneration of two part-time coordinators who will also participate in the implementation of the PCRP and oversee its on-going functioning; 3) selection and proper training of the Professional Compliance Team and Adjudication Panel members; 4) purchase of a management software to allow members of the Professional Compliance Team access to common working files in a secure electronic environment; 5) design of a continuous assessment process; and, 6) creation and implementation of an awareness campaign to publicize the new process and engage in continuing public education; 7) travel and accommodation costs when required for informal complaint resolution.

### **Members and Community Buy-in**

Research data confirmed that in order for AVLIC members and the communities they serve to fully embrace the PCRP they must be aware that there is a process to address legitimate complaints regarding the professional conduct of an interpreter who is an AVLIC member. The process must be easily accessible both in ASL and in English; it must be clear, fair, trustworthy and transparent (what is it about? Who is involved?). Several methods have been suggested to distribute information on the existence of the PCRP and to promote the process with a view to eliciting buy-in. It is believed that promotional efforts to inform the community (members and consumers) will also result in improved working relationships. It is therefore recommended that:

**49. As it implements its PCRP, AVLIC use all available opportunities (website, ASL and English videos, town hall meetings, emails, social media, advertisements, etc.) to launch a nation-wide awareness campaign for the Deaf community, AVLIC members, non-Deaf consumers and the general public, informing them of the revised**

## RECOMMENDATIONS FOR AVLIC PCRП

**Professional compliance review process and publicizing extensively the web address (URL) to access the service.**

**On-going Education**

Some of the strongest critiques of the current DRP concerned the lack of on-going education concerning the process. This aspect related to the personnel involved in service delivery – lack of continued training as the DRP evolved – as well as to members and the public in general.

For obvious reasons, the co-chairs of the Professional Compliance Team will be individuals who have the requisite competencies as listed above. It is also important to ensure that all the members of the Team and Panel have ample training and are comparably skilled to deliver adequate service. In the past, those involved in the DRP may have received training at the beginning of their mandate; however, they did not consistently have the occasion to practice their skills within the established structure. Consequently, when called upon to engage in the DRP, some of the IRP (Internal Resource Persons) felt ill equipped and in need of more tangible forms of support. It will be important for AVLIC to recognize the need for on-going education for those involved in the PCRП so that administrators remain attuned to developing trends in Professional compliance review processes. To do otherwise would result in a static process that will not meet the need of the communities served by AVLIC.

A requirement for membership and membership renewal is the obligation to attend training on the CoEGPC and on the PCRП on an on-going basis. Members need a shared understanding of what constitutes ethical practice. Equally, consumers of interpreting services also need a clear understanding of what would constitute grounds for a *bona fide* complaint and how to address concerns they might have with the professional conduct of a member. Such understanding must be fostered by continued education geared to answer questions from the community as the PCRП evolves. It is therefore recommended that:

## RECOMMENDATIONS FOR AVLIC PCR P

- 50. That AVLIC use a continuous assessment process to determine the needs for continued education and to provide direction for future efforts to keep all stakeholders informed.**

**RECORD KEEPING**

One of the important features of a profession complaint investigation and resolution process is how sometimes highly sensitive or personal information is collected, used, disclosed and eventually disposed of. As noted above, this issue comes into play when a member is asked to provide what is normally viewed as confidential information to the Professional Compliance Team (through a Professional Conduct Review Team) so that a determination can be made based upon all available information as to whether the complaint has been sustained or not. The importance of proper record keeping also arises at other times during and after the PCR P.

It is recommend that:

- 51. There should be clear rules established regarding (i) the receipt and retention of information that is provided during a PCR P process, (ii) confidentiality and its exceptions, (iii) when the general public may be informed of the final outcome of a particular complaint and the details, if any, etc. that may be thus disclosed.**

**Active Files and Documents Retention**

An electronic process (management software) should be established within AVLIC that would allow members of the Professional Compliance Team access to common working files in a secure electronic environment. Hard copy documents received by the PCR P must be scanned and entered into the corresponding file. When it is no longer required, the hard copy would then be destroyed (shredded) in a manner that maintains the confidentiality of the information.

#### RECOMMENDATIONS FOR AVLIC PCRП

It would be the responsibility of the Professional Compliance Team coordinators to manage record keeping and ensure that all required documentation has been received and included in the file. All communication with a PwC must be done through AVLIC designated email/Skype/Video recording messages addresses.

