

Association of Visual Language Interpreters of Canada

PROFESSIONAL CONDUCT REVIEW PROCESS COMPLAINT INVESTIGATION AND RESOLUTION POLICIES AND PROCEDURES

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DRAFT current to: January 24, 2017

Effective date: TBD¹

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¹ *DRAFTING NOTE: This would be the date when the AVLIC Board approves these Policies and Procedures or such later date as the Board may then set.*

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Introduction

These Professional Conduct Review *Complaint Investigation and Resolution Policies and Procedures* support the AVLIC's professional conduct review bylaws, as set out in Section 6 "Professional Conduct Review Process" of the Association's Bylaws.

These Policies and Procedures were reviewed by the membership and subsequently approved by the Board pursuant to bylaw 6.4(1)(c) on the date noted above, and are thus effective as of that date.

In accordance with policy #32(d), when a Complainant files a complaint against a Member, that person should be sent a copy of these Policies and Procedures to help them understand how the AVLIC will investigate and try to resolve their complaint.

If a *bona fide* complaint cannot be resolved informally, the matter may proceed to a formal disciplinary hearing. In that case, the Complainant would likely be a witness in that separate proceed and would be entitled, at that time, to a copy of the second set of policies and procedures, the Professional Conduct Review *Discipline Hearing Policies and Procedures*.

The applicable bylaws that provide the foundation for these *Complaint Investigation and Resolution Policies and Procedures* are set out in boxes throughout. Any changes to the bylaws themselves could result in further changes to this document.

While every effort has been made to ensure there is no conflict, where a provision of these *Complaint Investigation and Resolution Policies and Procedures* conflicts with a provision of the Bylaws, the applicable bylaw prevails to the extent necessary to resolve that conflict.

Separate sets of policies and procedures will be created and approved by the Board for the following related bylaw provisions:

- The rules and procedures that an Adjudication Panel would employ while conducting a disciplinary hearing, should a complaint proceed to that final step (ref. bylaws 6.26 to 6.39) – the *Discipline Hearing Policies and Procedures*;
- The application process and criteria to assess whether an Affiliate Chapter's complaints and discipline bylaws are substantially similar to the AVLIC's Section 6 Bylaws (ref. bylaw 6.2(1));
- The continuing education standards, timing and related procedures that Members are required to complete in compliance with the *Code of Ethics and Guidelines for Professional Conduct* (ref. bylaw 6.7).

In keeping with AVLIC policies, all complaint investigation and resolution activities addressed under the Bylaws and these policies and procedures shall be conducted in English or American Sign Language, as may be required.

Interpretation

Bylaw definitions

<u>Bylaw:</u> 6.1 In addition to the definitions set out in section 1.1, throughout this Section: ²	
(a)	<i>“Adjudication Panel” means a panel of Members appointed by the Board pursuant to bylaw 6.4 to adjudicate the allegations against a Member as set out in the citation issued pursuant to bylaw 6.23;</i>
(b)	<i>“alternative dispute resolution” means any process a Complainant or a Member, or both, may agree to participate in that provides a way to resolve a complaint other than holding a disciplinary hearing, and which may include mediation, arbitration or a restorative justice process as described in Division E – Alternative Dispute Resolution;</i>
(c)	...
(d)	<i>“Association” means the Association of Visual Language Interpreters of Canada or any committee or person appointed by the Board to administer the applicable bylaw;</i>
(e)	<i>“CoEGPC” means the Code of Ethics and Guidelines for Professional Conduct approved by the Board, and as may be amended from time to time;</i>
(f)	<i>“complaint” means a communication that documents a Complainant’s concerns about the conduct of a Member that meets the requirements of bylaw 6.11;</i>
(g)	<i>“Complainant” means a person who has filed a complaint against a Member under bylaw 6.11;</i>
(h)	<i>“concern” means a communication that a Person with a Concern provides to the Association pursuant to bylaw 6.10, but which is not a complaint filed under bylaw 6.11;</i>
(i)	<i>“Inquiry Committee” means the committee appointed by the Board pursuant to bylaw 6.4 to investigate and try to resolve a complaint filed under bylaw 6.11;</i>
(j)	<i>“facilitated agreement” means a written agreement between the parties that is reached through an alternative dispute resolution process;</i>
(k)	<i>“facilitator” means a person who has been appointed by the Inquiry Committee to be a facilitator, mediator or arbitrator for an alternative dispute resolution process;</i>
(l)	<i>“Member” means a Class A - Active Voting Member of the Association;</i>
(m)	<i>“Respondent Member” means a Member who has been named in a citation issued pursuant to bylaw 6.23;</i>
(n)	<i>“Person with a Concern” means a person who has a concern about the conduct of a Member and approaches the Association to try to resolve that concern informally under bylaw 6.10;³</i>
(o)	<i>“Subject Member” means a Member who has been named in a complaint filed under bylaw 6.11;</i>
(p)	<i>“third party” means any person who is not a Complainant, a Member, a Person with a Concern, nor a member of the Board, Inquiry Committee or Adjudication Panel.</i>

² EXPLANATORY NOTE: Only those bylaw definitions that are also used in these Policies and Procedures are listed here.

³ EXPLANATORY NOTE: A Person with a Concern does not become a Complainant until such time as that Person files a formal Complaint under bylaw 6.11.

P&P definitions

- 1) In addition to the definitions set out in bylaw 1.1 or 6.1, the following definitions apply to these Policies and Procedures:
 - a) “Investigator” means any member of the Inquiry Committee, or a person who is independent and external to the Committee, and who has been appointed by the Committee as an Investigator pursuant to bylaw 6.12(1)(c).⁴

Administration

Board appointments

Bylaw: 6.4(1) The Board may by ordinary resolution do the following:

- (a) appoint an Inquiry Committee, and name its chair, and such other persons as are necessary to administer the bylaws in Divisions C to E; ...*

Appointment of Inquiry Committee

- 2) In appointing the Inquiry Committee under bylaw 6.4(1)(a), the Board must appoint at least three Members, one of whom must also be appointed as the chair.
- 3) If an appointed Member on the Committee resigns or steps aside for any reason, the chair of the Committee must ask the Board to appoint a replacement Member to the Committee and, for that purpose, may also recommend a particular replacement Member.
- 4) If a Committee Member has resigned or stepped aside, the remaining Committee members may continue to investigate and try to resolve a complaint notwithstanding that a replacement Member has yet to be appointed by the Board under the previous policy.

Appointment of Intake Officer and responsibilities

- 5) Pursuant to bylaw 6.4(1)(a), the Board will appoint an Intake Officer⁵ to be the administrative staff person who will be responsible for the following:
 - a) to receive concerns that have been submitted by the public concerning a Member under bylaw 6.10;
 - b) to undertake an initial assessment of a concern applying policies #23 to #27;
 - c) to try to resolve a concern by informal means under bylaw 6.10;
 - d) if a concern cannot be resolved by informal means, to then forward that concern to the Inquiry Committee pursuant to bylaw 6.10 or 6.11;
 - e) to ensure the safe and secure storage of information or documents collected during a complaint investigation or subsequent adjudication hearing, and – when so instructed – to ensure the destruction of such information or documents when it is no longer needed;
 - f) to undertake responsibilities as may be assigned to the Intake Officer in the separate *Discipline Hearing Policies and Procedures*, as may be required;

⁴ *EXPLANATORY NOTE: There is a difference between the Intake Officer and an Investigator. The Intake Officer provides an administrative or supporting role, while the Investigator would be specifically trained in how to conduct a fair and transparent complaint investigation. That said, if an Intake Officer does have the appropriate qualifications, that Officer could also be appointed as an Investigator.*

⁵ *EXPLANATORY NOTE: The use of the singular here does not preclude the Board from appointing two or more persons to this position, or having them share these responsibilities.*

- g) to undertake any other duties or responsibilities as set out in these Policies and Procedures, or as the Committee may assign;⁶
- h) to report to the Inquiry Committee as may be necessary, on the completion of any of the above noted responsibilities, or as directed by the Committee.

If Intake Officer is also appointed as an Investigator

- 6) If an Intake Officer appointed by the Board under bylaw 6.4(1)(a) is also qualified to act as an Investigator and is so appointed by the Committee to be an Investigator (see policy #13, below) that staff person
 - a) may carry out the additional functions of an appointed, but
 - b) must be sensitive to any prior involvement in the complaint that he or she had while addressing a concern as the Intake Officer that might then make the Officer (as an Investigator) biased or put the Officer into a conflict of interest, and
 - c) must report to the Committee as so directed.

Tracking Committee appointments

- 7) For the purposes of bylaw 6.4(1), the Intake Officer shall
 - a) maintain an up to date list of all members who have been appointed by the Board to the Inquiry Committee, and
 - b) provide a copy of that list to any Member on request.

