

# Association of Visual Language Interpreters of Canada

## SPECIAL RESOLUTION #15-02 A New Professional Conduct Review Process

*Current to: June 2, 2015*

**WHEREAS** the 2015 report, *Recommendations for Professional Compliance Review Process*, prepared by Sylvie Lemay and Madeleine Mcbrearty, recommended substantial changes to the AVLIC's current Dispute Resolution Process, in particular to create a new set of bylaws to deal properly with public complaints against Association members;

**AND WHEREAS** the AVLIC Board has approved the Lemay/Mcbrearty report and agreed to act on the recommended amendments to the Association's Bylaws and Operating Policies and Procedures;

**AND WHEREAS** the Board has further agreed to replace the current Dispute Resolution Process with a new Professional Conduct Review Process based on the recommendations and Appendix B "Proposed Framework for the PCR Process Bylaws", as set out in the Lemay/Mcbrearty report, which constitutes a substantial change to the current Bylaws;

**AND WHEREAS** section 197(1) of the *Canada Not-For-Profit Corporations Act*, S.C. 2009, c.23, provides that the AVLIC membership must approve any substantial amendment to the Association's Bylaws by way of a "special resolution";

**AND WHEREAS** the term special resolution has been defined in section 1 of the Act (repeated in section 1.1 of the Bylaws) to mean a "resolution passed by a majority of not less than two thirds of the votes cast on that resolution";

**THEREFORE, BE IT RESOLVED THAT the Bylaws of the Association of Visual Language Interpreters of Canada be amended pursuant to section 197(1) of the Act and section 5.3 of the Bylaws by adding the following new Section immediately after bylaw 5.3:**

### **Section 6 – Professional Conduct Review Process**

#### *Definitions*

6.1 In addition to the definitions set out in section 1.1, throughout this Section:

- (a) "**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;
- (b) "**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*;
- (c) "**approved Affiliate Chapter**" means an Affiliate Chapter that has been approved by the Board pursuant to bylaw 6.2 as having bylaws, rules or procedures that provide a mechanism to investigate and resolve a complaint, and conduct disciplinary hearings are substantially similar to the bylaws in this Section;
- (d) "**Association**" means the Association of Visual Language Interpreters of Canada or any

- committee or person appointed by the Board to administer the applicable bylaw;
- (e) **“CoEGPC”** means the *Code of Ethics and Guidelines for Professional Conduct* approved by the Board, and as may be amended from time to time;
  - (f) **“complaint”** means a communication that documents a Complainant’s concerns about the conduct of a Member that meets the requirements of bylaw 6.11;
  - (g) **“Complainant”** means a person who has filed a complaint against a Member under bylaw 6.11;
  - (h) **“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) **“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;
  - (j) **“facilitated agreement”** means a written agreement between the parties that is reached through an alternative dispute resolution process;
  - (k) **“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;
  - (l) **“Member”** means a Class A - Active Voting Member of the Association;
  - (m) **“Respondent Member”** means a Member who has been named in a citation issued pursuant to bylaw 6.23;
  - (n) **“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;
  - (o) **“Subject Member”** means a Member who has been named in a complaint filed under bylaw 6.11;
  - (p) **“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.

### ***Division A – Jurisdiction and Administration***

#### ***Approval of an Affiliate Chapter’s complaints and discipline bylaws***

6.2(1) If requested by an Affiliate Chapter, the Board may determine that the bylaws, rules or procedures of an Affiliate Chapter that provide a mechanism to investigate and resolve a complaint and conduct disciplinary hearings are substantially similar to the bylaws in this Section.

(2) If the Board determines that an Affiliate Chapter complaint and discipline bylaws, rules or procedures are substantially similar to the bylaws in this Section the Board shall so notify the approved Affiliate Chapter within 30 days of that decision.

#### ***Investigation and resolution of complaints by an approved Affiliate Chapter***

6.3(1) If the Association receives a complaint against a Member who at the time of the alleged events was also a member of an approved Affiliate Chapter, rather than investigate and resolve that complaint under this Section, the Association must refer that complaint to the approved Affiliate Chapter for its investigation and resolution.

(2) An approved Affiliate Chapter that receives a complaint under bylaw (1) must do the following, as applicable;



- (a) notify the Association within 30 days of receipt of the complaint whether or not it will accept jurisdiction over that complaint and proceed to investigate and try to resolve the complaint under its bylaws, rules or procedures;
  - (b) within 30 days of the completion of its investigation or resolution of that complaint, notify the Association of the outcome of its investigation or resolution;
  - (c) within 30 days of the completion of its disciplinary hearing into that complaint, notify the Association of the outcome of its disciplinary hearing, including any orders that may have been issued during or at the end of that hearing.
- (3) If an approved Affiliate Chapter refuses to investigate a complaint that has been referred to it under subsection (1), the Association may proceed to investigate and try to resolve that complaint under this Section, and the Board will so notify that Affiliate Chapter.