#### **Timeline for Document Retention**

PCRП correspondence, resolution agreements or adjudication records should be kept on file for a minimum of seven (7) years. When circumstances warrant and following advice from legal counsel, certain records may be kept for a longer period of time. Conversely, there may be circumstances warranting that files dealing with minor deviations of ethical conduct be kept for a shorter time period, also following legal advice. When determining such time lines, it should be understood that new concerns can be brought forward within 3 years of their occurrence.

## Appendix A:

### SUGGESTED PROTOCOL TO ADDRESS A NON-COEGPC CONCERN

Issues that are not addressed in the COEGPC can include matters such as someone's concern for the color or style of clothes worn by a member as not being conducive to visual ease of receiving interpreted messages, or jewellery and/or painted fingernails that are perceived as a visual distraction. Other such concerns may point to simple personality differences or preferences between the PwC and interpreter, such as signing styles. Sometimes a PwC may have expectations that are outside the interpreter's role or are simply unreasonable. Although some of these situations may reflect or be indications of poor business practices, they are not issues that have been or can be addressed within the COEGPC itself.

With the PwC's consent, one of the Professional Compliance Team coordinators could bring these sorts of concern to the member's attention, and could do so without necessarily disclosing the PwC's name, as may be appropriate. The intent here would not be to engage in a PCRП; rather it is to create awareness, which potentially could be a catalyst for change.

In turn, the Professional Compliance Team coordinator must inform the PwC that, since the concern is not an issue that is addressed under the CoEGPC, even if was proven to have taken place, the coordinator can only inform the member of the concern and make recommendations to improve business practices. **NOTE:** It is important that the PwC be made aware that this will not constitute engagement in the PCRП since the concern is not a potential breach of the CoEGPC; therefore, it is not qualify as a formal complaint under the PCRП.

## Appendix B:

### PROPOSED FRAMEWORK FOR THE PCRCP BYLAWS

#### Definitions

1. Certain terms or words used throughout the Bylaws should be defined.

#### Appointments and Administration

2. The Bylaws should allow the Board to (a) appoint the those necessary to administer these bylaws, and (b) approve *PCRCP Policies and Procedures* that will provide these appointed individuals with detailed guidance on how these bylaws are to be administered.
3. Bylaws should be established regarding the receipt and retention of information that is provided during a PCRCP process, confidentiality and its exceptions, when the general public may be informed of the final outcome of a particular complaint and the details, if any, etc. that may be thus disclosed.

#### General Requirements

4. A bylaw should state that member must comply with the CoEGPC, and applicants must agree in writing to adhere to the AVLIC Bylaws and CoEGPC.
5. A member must complete continuing education within a defined period of time in relation to understanding and upholding the Code and following all Standards.
  - a. Specific consequences of a failure to complete continuing education re: the CoEGPC should be described, and a new process may be required to address such failures that would operate separately from dealing with a complaint.
6. A bylaw should state that member must cooperate with the Professional Compliance Team and the assigned Professional Conduct Review Team during

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an investigation or resolution of a complaint, and must attend and participate in a disciplinary hearing if one is called.

- a. Specific consequences of a failure to cooperate should be defined, and a new process may be required to address such failures that would operate separately from dealing with an initiating complaint.
7. If a member resigns during an investigative, resolution or disciplinary process, a bylaw should make it clear that those processes may continue and final decisions may be made without the further or direct participation of the (former) member. (In other words, resignation should not halt the professional conduct review process.)

#### **Supporting Persons with Concerns**

8. A bylaw should state that an Intake Coordinator, working at arms-length from the Conduct Review Team and the Professional Compliance Team, may help a person with a concern to prepare a complaint that meets the requirements of a formal complaint (see below), but in so doing the Intake Coordinator must not improperly influence or advise the person with a concern.
- a. The *PCRП Policies and Procedures* should make it clear to a person with a concern that if they do not want their identity to be disclosed to the subject member, their concern is not likely to proceed further (to become a formal complaint) and the file may then be closed.

#### **Receipt of Complaints**

9. A complaint must (a) disclose the name of the person lodging the formal complaint, (b) name a member or allow a member to be identified, (c) describe conduct that, if proven, could constitute improper conduct or conduct unbecoming or indicate a specific breach of the CoEGPC, (d) be within jurisdiction, (e) not concern a matter that is already being addressed in another legal forum or should be addressed in another forum, and (f) must be filed within three years of the events taking place.