Avoiding conflicts of interest

Bylaw: 6.4(2) *Notwithstanding the generality of subsection (1),*

- (a) *the person who tries to help a Person with a Concern resolve a concern under bylaw 6.10 must not be appointed as a member of ...*
 - (i) *the Inquiry Committee that might subsequently investigate the resulting complaint under bylaw 6.11, ...*
 - ..., and*
- (b) *no member of the Inquiry Committee that investigated and attempted to resolve a complaint filed against a Member under bylaw 6.11 may be appointed to an Adjudication Panel that is subsequently adjudicating a citation issued against that Member pursuant to bylaw 6.23 based on that same complaint.*

Tracking mechanism to help avoid conflicts of interest

- 8) To minimize the possibility of a conflict of interest, the Intake Officer shall maintain a tracking mechanism to ensure that
 - a) in accordance with bylaw 6.4(2), a person who helps a Person with a Concern resolve that concern under bylaw 6.10 must not subsequently be appointed as a member of the Inquiry Committee, and
 - b) in accordance with bylaw 6.4(2)(b), no member of the Inquiry Committee that investigated or attempted to resolve a complaint filed against a Member must then be appointed to an Adjudication Panel.

⁶ EXPLANATORY NOTE: *The Inquiry Committee is ultimately responsible for how complaints are investigated, resolved, etc. While the Intake Officer may play a major role, all final decisions must rest with that Committee.*

Reporting conflicts of interest

- 9) If a member of the Inquiry Committee becomes aware that he or she is or may be in a conflict of interest in relation to any matter the Committee is investigating, that member shall promptly notify the chair of the Inquiry Committee of that conflict, applying the reporting procedures set out in the AVLIC *Conflicts of Interest Policy*.
- 10) If the Intake Officer becomes aware that
 - a) he or she is or may be in a conflict of interest with respect to any concern that the Officer is trying to resolve, or
 - b) any member of the Inquiry Committee is or may be in a conflict of interest in relation to any matter the Committee is investigating,the Officer shall promptly notify the chair of the Inquiry Committee of that conflict, applying the reporting procedures set out in the AVLIC *Conflicts of Interest Policy*.

Addressing conflicts of interest, etc.

- 11) If the Inquiry Committee as a whole concludes that one of its appointed members is in a conflict of interest that would bring into question that member's impartiality in investigating or resolving a complaint, is biased or is otherwise not able to participate in an investigation, the Panel shall promptly request the Board to appoint a new member to replace that member, applying bylaw 6.4(1)(b).
- 12) Before making a decision under the previous policy, the Inquiry Committee or the Board may seek the advice of legal counsel, but must not disclose that opinion to any person outside the Committee or the Board, as applicable.

Skills of Inquiry Committee members

- 13) Before appointing a Member to the Inquiry Committee under bylaw 6.4(1)(a) or as soon as possible after being appointed, the Board will ensure that such a member has the following training, skills or abilities:
 - a) complaint investigation and interview techniques;
 - b) the identification and characterization of evidence that may be gathered during an investigation (e.g. type, quality, reliability, etc.);
 - c) how to write an investigation report;
 - d) how to resolve a *bona fide* complaint through an alternative dispute resolution process.

Appointing Investigators

- 14) Pursuant to bylaw 6.12(1)(c), the Inquiry Committee may do one or both of the following:
 - a) appoint any member of the Committee or a person who is independent and external to the Committee to be an Investigator, and⁷
 - b) provide that appointed Investigator with a letter of appointment signed by the chair of the Committee.

⁷ EXPLANATORY NOTE: For certain types of complaints (e.g. allegations of sexual misconduct or abuse), the Committee may want to retain the services of a professional investigator, such as a retired police officer or a private detective.

- 15) A person appointed as an Investigator who is not also a member of the Committee must
 - a) enter into and sign a service contract with the Association,
 - b) agree to the confidentiality and privacy terms and conditions set out in that contract and bylaw 6.5, and
 - c) report to the Committee as so directed
- 16) Any person appointed as an Investigator pursuant to bylaw 6.12(1)(c) must present their appointment letter to any person on request.

Expectation of Committee members and Investigators

- 17) Committee members and Investigators will be well-informed and impartial, and follow fair and transparent investigative procedures.
- 18) All complaint investigations will be conducted in a timely, confidential, evidence-based and thorough manner.

Information gathered during an investigation, resolution or hearing

Confidentiality and record retention

Bylaw: 6.5(1) Except as otherwise directed or permitted in this or any other bylaw in this Section, the Inquiry Committee, an Adjudication Panel or the Board must not disclose to a third party any documents or information

(a) obtained during an investigation of a complaint,
(b) concerning a resolution of a complaint or an attempt to resolve a complaint, or
(c) provided to the Adjudication Panel during a discipline hearing,
unless the person about whom that information relates or the appropriate committee, as the case may be, consents to such a disclosure.

(2) The Association shall keep

(a) all records of an investigation of the Inquiry Committee,
(b) all evidence presented to a disciplinary panel during a hearing, and
(c) all decisions of the Adjudication Panel

for a period of not less than seven years, but if the circumstances warrant and after consulting with legal counsel, the Association may keep these records for a longer period of time that counsel may advise.

Storage and destruction of information gathered during a complaint investigation

- 19) All information the Committee or an appointed Investigator gathers during a complaint investigation will be kept in a safe and secure location to be approved by the Committee.
- 20) So long as the complaint does not proceed to a disciplinary hearing, with the approval of the Inquiry Committee, all complaint investigation information will be destroyed seven years after the investigation file has been closed, unless legal counsel advises otherwise.
- 21) If so directed by the Inquiry Committee, the Intake Officer may be responsible for administering bylaw 6.5, the previous two policies, and for consulting with legal counsel as may be necessary.

Member cooperation during an investigation

Member's duty

Bylaw: 6.8(1) A Member must cooperate with the Association during an investigation
(2) Without limiting the generality of subsection (1), a member must
(a) cooperate with the Inquiry Committee or whatever other committee or person the Board may appoint under bylaw 6.4 to administer the bylaws in this Section;
(b) not withhold information from the Inquiry Committee;
(c) not hinder or obstruct the Committee or any Investigator appointed by the Committee.

Failure to cooperate during an investigation

Bylaw: 6.9(1) If a Subject Member fails to comply with a requirement of bylaw 6.8, the Inquiry Committee may, subject to subsection (2),
(a) suspend that member's registration in the Association until such time as the member cooperates with the committee or responds to the committee's request, or
(b) add the member's failure as a new allegation in a citation issued under bylaw 6.23.
(2) Before acting under subsection (1)(a), the Inquiry Committee must notify the Subject Member that
(a) his or her registration may be suspended because of a failure to comply with a requirement of bylaw 6.8, and
(b) the member has 30 days from the receipt of the notification to provide the committee with an explanation for that member's failure to comply with a requirement of bylaw 6.8.
(3) A Subject Member who has been notified pursuant to subsection (2) has the burden to explain to the satisfaction of Inquiry Committee why he or she should not be suspended pursuant to subsection (1)(a), and the member's explanation must be reasonable and acceptable to the committee.
(4) If a Subject Member has been suspended pursuant to subsection (1)(a), that member's membership in the Association may not renew unless the Inquiry Committee otherwise approves that member's renewal.
(5) For clarity, a show cause proceeding under this bylaw is separate and distinct from a disciplinary hearing initiated by a citation issued under bylaw 6.23.

Warning an uncooperative member

- 22) As soon as the Inquiry Committee determines that a Member is or may be in breach of bylaw 6.8 during a complaint investigation or any subsequent attempt to resolve a *bona fide* complaint, in accordance with bylaw 6.9(2), the Committee will promptly advise that Member in writing of
- a) that apparent breach and the circumstances, and
 - b) the consequences under bylaw 6.9 should that Member's failure to cooperate continue.

Member resignation

Bylaw: 6.8(3) If a Member resigns during an investigation [or] resolution ... those processes may continue and a final decision may be made without the further or direct participation of the (former) member.

- 23) As soon as the Committee determines that a Member has resigned during an investigation, resolution or disciplinary process, the Committee shall promptly inform that member of the requirements of bylaw 6.8(3), and the fact that the Committee may continue in its investigation in the absence of that member.

Concerns about a Member

Bylaw: 6.10(1) If a person contacts the Association with a concern about the conduct of a Member, before proceeding to treat that concern as a formal complaint under bylaw 6.11, the Association will encourage and support the Person with a Concern to resolve their concern by informal means, including arranging or facilitating a meeting between the Person with a Concern and the Member to discuss and try to resolve the concern, where both parties so agree.