#### *Appointments, Policies and Procedures*

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;
  - (b) appoint an Adjudication Panel, and name its chair, and such other persons as are necessary to administer the bylaws in Division F;
  - (c) maintain a roster of Members who can be called on to sit as members of a Adjudication Panel, if a citation is issued pursuant to bylaw 6.23;
  - (d) approve such Policies and Procedures that are consistent with this Section to provide guidance on how the bylaws in this Section are to be administered.
- (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 either
    - a. the Inquiry Committee that might subsequently investigate the resulting complaint under bylaw 6.11, or
    - b. an Adjudication Panel that might adjudicate a citation issued against a Member pursuant to bylaw 6.23 flowing from that same concern, 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.

#### *Confidentiality and record retention*

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.

### ***Division B – General Requirements***

#### *Compliance with the Bylaws, CoEGPC etc.*

6.6) A Member must comply with

- (a) the Bylaws and the provisions of this Section,
- (b) the CoEGPC.
- (c) any professional standards or similar rules approved by the Board, and
- (d) any subsequent amendments made to any of the above.

#### *Continuing education*

6.7(1) A Member must complete continuing education within a defined period of time in relation to understanding and upholding the CoEGPC and to follow any approved standards, and do so in accordance with any policies and procedures the Board may approve for this purpose.

#### *Member cooperation*

6.8(1) A Member must cooperate with the Association during an investigation or resolution of a complaint, and must attend and participate in a disciplinary hearing if one is called.

(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.

(3) If a Member resigns during an investigative, resolution or disciplinary process, those processes may continue and a final decision may be made without the further or direct participation of the (former) member.

#### *Failure to cooperate*

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.

### ***Division C – Concerns and Complaints***

#### *Concerns about a Member*

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.

(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*

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.

(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.



## **Division D – Investigation of Complaints**

### *Role of the Inquiry Committee*

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
- c) 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.

### *Member notification of a complaint*

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.

(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.

## **Division E - Alternative Dispute Resolution**

### *Committee's remedial action by consent and consent agreements*

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.

(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.
- (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.
- (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 and consent agreement*

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



- (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*

- 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*

- 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*

- 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*

- 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.

*Facilitated agreements*

- 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.

(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.

#### *Facilitated agreement not reached*

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 and compliance with agreements*

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

- (a) an 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.

(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.

### ***Division F – Citations and Disciplinary Hearings***

#### *Citation for a disciplinary hearing*

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.

(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.

(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.

(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*

- 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.

#### *Posting of a notice of disciplinary hearing*

- 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 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.
- (2) The chair of the Inquiry Committee may refuse to post a 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.
- (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.
- (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.
- (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.

#### *Discipline hearings*

6.26(1) The Adjudication Panel shall hear and determine a matter that has been set for hearing by a citation issued pursuant to bylaw 6.23.

(2) The Respondent Member, an investigator, any member of the Inquiry Committee, or any other person authorized by the Adjudication Panel may appear as parties and with counsel at a discipline hearing.

(3) Information about the date, time and subject matter of the hearing shall be provided to any person on request.

(4) A discipline hearing shall be in public unless

- (a) the Complainant, a witness or the Respondent Member requests the Adjudication Panel hold the hearing in private, and
- (b) the Adjudication Panel is satisfied that a private hearing would be appropriate in the circumstances.

(5) The Adjudication Panel may order the Respondent Member or any other person to attend at a hearing to give evidence and to produce records in the possession of or under the control of the Respondent Member or person.

(6) The Adjudication Panel shall provide notice by registered mail or by personal service to a person who is required to attend a hearing.

#### *Respondent member resigns, fails to renew or does not attend a hearing*

6.27(1) For the purposes of this bylaw, “**absent respondent**” means a Respondent Member who has

- (a) resigned his or her membership,
- (b) failed to renew his or her membership,
- (c) failed to attend a discipline hearing, or
- (d) left a discipline hearing before it is completed.

(2) If the Adjudication Panel is satisfied that an absent respondent has been

- (a) served with the citation or notice of discipline hearing,
- (b) provided with an opportunity to be heard, and
- (c) informed the hearing may continue in his or her absence,

the Panel may order the hearing to continue in the absence of the absent respondent and, on completion of the hearing, the panel may act or make any order it could have made if the absent respondent had continued to be a member or had attended the hearing.

(3) For clarity, the fact that a Respondent Member

- (a) resigns or failed to renew his or her membership in the Association, and, therefore, ceases to be a member under bylaw 4, or
- (b) fails to attend or leaves a hearing,

does not automatically mean that the Adjudication Panel no longer has the jurisdiction to continue the hearing into that absent respondent’s conduct, and the Panel may take such actions or make such decisions as it would otherwise be able to take or make under this Division.