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a. The *PCRPP Policies and Procedures* may

- provide guidance to help determine whether a complaint is within jurisdiction or concerns a matter that is already being addressed (or could be addressed) in another legal forum, including if the member is employed by an agency, is covered by a collective agreement, etc.;
- address challenging issues such as dealing with third-party complaints and anonymous complaints;
- provide guidance to help determine whether the allegation might constitute a breach of the CoEGPC, or constitute conduct unbecoming of a member that is not otherwise addressed in the CoEGPC.

b. The *PCRPP Policies and Procedures* could also set out recommended timelines that should be followed so that a complaint can be investigated, resolved or adjudicated in a timely fashion.

10. A bylaw should allow the Professional Compliance Team to investigate a member's conduct, even if there is no formal complaint filed by a PwC. This allows an investigation to proceed to address concerns that may arise in newspaper or other media reports about the conduct of a member, etc.

11. Bylaws should be established governing when the Professional Compliance Team should advise a member's employer that the Association has received and is investigating a complaint, is taking steps to resolve or has resolved a complaint, or has issued a citation, commenced a disciplinary hearing or issued final orders.

a. The *PCRPP Policies and Procedures* could provide more detailed guidance on this particular jurisdictional issue.

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**Investigation of Complaints**

12. Bylaws should be established that would give the Professional Compliance Team (or an assigned Professional Conduct Review Team) clear authorities to
- (a) request the member provide it with certain information, and to do so within a minimum period of time;
  - (b) to inspect a member's office,
  - (c) to review files, and
  - (d) to make copies of documents.
- a. Subsequent bylaws should address how this information must then be kept in safe storage and eventually destroyed, if it is not used later in either the resolution or disciplinary phases.
  - b. As noted above, a bylaw should speak to the requirement that a member cooperate with an investigation, etc.
13. There should be a bylaw that makes it clear that any information gathered during a complaint investigation is confidential and must not be disclosed to an external or third party, unless the affected party (e.g. PwC or subject member) agrees.

**Resolution of Complaints**

14. Bylaws should be established that authorize the Professional Compliance Team (through the assigned Team) to engage in various ways to try to resolve a *bona fide* complaint.
- a. The *PCRCP Policies and Procedures* document could describe these various resolution mechanisms in more detail; e.g. mediation and community conciliation (if the later is to be retained).
  - b. Issues regarding the confidential nature of these informal resolution mechanisms would have to be addressed in a bylaw, such as requiring all participants sign a non-disclosure agreement.
15. If a complaint cannot be resolved informally through some form of informal resolution process, a bylaw would require the Team to report that failure to the Professional Compliance Team (without providing details that would breach the non-disclosure agreement), and offering recommendation as to whether a

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citation to should be issued or some other action taken.

**Adjudication of Complaints (disciplinary hearings)**

16. There should be clear authority in the Bylaws for the Professional Compliance Team to issue a citation that would (a) name the respondent member, (b) summarize the allegations of misconduct or unprofessional conduct against that member; and (c) set a date, time and location for the hearing.

- a. When issued, the citation should be posted at the website or otherwise made available to the public.

17. The Bylaws would also require that, within a defined period of time, the respondent member must be provided with full disclosure of all information the Team has obtained during its investigation whether or not it will rely upon that information in the pending disciplinary hearing.

- a. Any new information that might have been disclosed during the second phase (informal resolution) cannot be used during the subsequent disciplinary process.

18. The Bylaws should authorize the Board to appoint an independent Adjudication Panel that would be responsible for conducting the disciplinary hearing.

- a. The Adjudication Panel would be struck only when a citation has been issued, and it must be composed of persons who have had no previous knowledge of the complaint.
- b. The *PCRCP Policies and Procedures* document could describe the details of a disciplinary hearing, including providing an agenda to help guide this process.

19. The Bylaws should address other procedural issues that would arise during a typical hearing, such as:

- a. Who is entitled to attend a hearing, to cross-examine a witness, etc.
- b. When a hearing should be conducted “in camera” (excluding the public);

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- c. Witnesses taking of an oath or affirmation, and cross-examination of witnesses;
  - d. Recording the hearing and obtaining copies of transcripts, etc.;
  - e. What orders an Adjudication Panel may issue if it finds one or more of the allegations set out in a citation have been proven;
  - f. Publication and notifications re: the Panel's final decisions.
20. If necessary, new bylaws could be developed to deal with the option for a disciplined member to appeal the Panel's decision to the full Board.