Categories of Persons with a Concern

- 24) To be a Person with a Concern as described under bylaw 6.10(1), such a person must fall into one of the following categories:
- a) the person for whom the Member provided the interpretation services;
 - b) the legal or authorized representative of the person for whom the Member provided the interpretation services;
 - c) the person or corporation who hired or who employed the Member who provided the interpretation services.
- 25) For clarity, any person who is not a person described in clause (a) to (c) in the previous policy is deemed to be a Third Party.

Concerns of Third Parties

- 26) If a Third Party contacts the Association with a concern about the conduct of a Member, that Third Party will be advised that the Association will not accept or act on that concern until such time as a person who is one of the categories of persons listed in policy #24 contacts the Association directly.

How a person may communicate a concern

- 27) A Person with a Concern may contact the Association by various means which include, but are not limited to the following:
- a) sending a letter of complaint to the Association;
 - b) phoning the Association directly (or leaving a voice mail message);
 - c) emailing the Association through its general email address;
 - d) submitting a complaint by video using American Sign Language.

Duties of Intake Officer

- 28) The Intake Officer will, as soon as practical,
- a) undertake an initial assessment of a concern applying bylaw 6.11(2) and policies #33 to #36 (below),
 - b) consult with legal counsel in relation to any legal or procedural issue that may be identified during the initial assessment, and
 - c) report to the chair of the Inquiry Committee the results of that initial assessment in writing, including
 - i) any informal resolution of the concern the Officer was able to achieve, or
 - ii) any recommendations the Officer may have to resolve the concern by informal means.
- 29) For clarity, the Intake Officer has no authority to decide or direct that the Association or Committee must take or not take a particular action; the Officer's role is purely advisory

and the Committee alone retains the sole authority to decide what steps should be taken in relation to an assessed concern or complaint that it receives from an Officer.

- 30) The Intake Officer is also responsible for providing information to a Person with a Concern, as required under bylaw 6.10(2).

Providing information to a Person with a Concern

Bylaw: 6.10(2) In addition to trying to resolve a concern informally, the Association will provide a Person with a Concern with information that will explain how – if their concern cannot be resolved informally – that Person could then file a formal complaint against the Member under bylaw 6.11.
(3) If Person with a Concern is not satisfied with either the process of or the outcome of an informal resolution of their concern about a Member’s conduct, that Person may file a complaint against that Member pursuant to bylaw 6.11.
(4) For clarify, a Person with a Concern is not required to agree to an informal resolution of their concern under this bylaw, but may proceed directly to filing a formal complaint against a Member pursuant to bylaw 6.11.

Complaints against a Member

Filing a formal complaint

Bylaw: 6.11(1) A person may file a complaint against a Member.
(2) To constitute a complaint against a Member, the information in the complaint filed under subsection (1) must meet the following requirements:

- (a) be in writing or a video in American Sign Language;*
- (b) disclose the name and contact information of the person who is making the complaint;*
- (c) name the person(s) who were affected by the Member’s alleged improper conduct and give their contact information, if the person affected was not the Complainant;*
- (d) name a Member who is alleged to have acted improperly, or provide such information that would then allow the Member to be identified;*
- (e) describe the Member’s conduct such that, if proven, it would constitute a breach of the CoEGPC or might otherwise constitute professional misconduct;*
- (f) concern matters that are within the Association’s jurisdiction;*
- (g) whether the concern has already been addressed or is currently being addressed in another legal forum, or could or should be addressed in another legal forum;*
- (h) must be received within two years of the events taking place.*

Additional requirements re: a formal complaint

- 31) In addition to the requirements of bylaw 6.11(2), the following additional technical requirements apply to a complaint:
- a) if it is submitted in writing, the complaint must be in English, dated and signed by the Complainant;⁸
 - b) if it is submitted by video, it must be in American Sign Language, and it must also be possible to identify
 - i) the date when the video was made, and
 - ii) that it was made or authorized by the Complainant;

⁸ EXPLANATORY NOTE: A complaint that is received by an email or fax is a “complaint in writing”.

- c) if the Complainant is a child⁹ or an adult without legal capacity, the complaint must also be signed or sponsored by the Complainant's legal guardian.
- d) if a complaint is initially made verbally by telephone, the Intake Officer will advise the complainant that it must be received in writing or by video.

Difficulties in submitting a complaint

32) If a complainant is unable to provide a written or video complaint, the Intake Officer may then

- a) transcribe the Complainant's complaint,
- b) confirm with the Complainant that the transcribed complaint is an accurate reflection of the complaint, and
- c) document how the Complainant confirmed the transcribed complaint.

On receipt of a complaint

33) On receipt of a complaint, the Intake Officer will

- a) date-stamp the complaint,
- b) open a numbered file for the complaint, and
- c) send a letter to the Complainant
- d) acknowledging receipt of the complaint, and
- e) advising the Complainant that the Inquiry Committee will begin its review of the matter within 60 days, and
- f) provide the Complainant with a copy of these Inquiry Policies and Procedures.

Examples of intra-jurisdictional complaints

34) Pursuant to bylaw 6.11, the sorts of complaints about the conduct of a Member that a person may file with the Association ("intra-jurisdictional complaints") include, but are not limited to the following:

- a) a concern about the quality of a Member's competency or ability in relation to specific interpretation services that were provided to an identified person or organization;
- b) a concern about a Member's personal conduct that may have negatively impacted on their competency or ability in relation to provided interpretation services;
- c) any matter which, on its face, might constitute a breach of the CoEGPC;
- d) any matter which, on its face, suggests that the Member may have failed to meet or uphold a professional standard or similar rule approved by the Board.

Examples of non-jurisdictional complaints

35) For clarity, the following are the sorts of complaints that the Association will not be pursued further under bylaw 6.11 ("non-jurisdictional complaints"):

- a) if the complaint is about a person who is not an Active Member;

⁹ EXPLANATORY NOTE: Typically, a "child" means any person under the age of 18 or 19 (depending on the province in question), however under Canadian law a mature minor may also be capable of filing a formal complaint without the need for the sponsorship or approval of that child's legal guardian. The Committee should consult with legal counsel concerning all complaints that may be filed by children under the age of 18 or 19.

- b) if the complaint is about the conduct of a Student Member;¹⁰
- c) if the complaint is trivial, frivolous, vexatious, or made in bad faith;¹¹
- d) if the complaint does not contain an allegation which, if admitted or proven, would constitute a matter that falls under the ambit of bylaw 6.11(2).

Complaints involving financial matters

36) If the complaint involves a financial matter, but does not raise an issue concerning client safety or the ethical conduct or competency of the Member, the Inquiry Committee may, at its discretion,

- a) delay its investigation of that complaint pending the outcome of a civil action regarding that financial matter that involves or may involve the Member,¹² and
- b) so advise both the Complainant and the Member.

Concurrent legal proceedings

37) Pursuant to bylaw 6.11, following are the sorts of concerns about the conduct of a Member that may result in a **delay** of the Association's further involvement until such time as these other legal proceedings have completed or such time as the Association's involvement would not compromise those other legal proceedings:¹³

- a) if the concern is in relation to a matter that is under active investigation by the police or some other regulatory authority with the primary jurisdiction to address that concern;
- b) if the concern is in relation to a matter that is currently before the Court, be it a civil or criminal proceeding;
- c) if the concern is in relation to a matter that is currently being investigated or addressed
 - i) by the employer,
 - ii) pursuant to a collective agreement, or
 - iii) before an industrial relations tribunal.

38) If the Committee decides to delay an investigation in relation to any matter, including those listed in the previous policies, it shall so advise both the Complainant and the Member of that decision.

¹⁰ *EXPLANATORY NOTE: Generally speaking, Students will be under the guidance of and are the responsibility of a teacher or an Active Member. Such supervisors are responsible to ensure the student acts properly, competently, etc. To expand the PCR to include Student Members could put the AVLIC in role of being the primary supervisor for all student, at least all Student Members.*

¹¹ *EXPLANATORY NOTE: There may be a need to consult with legal counsel to ascertain if a complaint is "trivial, frivolous, vexatious, or made in bad faith".*

¹² *EXPLANATORY NOTE: If a regulatory body receives a complaint that is primarily focused on a financial dispute between a member and a client, the body would not normally intervene, at least not until after the legal proceeding (e.g. a claim that has or could be filed in small claims court) has completed. To do otherwise could set-up the Association to take over (albeit inadvertently) a financial dispute that is typically easier for the courts to adjudicate.*

¹³ *EXPLANATORY NOTE: A regulatory body should exercise caution in investigating a complaint if any of the noted circumstances arise. The body should continue its investigation only after these other legal proceedings have completed. To do otherwise could undermine these "higher priority" legal proceedings.*

Committee-initiated complaints

Bylaw: 6.11(3) *In the absence of a formal complaint, the Inquiry Committee may on its own motion investigate a Member in relation any of the following:*

- (a) *a contravention or failure to comply with Bylaws of the Association;*
- (b) *a contravention or failure to comply with the CoEGPC;*
- (c) *any type of professional misconduct;*
- (d) *concerns regarding the Member's competence to work as a sign language interpreter;*
- (e) *a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs the Member's ability to work as a sign language interpreter.*

Initial assessment of Committee-initiated complaints

39) Before acting under bylaw 6.11(3), the Inquiry Committee must undertake an assessment of its concern or complaint and do so applying bylaw 6.11(2) and policies #30 to #36, with such modifications as may be required for such an assessment.

40) For the purposes of the previous policy, the Committee may request the Intake Officer to undertake an assessment of a complaint and submit an initial assessment report of that complaint to the Committee.

Advising a Member's employer

41) If the Complainant is not the Member's employer, the Inquiry Committee may advise the Member's employer, if applicable, and do so in writing, to the effect that the Association has received a complaint concerning that Member and is investigating the matter.

42) Before acting under the previous policy, the Inquiry Committee may consult with legal counsel.

43) If as a result of informing a Member's employer under policy #40 or otherwise, the Employer advises the Association that the Employer is investigating or taking action in relation to the complaint, the Inquiry Committee may then delay its further investigation of the complaint in accordance with policy #36(c).

Investigation of a Complaint

Role of the Inquiry Committee

Bylaw: 6.12(1) *Where a complaint has been filed against a Member, the Committee shall*

- (a) *assess the complaint to ensure it meets the requirements of bylaw 6.11(2),*
- (b) *investigate any matters raised by the complaint, and*
- (a) *seek to resolve the complaint as soon as possible after it has been received.*
- (2) *In relation to its investigation of a complaint, the Inquiry Committee may do any of the following:*
 - (a) *request the Complainant and the Subject Member to provide the Committee with such information the Committee may require regarding the matter under investigation, and to do so within a specified period of time;*
 - (b) *make copies of any documents;*
 - (c) *appoint an Investigator to collect additional information pertinent to the complaint.*

Timing of complaint investigations generally

44) The Inquiry Committee will make every effort to

- a) *begin its investigation of a complaint within 60 days of the Committee receiving that complaint, and*

- b) to complete its investigation of a complaint or resolve that complaint within 180 days of the Committee receiving that complaint.¹⁴

45) If the Inquiry Committee is unable to start an investigation of a complaint or complete its investigation as set out in the previous policy, the Committee shall so notify the Complainant or the Subject Member, as may be appropriate, and provide a revised estimate accordingly.

Member notification of a complaint

Bylaw: 6.13(1) Within a reasonable period of time after receiving a complaint that meets the requirements of bylaw 6.11, the Inquiry Committee must inform the member who is the subject of that formal complaint about the complaint and such details as the Committee determines are useful or necessary to disclose at that time.

- 46) When acting pursuant to bylaw 6.13(1), the Inquiry Committee need not immediately inform the Member that a complaint has been filed against that Member if the Committee is concerned that
- a) to provide such prompt notification may compromise its subsequent investigation of the complaint, or
 - b) such notification may place the Complainant or any other person at undue risk of harm.

47) Notwithstanding the previous policy, the Inquiry Committee must inform the Subject Member pursuant to bylaw 6.13(1) within 90 days of receipt of the complaint.

- 48) When notifying the Subject Member of a complaint pursuant to bylaw 6.13(1), the Inquiry Committee may
- a) provide the Member with one or both of the following:
 - i) a copy of the complaint as it was originally submitted, or
 - ii) the Committee's summary of the complaint, removing such information from the original complaint which the Committee feels is unnecessary in the circumstances or is not related to the Member's alleged conduct, and¹⁵
 - b) ask the Member to respond to specific issues within the complaint as may be identified by the Committee.

Withholding complainant's identity

- 49) Pursuant to bylaw 6.13(1) and notwithstanding the previous policies, the Inquiry Committee may direct that the identity of a Complainant not be disclosed to the Subject Member or any other party if the Committee is of the view that such disclosure may place the Complainant or any other person at undue risk of harm.¹⁶

¹⁴ *EXPLANATORY NOTE: These are aspirational timelines, and not – strictly speaking – enforceable on the Committee. Many factors can cause a delay to the start of an investigation, let alone the successful completion of an investigation. If such unanticipated delays occur, the Complainant and Member should be so notified, as per the following policy.*

¹⁵ *EXPLANATORY NOTE: Sometimes it is useful for the purposes of resolving a complaint not to simply give the Subject Member a copy of the original complaint, because sometimes the Complainant's language will simply inflame rather than contribute to the resolution of the underlying problem raised by the complaint.*

¹⁶ *EXPLANATORY NOTE: Before acting under this policy, the Committee should consult with legal counsel to ensure that the applicable legal threshold has been reached in the circumstances.*

Member's opportunity to respond to a complaint

Bylaw: 6.13(2) A Member who has been informed of a complaint under subsection (1) must be given a reasonable period of time to respond to the issues raised therein.

- 50) For the purposes of bylaw 6.13(2) and the previous policies, the Inquiry Committee will provide the Member with a minimum of 30 days but no more than 90 days to respond to the issues raised in the complaint.
- 51) The Committee may vary these timelines in the interest of fairness to all parties concerned.

Communications to/from the Committee

- 52) All communications to and from the Inquiry Committee should be under the signature of
- a) the chair of the Committee,
 - b) an appointed member of the Committee, or
 - c) such other person as the Committee or chair may so designate.
- 53) If a Complainant or Subject Member communicates with the Inquiry Committee through a lawyer or another named representative, the Committee will direct all future communications to the Complainant or the Member, as the case may be, through that named lawyer or representative, and continue to do so until such time as the Committee is informed otherwise by the Complainant or the Member.

Inspection of premises, information, etc.

- 54) Subject to pre-approval by the Inquiry Committee and any limits or conditions set by the Committee, and Investigator may investigate, inquire into, inspect, observe or examine one or more of the following:¹⁷
- a) the premises, the equipment and the materials used by a Member to practise as a professional;
 - b) the information records of the Member relating to the Member's practice of as a professional and may copy those records;
 - c) the practice of that Member or any support person performed by or under the supervision of the Member.
- 55) If an Investigator intends to observe a Member or support person when providing a service to a client, the Investigator must first obtain the consent of the client who is obtaining such services, unless that service is being provided by the Member or support person in a public setting.

¹⁷ *EXPLANATORY NOTE: While these may seem to be intrusive powers, the Investigator cannot proceed to carry-out these functions without first obtaining the approval of the Inquiry Committee. Further, a Member is required to cooperate with an Investigator in accordance with bylaws 6.8 and 6.9, as noted above.*

Investigator direction and reporting

- 56) The Inquiry Committee may
- a) direct an Investigator to act under the previous policies or to undertake any aspect of an investigation under these Bylaws or Policies and Procedures generally, or
 - b) set any limit or condition on the Investigator the Committee may determine is necessary and appropriate in the circumstances.
- 57) If an Investigator acts as a consequence of a direction given under the previous policy, the Investigator must promptly report the results of such actions in writing to the Inquiry Committee, which may be included in the Investigator's report as required in the following policies.

Investigator's report to the Committee

- 58) An Investigator must report in writing to the Inquiry Committee the results of that Investigator's investigation under the Bylaws and these Policies and Procedures.
- 59) The form and organization of an Investigator's report shall be as directed by the Committee, but taking into consideration the framework for such a report as set out in Appendix "A" – *Investigator's Report Template*.

Information and document control

- 60) To ensure the integrity of all information that is generated during an investigation, the Inquiry Committee will ensure that the originals of all documents and other evidence received, or any communications received from or sent to the Complainant, the Subject Member or a third party, are dated, recorded on a master list, and kept in a secure location.
- 61) Unless it is necessary to review the originals, the Committee should work from copies of all documents or other evidence it receives or generated during its investigation.
- 62) The chair of the Inquiry Committee should maintain an investigation chronology, setting out the date (if not also time) of major events during an investigation, including the dates of the following events:
- a) the dates that documents or other evidence are received by or sent to the Committee,
 - b) the dates of conversations with a Complainant, a Member or third party, and
 - c) the dates of meetings of the Committee, including telephone conference calls.
- 63) As the Committee's communications with legal counsel are privileged, these need not be recorded pursuant to the previous policies.
- 64) The Committee may direct the Intake Officer to undertake the information and document control measures set out in the previous policies.

On-going assessment of a complaint

- 65) As the process of gathering information in a complaint investigation can be on-going, the Committee will continually ascertain if it has sufficient information from the Complainant, the Subject Member or other parties.
- 66) If more information is needed, the chair of the Committee (or an appointed Investigator) will seek that information from the appropriate source.

Burden and standard of proof

67) The Committee

- a) holds the burden to prove each issue or allegation in a complaint against a Member and,
- b) if the matter proceeds to a formal disciplinary hearing, that evidence must then prove the allegation on the balance of probabilities.

Description of a “bona fide” complaint

68) In deciding whether a complaint appears warranted (i.e. is a “bona fide complaint”) and should then proceed to resolution under bylaw 6.14, the Committee is not making a decision as to the guilt or innocence of the Subject Member, instead the Committee’s role is limited to the following:

- a) identifying the issues (allegations) raised in the complaint, and gathering all the evidence that supports or does not support each allegation against the Member under investigation;
- b) ascertaining if the information it has gathered meets both the burden and the standard of proof as set out in the previous policy;
- c) deciding whether, if that information and the witnesses were believed by a Disciplinary Panel, there is a reasonable likelihood that the information gathered during the investigation could prove each allegation against the Member under investigation, given all other possible alternative explanations that the Member has or may offer.

Alternative Dispute Resolution

Committee’s remedial action by consent

Bylaw: 6.14(1) In relation to a matter investigated under this Section, the Inquiry Committee may request the Subject Member to do one or more of the following:

- (a) undertake not to repeat the conduct to which the matter relates;
- (b) undertake to take educational courses specified by the Inquiry Committee;
- (c) accept a reprimand;
- (d) accept a limit or condition on the member’s practice, including a suspension for a defined period of time;
- (e) accept a cancellation of the member’s registration;
- (f) to pay a fine in an amount not exceeding the maximum fine established under bylaw 6.29(1)(f);
- (g) undertake or consent to any other action specified by the Inquiry Committee.

Committee assessment

- 69) In deciding whether to propose an alternative dispute resolution option to resolve a complaint pursuant to bylaw 6.14(1), the Inquiry Committee (in consultation with legal counsel) must fairly, independently and objectively examine the evidence it has gathered to then determine
- a) if it has a reasonable understanding of the events that led up to the complaint, and
 - b) if so, whether it is in the public interest to then propose to resolve the complaint by some form of an alternative dispute resolution.

- 70) In determining if it has “a clear an understanding of the events that led up to the complaint” as per clause 68(a), the Committee should be satisfied that
- a) it has gathered sufficient information from both the complainant and the subject member, and
 - b) such information would support an initial or preliminary finding that the subject member has breached a specific code or standard.
- 71) In determining it would be “in the public interest to propose to resolve the complaint by some form of an alternative dispute resolution” as per clause 68(b), the Committee should have a reasonably good idea as to
- a) whether the alternative dispute resolution option is its considering (e.g. mediation or some other form of ADR) would likely resolve the originating complaint,
 - b) who should participate in the ADR process, and
 - c) whether the process would be cost-effective in the circumstances.

Proposal in writing

- 72) The Inquiry Committee’s request to a Subject Member to resolve a complaint pursuant to bylaw 6.14 should be set out in writing.
- 73) Before submitting the proposed resolution to the Subject Member, the Committee should consult with legal counsel to ensure the written proposal would be acceptable at law, enforceable, etc.

Consent agreements

Bylaw: 6.14(2) If the committee believes a Subject Member’s undertaking, acceptance or consent should be documented, it may ask the member to enter into a consent agreement.

(3) A consent agreement must

- (a) be in writing and be signed by the Subject Member and the chair of the Committee;
- (b) include an undertaking, acceptance or consent given by the Subject Member under subsection (1),
- (c) specify the length of time that an undertaking, acceptance or consent is binding on the Subject Member,
- (d) specify the procedure that the Subject Member may follow to be released from an undertaking, acceptance or consent, and
- (e) specify which terms of the consent agreement may be disclosed to the public, and the timing of such disclosure.

- 74) In preparing a written consent agreement pursuant to bylaw 6.14, the Committee will employ the template set out in Appendix “B” – *Consent Agreements*.

Accepting the Committee’s proposal

Bylaw: 6.14(4) If the Subject Member accepts a proposal from the committee received under subsection (1),

- (a) the Inquiry Committee must within 30 days enter into a consent agreement with the member that is consistent with the proposal, and

- (b) on completion of the consent agreement, the chair of the Inquiry Committee must cancel any issued citation and the hearing if one has been scheduled.

Rejecting the Committee's proposal

- Bylaw: 6.14(5) If the Subject Member rejects a proposal received under subsection (1),
- (a) a hearing of the citation must proceed as though the proposal had not been made, and
 - (b) the Adjudication Panel must not consider the member's admissions or consents, if any, in determining the matter or in making an order under bylaw 6.29.

Subject member's proposal

- Bylaw: 6.15(1) A Subject Member may give the Inquiry Committee a written proposal at any time before the commencement of a hearing under bylaw 6.26
- (a) admitting the nature of the complaint or other matter that is to be the subject of the hearing,
 - (b) consenting to the making of an order described in bylaw 6.14 as set out in the proposal,
 - (c) consenting to indemnify the Association for cost of an investigation under Division D in an amount not to exceed the costs for the inquiry as specified in bylaw 6.31, and
 - (d) if the member gives the proposal to the Inquiry Committee less than 7 days before the hearing is scheduled to commence, consenting also to indemnify the Association for the cost of preparing for the hearing in an amount not to exceed one half the costs to that date of preparing for the hearing.

75) In preparing a written proposal pursuant to bylaw 6.15(1), the Subject Member is encouraged to employ the template set out in Appendix "B" – *Consent Agreements*.¹⁸

Committee's authority re: a Member's proposal

- Bylaw: 6.15(2) The Inquiry Committee may accept or reject a proposal received under subsection (1) based on the investigations of the complaint.

Accepting the Member's proposal

- Bylaw: 6.15(3) If the Inquiry Committee accepts a proposal from the Subject Member received under subsection (1),
- (a) the Inquiry Committee must within 30 days enter into a consent agreement with the member that is consistent with the proposal, and
 - (b) on completion of the consent agreement, the chair of the Inquiry Committee must cancel any issued citation and the hearing if one has been scheduled.

76) In accepting the Member's proposal pursuant to bylaw 6.15(3), the Committee will document its agreement applying the template set out in Appendix "B" – *Consent Agreements*.

Accepting the Member's proposal

- Bylaw: 6.15(4) If the Inquiry Committee rejects a proposal received under subsection (1),
- (a) a hearing of the citation must proceed as though the proposal had not been made, and

¹⁸ *EXPLANATORY NOTE: If the Subject Member does not employ the template for a consent agreement, the Committee may then need to respond to that Member's proposal by framing it as a formal agreement.*

- (b) the Adjudication Panel must not consider the member's admissions or consents in determining the matter or in making an order under bylaw 6.26.

Member's proposal given during a discipline hearing

Bylaw: 6.15(5) If the discipline hearing has commenced under bylaw 6.26 before the Subject Member has given the Inquiry Committee a written proposal under subsection (1)

- (a) the member may give to the Inquiry Committee a written proposal
- (i) described in clauses (1)(a) to (c), and
 - (ii) which also consents to indemnify the Association for preparing and conducting the hearing in an amount not to exceed the actual costs of preparing for and conducting the hearing, and
- (b) the Inquiry Committee may accept or reject the proposal in its discretion.

77) In preparing a written proposal pursuant to bylaw 6.15(5), the Subject Member is encouraged to employ the template set out in Appendix "B" – *Consent Agreements*.

Consequence of accepting a Member's proposal given during a discipline hearing

Bylaw: 6.15(6) If the Inquiry Committee accepts a proposal under subsection (5),

- (a) the Inquiry Committee must within 30 days enter into a consent agreement with the member that is consistent with the proposal, and
- (b) on completion of the consent agreement, the Adjudication Panel must cancel the hearing.

78) In accepting the Member's proposal pursuant to bylaw 6.15(5), the Committee will document its agreement applying the template set out in Appendix "B" – *Consent Agreements*.

Consequence of rejecting a Member's proposal given during a discipline hearing

Bylaw: 6.15 (7) If the Inquiry Committee rejects a proposal received under subsection (5),

- (a) a hearing of the citation must proceed as though the proposal had not been made, and
- (b) the Adjudication Panel must not consider the member's admission or consent in determining the matter or in making an order under bylaws 6.29 or 6.31.

Alternative dispute resolution involving the Complainant and Subject Member

Bylaw: 6.16) The Inquiry Committee may recommend that a complaint be resolved by an alternative dispute resolution process involving the Complainant and the Subject Member if

- (a) the Committee believes it is in the public interest to so try to resolve the complaint, and
- (b) both the Complainant and the Subject Member agree to the proposed alternative dispute resolution process.

Alternative dispute resolution involving the Committee and Subject Member

Bylaw: 6.17) The Inquiry Committee may recommend that a complaint be resolved by an alternative dispute resolution process involving the Committee and the Subject Member, but without the involvement of the Complainant, if

- (a) the Committee believes it is in the public interest to try to resolve the complaint without the Complainant, and
- (b) both the Committee and the Subject Member agree to the proposed alternative dispute resolution process in the absence of the Complainant.

Alternative dispute resolution involving the Complainant, Subject Member and Inquiry Committee

Bylaw: 6.18) The Inquiry Committee may recommend that a complaint be resolved by an alternative dispute resolution process involving the Complainant, the Subject Member and the Committee if

- (a) the Committee believes it is in the public interest to so try to resolve the complaint involving all three parties, and
- (b) the Complainant, Subject Member and the Committee each agree to the proposed alternative dispute resolution process.

Alternative dispute resolution requirements

Bylaw: 6.19(1) Following acceptance of a recommendation under bylaws 6.16 to 6.18, the Inquiry Committee shall appoint at its cost a facilitator who is acceptable to the parties.

- (2) The appointed facilitator shall conduct the alternative dispute resolution process in accordance with the terms of a written agreement to participate in alternative dispute resolution.
- (3) An agreement to participate in alternative dispute resolution under subsection (3) must
 - (a) contain a confidentiality provision that is acceptable to the Inquiry Committee, and
 - (b) be executed by the parties.

79) In preparing a written agreement to participate pursuant to bylaw 6.19(3), the Committee will employ the template set out in Appendix “C” – *Agreement to Participate*.

Facilitated agreements

Bylaw: 6.20(1) Where a facilitated agreement between the parties has been reached through an alternative dispute resolution process,

- (a) the terms of the resulting agreement must be set out in a facilitated agreement approved and signed by the parties,
- (b) the facilitated agreement must contain monitoring and enforcement provisions that is acceptable to the Inquiry Committee, and
- (c) the facilitator must submit the original of the signed facilitated agreement to the Inquiry Committee at the Association’s office.

(2) Where the term of a facilitated agreement requires the member to undertake or consent to an action referred to in bylaw 6.14, the Inquiry Committee may request the member to make such an undertaking or consent where the Inquiry Committee considers the undertaking or consent to be appropriate in the circumstances.

80) For the purposes of bylaw 6.20(1)(b),

- a) the required monitoring and enforcement provision must require the Subject Member to report to the Committee on that Member’s completion of any agreement or undertaking set out in the Facilitated Agreement, and
- b) the Agreement must expressly allow the Committee to ensure any agreement or undertaking can be monitored and enforced by the Committee.

81) The Committee may adapt the Consent Agreement template, as set out in Appendix “B”, for the purposes of preparing a Facilitate Agreement pursuant to bylaw 6.20.

Reporting to Board re: a facilitated agreement

Bylaw: 6.20 (3) Where a facilitated agreement is reached through an alternative dispute resolution process, the Inquiry Committee shall

- (a) report the resolution of the matter to the Board, and

(b) retain a copy of the agreement on file.

82) In reporting to the Board pursuant to bylaw 6.20(3),

- a) the Committee may withhold the name of any party if it determines that the party's identity is not necessary for the purposes of its report, and
- b) the Committee may consult with legal counsel for this purpose.

Facilitated agreement not reached

Bylaw: 6.21) Where a facilitated agreement is not reached through an alternative dispute resolution process,

- (a) the facilitator must refer the matter back to the Inquiry Committee with or without recommendations, and
- (b) on receipt that referral, the Inquiry Committee may then take such actions as are permitted under this Section.

Monitoring of an agreement

Bylaw: 6.22(1) The Inquiry Committee shall monitor a Subject Member's compliance with

- (a) undertaking or consent the member agreed to pursuant to bylaw 6.14 or 6.15, or
- (b) a facilitated agreement the member entered into pursuant to bylaw 6.20.

83) In monitoring the undertaking, consent, or agreement referred to in bylaw 6.22(1), the Committee may do the following:

- a) direct that one of its members, the Intake Officer or an Investigator
 - i) undertake the monitoring, follow-up communications, or other procedures necessary to carry out those functions, and
 - ii) report the results of that monitoring to the Committee in such form and schedule as the Committee may determine is appropriate and necessary in the circumstances;
- b) if a reporting requirement is not set out in the undertaking, consent, or agreement, require that the subject member report to the Committee on such terms and conditions as the Committee determines would be appropriate and necessary in the circumstances.

84) The person appointed by the Committee under the above policy to monitor an undertaking, consent, or agreements referred to in bylaw 6.22(1) must report to the Committee in accordance to the reporting directives as set by the Committee in that appointment.

Non-compliance with an agreement

Bylaw: 6.22...(2) If the Inquiry Committee concludes that a Subject Member has not complied with an undertaking, consent or facilitated agreement, the committee may

- (a) direct that a citation be issued against the Subject Member under bylaw 6.23,
- (b) direct that the Subject Member be suspended without further notice to the member and until such time as the member complies with the undertaking, consent or facilitated agreement, or
- (c) take such other action as is permitted under this Section.

Citations and Notice of Hearing

Issuing a citation

Bylaw: 6.23(1) Where as a result of its investigation, the Inquiry Committee determines it is necessary to do so, it may issue a citation that

- (a) names the affected member as the Respondent Member,
- (b) describes the nature of the complaint or other matter that is to be the subject of the hearing, including the particulars of any evidence in support of that subject matter,
- (c) specifies the date, time and place of the hearing, if known, and
- (d) advises the Respondent Member that the Adjudication Panel is entitled to proceed with the hearing in his or her absence.

Committee assessment

85) In deciding whether to issue a citation against a member pursuant to bylaw 6.23(1), the Inquiry Committee (in consultation with legal counsel) must fairly, independently and objectively examine the available evidence to then determine

- a) whether there is a substantial likelihood that the allegations set out in the citation can be proven on a balance of probabilities and,
- b) if so, whether it is in the public interest to issue the citation and hold a disciplinary hearing.

86) In determining if there is “a substantial likelihood that the allegations set out in the citation can be proven on a balance of probabilities” as per clause 81(a), the Committee should be satisfied that there is a strong, solid case of substance that can be presented to a Discipline Panel

87) In determining if “it is in the public interest to issue the citation and hold a disciplinary hearing” as per clause 81(b), the Committee should consider the circumstances of the originating complaint, the complainant and the subject member, as well as the legitimate concerns of the affected community, if applicable.¹⁹

Content of a citation

88) The Committee may consult with legal counsel for the purposes of preparing a citation to be issued under bylaw 6.23,²⁰ which may include a notice of hearing.²¹

¹⁹ *EXPLANATORY NOTE: In exceptional circumstances, the Committee may proceed to issue a citation even though the evidentiary test in clause 81(a) has not fully been satisfied, such as when concerns about public safety are paramount. Legal counsel should be consulted in such circumstances.*

²⁰ *EXPLANATORY NOTE: If the matter proceeds to a citation (thus initiating a formal disciplinary hearing), it is highly recommended that the Inquiry Committee retain legal counsel to help draft the necessary citation, if not also the notice of hearing. As such, templates for these two documents will not be set out in these Policies and Procedures.*

²¹ *EXPLANATORY NOTE: If the details for the date, time and place of the hearing have been finalized, this information can be included as the Notice of Hearing section of the Citation. But, if such details are not finalized, a later and separate Notice of Hearing would then have to be issued as noted in bylaw 6.24(1), below.*

89) When the Committee issues a citation pursuant to bylaw 6.23, the Committee will try to ensure that all the information it would rely upon during the resulting disciplinary hearing, and the names of witnesses likely to be called, are listed along with the citation.²²

Delivery of citation

Bylaw: 6.23(2) The chair of the Inquiry Committee shall have a citation either delivered to the Respondent Member by personal service or sent by registered mail to the Respondent Member at the last known address for that person not fewer than 30 days before the date of the hearing.
(3) Where the subject matter of a citation is a complaint, the chair of the Inquiry Committee shall notify the complainant in writing of the date, time and place of the hearing not fewer than 14 days before the date of the hearing.

Cancelling an issued citation

Bylaw: 6.23(4) The Inquiry Committee may direct that a citation that has been issued be subsequently cancelled if the Committee determines that a hearing by the Adjudication Panel is not required.

Amending a citation

(5) The Inquiry Committee may do the following:
(a) join one or more complaints or other matters which are to be the subject of a discipline hearing in one citation as appropriate in the circumstances;
(b) sever one or more complaints or other matters which are to be the subject of a discipline hearing as appropriate in the circumstances;
(c) amend a citation issued under this bylaw.
(6) Where a citation is amended under clause (5)(c) prior to a discipline hearing, the amended citation shall be delivered to the Respondent Member by personal service or sent by regular mail to the Respondent Member at the last known address for the person not fewer than 30 days before the date of the hearing, unless the Respondent Member consents to a shorter notice period.
(7) Where a citation is amended under clause (5)(c) prior to a discipline hearing and the amended citation changes the date, time or place of the hearing, the chair of the Inquiry Committee shall notify any complainant of the amendment not fewer than 14 days before the date of the hearing, unless the Respondent Member consents to a shorter notice period.

Notice of Hearing

Bylaw: 6.24(1) If a citation issued under bylaw 6.23 does not specify the date, time or location of the disciplinary hearing, the chair of the Inquiry Committee may issue a separate notice of hearing after the date when that citation was issued, but at least 30 days before the hearing date, unless the Respondent Member consents to a shorter notice period.
(2) If the date, time or location of the disciplinary hearing changes from the information that was set out in either a citation or a notice of hearing, the chair of the Inquiry Committee must issue a new notice of hearing containing that change at least 30 days before the new date, time or location, unless the Respondent Member consents to a shorter notice period.

²² *EXPLANATORY NOTE: Once a citation/notice of hearing has been issued, that would trigger the formal disciplinary hearing. A separate set of Discipline Hearing Policies and Procedures would then apply to help guide this final aspect of the PCR. (See the applicable, separate P&Ps.)*

Posting of a public notice of disciplinary hearing

Bylaw: 6.25(1) If the chair of the Inquiry Committee issues a citation or notice of hearing pursuant to bylaw 6.23 or 6.24, the chair must, subject to subsection (2), post at the Association website a [public] notice of disciplinary hearing setting out the following information:

- (a) the name of the Respondent Member;
- (b) a summary description of the general nature of the complaint or other matter that is to be the subject of the discipline hearing;
- (c) the date, time and place for the discipline hearing.

Refusing to post a public notice

Bylaw: 6.25(2) The chair of the Inquiry Committee may refuse to post a [public] notice of disciplinary hearing if the Inquiry Committee determines that

- (a) there are reasons for confidentiality respecting financial, personal or other matters that may be disclosed at the hearing that outweigh the public interest in having an open hearing,
- (b) an open hearing may result in prejudice to a person involved in a criminal or civil proceeding, or
- (c) an open hearing may jeopardize the safety of a person.

90) The Committee may consult with legal counsel for the purposes of refusing to post a public notice of a pending hearing pursuant bylaw 6.25(2) or (4).²³

91) For the purposes of bylaw 6.25(2) or (4), the Committee may issue an abbreviated or redacted public notice of hearing if it determines that such an amended notice will not meet the conditions set out in bylaw 6.25(2) as advised by legal counsel.

Failure to post a notice

Bylaw: 6.25 (3) The accidental omission or failure to post a notice of disciplinary hearing at the Association's website in accordance with this bylaw does not invalidate the proceedings at that hearing.

Posting notice at website

Bylaw: 6.25(4) The chair of the Inquiry Committee shall post the notice of disciplinary hearing at the Association's website not fewer than 14 days before the date of the hearing, but may post the notice in a shorter period of time if circumstances so warrant and the Inquiry Committee so directs.

No right to appeal posting of notice

Bylaw: 6.25(5) A decision of the Inquiry Committee under this bylaw is final and conclusive, and is not open to question or review in any court, and proceedings by or before the Committee shall not be restrained by injunction, prohibition or other process or proceeding in any court or be removable by certiorari or otherwise in any court.

²³ EXPLANATORY NOTE: The public notice of a pending hearing (see the requirements of bylaw 6.25(1)) is different than the Notice of Hearing, which may be included in the Citation itself or issued later (see the requirements of bylaw 6.24(1)).

Member's Competence or Fitness to Practice

Concerns re: a member's competency or fitness to practice

92) If the Inquiry Committee has a reason to believe that a Subject Member is or may be incompetent or incapacitated, that Committee may, pursuant to bylaw 6.11(3)(d) or (e) do one or both of the following:

- a) assess and attempt to resolve its concern about a subject member's competence or fitness to practice, and do so in accordance with the following policies;
- b) refer the matter to a separate Competency and Fitness to Practice Panel appointed by the Board under the following policy.

Appointment of the Panel

93) For the purposes of the previous policy,

- a) the Board shall appoint the members of the Competency and Fitness to Practice Panel, including its chair, and
- b) the Panel must consist of at least three Members
- c) the provisions of policies #7 to #11 apply to the Panel.

Competency assessment

94) For the purposes of bylaw 6.11(3)(d), the Inquiry Committee or the separate Panel appointed under the previous policy may do one or more of the following:

- a) require the Subject Member to co-operate with the Committee or Panel during the assessment and resolution process;
- b) request the Subject Member to
 - i) consent to a competency assessed by one or more interpreters appointed by the Committee or Panel for the purpose of determining whether the member is competent to provide the services of a interpreter, and
 - ii) have the appointed interpreter report the findings of the assessment of the member directly to the Committee or Panel.

95) Where the interpreter appointed under the previous policy finds that the Subject Member is not competent generally or in relation to a particular interpretation service, the Committee or Panel may negotiate with the Member a resolution of the originating complaint in the form of a consent agreement that would help the Member address his or her lack of skills or abilities, and to do so on such terms and conditions as the Committee or Panel determine are appropriate in the circumstances.

Fitness to practice assessment

96) For the purposes of bylaw 6.11(3)(e), the Inquiry Committee or the separate Fitness to Practice Panel may do one or more of the following:

- a) require the Subject Member to co-operate with the Committee or Panel during the assessment and resolution process;
- b) request the Subject Member to
 - i) consent to a fitness to practice assessed by one or more health care professionals appointed by the Committee or Panel for the purpose of determining whether the member is capable of practicing properly and safely as a interpreter, and
 - ii) have the appointed health professional report the findings of the assessment of the member directly to the Committee or Panel.

97) Where the health care professional appointed under the previous policy finds that the Subject Member is incapacitated, the Committee or Panel may negotiate with the Member a resolution of the originating complaint in the form of a consent agreement that would help the Member address his or her incapacity and on such terms and conditions as the panel determine are appropriate in the circumstances.

Consequential policies

98) For clarity, the requirement for member-cooperation as set out in bylaw 6.8 and the consequences of member non-cooperation as set out in bylaw 6.9 both apply to the policies and procedures in this section.

99) Any information the Committee or Panel obtains during its assessment of a subject member's fitness to practice under these policies is confidential and may not be provided to the Discipline Panel if a complaint proceeds to a disciplinary hearing pursuant to bylaw 6.23.

Costs of an assessment

100) For the purposes of determining whether the Subject Member should be asked to pay for all, some or none of the costs of a competency assessment being proposed pursuant to policy #93(b) or a fitness to practice assessment being proposed pursuant to policy #95(b), the Inquiry Committee may take into consideration the following factors:

- a) whether the Subject Member has the financial resources to pay for all or some of the costs of the applicable assessment;
- b) whether asking the Subject Member to pay for all or some of the costs of the applicable assessment would make it more or less likely that the Member would agree to be so assessed;
- c) whether, as a result of the anticipated outcome of an assessment, the Subject Member would likely gain a substantial professional or financial benefit the Association would otherwise be paying for in whole or in part;
- d) whether it is in the public interest, including a timely resolution of the complaint, for the Association to pay for all or some of the costs of the applicable assessment.

101) As part of its proposal to a Subject Member to undergo either a competency or fitness to practice assessment, if the Inquiry Committee determines pursuant to policy #99 that a Subject Member cannot afford or is unlikely to be assessed if that Member has to pay for all or some of the costs of the assessment, the Committee may then propose that, if after completing the assessment or acting on its results, the Member obtains a substantial professional or financial benefit, the Member would then reimburse the Association for all or some of the costs of the applicable assessment.

Identification of risk of harm to self or others

102) If as a result of an investigation or an assessment of a member, the Committee or Panel has a reason to believe that a member may constitute a risk of harm to him/herself or to others, the Committee or Panel must, as soon as practical, consult with local authorities or mental health professionals for guidance as to what further action, if any, the Committee or Panel should take in the particular circumstances.

Closing a complaint file

If matter is resolved or no citation will be issued

- 103) The Committee may close a complaint file in any of the following circumstances:
- a) if the complaint is resolved,
 - b) if the Committee does not have the jurisdiction to investigate or proceed further, or
 - c) if no citation will be issued.
- 104) In closing a complaint file, the Committee will then do the following:
- a) issue a file closing letter to the Complainant and the Subject Member within 60 days of closing the file;²⁴
 - b) advise the Board at its next meeting that the complaint file has been closed.

File closing letter

- 105) In general terms, the Committee should address the following in its file closing letter:
- a) a general summary of the investigation process itself, starting with receipt of the original complaint;
 - b) if necessary, a commentary on any recent correspondence between the Complainant or Respondent Member and the Committee concerning any aspect of the complaint investigation process;
 - c) a brief summary of any successful resolution of the complaint or the Committee's attempt to resolve a bona fide complaint, if applicable;
 - d) a statement that the investigation is now closed, and the file has been closed.

If a citation has been issued

- 106) In relation to a complaint file where a citation has been issued under bylaw 6.23(1), the Committee may close the file only after the Adjudication Panel has completed a disciplinary hearing or issued a final decision, in which case the Panel's final decision would replace the file closing letter referred to in the previous policy.

²⁴ *EXPLANATORY NOTE: These are typically two separate letters, because different information may need to be conveyed to each party.*

Appendix “A” – Investigator’s Report

The following is a *recommend* list of contents (basis for a table of contents) for an Investigator’s Report that would be submitted to the Inquiry Committee for its consideration and final decision:

- Name and contact information for the Investigator;
- Description of the Investigator’s authority or authorization (from the Committee) to investigate the complaint;
- Summary of the Investigator’s training, experience, etc. re: complaint investigations, if applicable;
- Indicated if this is a final or an interim investigation report;
- General summary or description of the complaint, including a summary of each allegation and the relief the Complainant is seeking (may attach a copy of the written complaint as an appendix);
- Identify which elements of the Code or Standards would have been breached if the complaint was later determined to be sustained;
- Describe the steps taken during the investigation the complaint, including any steps that the Investigator was unable to take (with reasons) or was prevented from taking (with explanations);
- Provide a reasonably detailed chronology of events, as found by the Investigator;²⁵
- List of the documents the Investigator considered during the investigation (this could be a separate appendix);
- List of the persons the Investigator interviewed during the investigation, including dates and times of interviews²⁶ (this could be a separate appendix);
- Discuss the results of the investigation (the elements of the Code/Standards that appear to have been breached can be used as sub-headings);²⁷
- Discuss any challenges or short-comings of the investigation, and how those may have impacted on the Investigator’s observations and recommendations;
- Identify any issues that are outside the jurisdiction of the AVLIC, or are matters that the Association should delay or not investigate, with an explanation for each;
- Offer any recommendations as ways to resolve the complaint, if applicable, or describe steps that the Investigator took to try to resolve the complaint and why those steps did not succeed.

²⁵ *EXPLANATORY NOTE: A chronology of events is often the most important aspect of the Investigator’s Report, as it should provide the clearest summary of what did (or did not) occur, leading up to the complaint.*

²⁶ *EXPLANATORY NOTE: An person interviewed may be “de-identified”, but this should be done only after consultation with legal counsel.*

²⁷ *EXPLANATORY NOTE: In discussing the results, an Investigator should not make a conclusion as to the Subject Member’s “guilt” or “innocence”. These are decisions that only the Adjudication Panel can make after a hearing. The report should be focused on describing or summarizing the facts as the Investigator found them during the investigation.*

Appendix “B” – Consent Agreement template

The following is a recommend template for a Consent Agreement, but this framework could be modified after consultation with legal counsel:

This **Consent Agreement** is between:

The Inquiry Committee of the AVLIC, with an office at *LOCATION* (“the Committee”)

And the

NAME OF SUBJECT MEMBER, residing at *LOCATION* (“the Subject Member”)

WHERE AS *TO BE COMPLETED*

THEREFORE, the Committee and the Subject Member wish to document the resolution of the complaint that they have agreed to by informal means.

THE PARTIES AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

1. That this Agreement is being made pursuant to *[refer to the applicable bylaw]*. And that its purpose is to document the resolution of a complain. *[Can provide a brief description of the originating complaint, if necessary.]*
2. That the Subject Member will: *[Describe in general terms the undertaking, acceptance or consent given by the Subject Member but in sufficient detail to allow a casual reader to understand the facts and the situation].*
3. The Subject Member will complete the undertaking or meet the terms of this Agreement by no later than *DATE?*
4. In order to meet the terms and conditions of this Agreement, the Subject Member will to the following: *[Describe what specific things the Member will do to meet the undertaking, acceptance or consent and in sufficient detail to allow someone to determine if the Member has met the applicable terms and conditions].*
5. The Subject Member agrees to the following mechanism to monitor the Member’s compliance with the terms and conditions of this Agreement:
 - a. *TO BE COMPLETED (e.g. reporting within defined time periods, etc.).*
6. The Subject Member agrees to consult with the following or employ the following resources: *[May be useful to identify any professional who will be assisting the Subject Member in meeting the terms and conditions in resolving the complaint, or in listing specific resources, courses, etc. that the Member will use or take.]*
7. The Subject Member agrees to make an apology to *COMPLAINANT*, the substance of which the Committee must approve before it is given. *[If an apology is necessary, the Committee should ensure that it contains a statement of regret for having caused harm or damage, that the Member takes clear responsibility for his or her actions/omissions, and that the Member clearly states what actions he/she will take to remedy the situation.]*
8. To be released from the terms and conditions of this Agreement, the Subject Member will provide proof of meeting these terms and conditions that is acceptable to the Committee.
9. On accepting the Subject Member’s proof of having met the terms and conditions of this Agreement, the Chair of the Committee will so notify the Subject Member accordingly in writing.

10. The Subject Member agrees to the following description of his or her conduct, or the general facts that form the foundation of the complaint: *TO BE COMPLETED...*
11. The Subject Member agrees to indemnify the Association for cost of its investigation under Division D in an amount of AMOUNTN (*NOTE: This is not to exceed the costs for the inquiry as specified in bylaw 6.310.*)
12. The terms and conditions of this Agreement are binding on the Subject Member through to *DATE?*
13. The Parties agree that the following information concerning this Agreement or its circumstances may be disclosed to the original complainant, or the general public, as they may determine:
 - a. *TO BE COMPLETED.*

AS WITNESSED BY THEIR SIGNATURES:

*Signature of
NAME chair of the Inquiry Committee*

*Signature of
NAME of Subject Member*

Effective date of this Agreement: *TBD*

Appendix “C” – Agreement to Participate template

The following is a recommend template for an Agreement to Participate in an alternative dispute resolution process, but this template could be modified after consultation with either the Facilitator or legal counsel:

The parties signing this **Agreement to Participate** agree to the following terms and conditions:

1. That this Agreement is being made pursuant to *[refer to the applicable bylaw]*.
2. That the parties agree to participate in this alternative resolution process that will be facilitated by *NAME OF FACILITATOR* (the Facilitator).
3. That the AVLIC will pay for the costs of the services of the Facilitator.
4. The parties understand that
 - a) this facilitated mediation process is an agreement-reaching process in which the Facilitator assists parties to reach agreement in a collaborative, consensual and informed manner;
 - b) the Facilitator has no power to decide disputed issues for the parties, but will work to help the parties themselves to reach a constructive and fair agreement;
 - c) this process is not a substitute for independent legal advice;
 - d) If an agreement is reached as a result of this facilitated process, each party is entitled to obtain independent legal before signing that agreement;
 - e) The Facilitator has an obligation to work on behalf of each party equally and that the mediator cannot render individual legal advice to any party and will not render therapy within the process.
5. All parties here state their good faith intention to complete this process by reaching an agreement, but it is also understood that any party may withdraw from or suspend the process at any time and for any reason.
6. The parties also understand that the Facilitator may suspend or terminate the alternative resolution process if the Facilitator feels that
 - a) the mediation will lead to an unjust or unreasonable result,
 - b) an impasse has been reached, or
 - c) s/he can no longer effectively perform his/her facilitative role.
7. It is understood between the parties and the Facilitator that
 - a) the facilitated process will be strictly confidential, and any discussions, written and oral communications, any draft resolutions, and any unsigned agreements shall not be admissible in any court proceeding;
 - b) only a mediated agreement, signed by the parties may be so admissible;
 - c) the Facilitator will not be called to testify concerning the facilitated process or to provide any materials from the process in any court proceeding between the parties;
 - d) this process is considered by the parties and the Facilitator to be negotiations toward a settlement;
 - e) notwithstanding the above, the Facilitator has an ethical responsibility and legal to break confidentiality if s/he suspects another person may be in danger of harm.
8. Each party agrees to fully and honestly disclose all relevant information and writings as requested by the Facilitator and all information requested by any other party if the Facilitator determines that the disclosure is relevant to the facilitated discussions.

9. The results of this facilitated session, including any Facilitated Agreement that may be reached by the parties to resolve the matter, may be disclosed by the Facilitator to the AVLIC Inquiry Committee in summary form.
10. Before the session commences, this Agreement must be executed by the parties, the Facilitator and any other persons the parties agree may attend the facilitated sessions.

AS WITNESSED BY THEIR SIGNATURES:

*Signature of
NAME Party #1*

*Signature of
NAME Party #2*

*Signature of
NAME Third Party*

*Signature of
NAME of the Facilitator*

Date of this Agreement and the facilitated session: *TBD*