#### *Scope of inquiry*

6.28(1) The Adjudication Panel is not limited to inquiry into only that conduct of the Respondent Member that is described in the citation, but may also inquire into other conduct of the member that is related or similar to the allegations described in the citation.

(2) If the Adjudication Panel proceeds under subsection (1), the Respondent Member may request an adjournment of the hearing, and that request may be granted if the committee considers it is necessary to do so in fairness to the member.

#### *Action by the Adjudication Panel*

6.29(1) On completion of a hearing, the Adjudication Panel may, by order, do one or more of the following:

- (a) dismiss the matter;
- (b) reprimand the Respondent Member;
- (c) impose limits or conditions on the practice of clinical counselling by the Respondent Member, including practicing under supervision for a defined period of time;
- (d) suspend the registration of the Respondent Member for a defined period of time;
- (e) cancel the registration of the Respondent Member;
- (f) fine the Respondent Member in an amount not to exceed \$25,000;
- (g) assess costs or part of the costs of the investigation of the Respondent Member's conduct and the hearing of the citation.

(2) An order of the Adjudication Panel under subsection (1) shall be in writing and shall be delivered to the Respondent Member and to the complainant, if any.

(3) Unless the Adjudication Panel directs otherwise, the chair of the Inquiry Committee may disclose to any person on request

- (a) an order of the Adjudication Panel under subsection (1), or
- (b) any reasons the panel may issue in relation to the results of a discipline hearing.

#### *Penalty hearing*

6.30(1) If the Adjudication Panel determines that a Respondent Member is guilty of an allegation set out in a citation, it must hold a later and separate hearing on the question of the appropriate penalty to apply as per bylaw 6.29, unless the member agrees that the penalty hearing can be held sooner.

(2) The Adjudication Panel may consider a request from the Respondent Member or the Inquiry Committee to hold a later, separate hearing on the question of penalty.

(3) In determining the penalty to be imposed on a Respondent Member after making a determination on the facts, the Adjudication Panel may consider a previous relevant disciplinary decision regarding the member or an undertaking or consent to a reprimand given by the member under this Part.

#### *Costs*

6.31(1) Costs awarded under clause 6.29(1)(g) must not exceed, in total,

- (a) 50% of the total costs of the investigation leading up to the hearing, including legal costs, and
- (b) 50% of the actual costs for legal representation during the hearing.

(2) In making an order for an assessment of costs under clause 6.29(1)(g), the Adjudication Panel may receive submissions on costs in writing or hold a separate hearing.

#### *Panel decision*

6.32(1) The Adjudication Panel may give its decision on the matter in sign language or orally at the end of the hearing, but if the Panel's decision will be issued later in writing, it shall be so issued as soon as practical after the hearing, but not less than 60 days after the hearing.

(2) The Panel's written decision must:

- (a) be written in a manner that protects the personal privacy of the third parties, and is suitable for public disclosure in full;

- (b) include the names of the panel members issuing the decision;
  - (c) identify the parties in the proceeding, and their legal counsel or representatives, including the Respondent;
  - (d) not include the names of a complainant or any witnesses, except when they have appeared at an open hearing in an official capacity;
  - (e) not include other possible personal identifiers or health care information of a complainant or a third party, except where necessary to adequately explain the reasons for the decision;
  - (f) be written in plain language.
- (3) A decision of an Adjudication Panel does not have to be unanimous, but must be in writing and signed by each concurring member.
- (4) A Panel member not concurring may make a minority decision, which may be issued separately from the majority decision, but must be issued within 60 days of the hearing.
- (5) A decision of the Panel under this bylaw is final and conclusive, and is not open to question or review in any court, and proceedings by or before the Panel 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.

*Panel remains active*

6.33) Until the Adjudication Panel releases its final written decision under bylaw 6.32, the Panel remains active, is seized of the matter and may re-open the hearing at the request of the parties and as may be required.

**Division G – Consequences of Disciplinary Decisions**

*Monitoring compliance with disciplinary orders*

- 6.34(1) The chair of the Inquiry Committee shall monitor a Respondent Member's compliance with an order the Adjudication Panel has issued pursuant to bylaws 6.29 or 6.31.
- (2) If the chair of the Inquiry Committee determines that a member has not complied with an Adjudication Panel order, the chair must so report the matter to the Inquiry Committee, with or without recommendations.

*Failure to comply with a disciplinary order*

- 6.35) If the Inquiry Committee concludes that a Respondent Member has not complied with an Adjudication Panel order issued pursuant to bylaws 6.29 or 6.31, the committee may
- (a) direct that the member be suspended until such time as the member complies with the order, or
  - (b) take such other actions as may be permitted under this Section.

*Publication and notification of a decision*

- 6.36(1) Where disciplinary proceedings result in a limitation imposed on a Respondent's practice or the suspension of the Respondent's membership, the chair of the Inquiry Committee shall advise the membership and the general public of
- (a) the name of the Respondent,
  - (b) the facts of the case,
  - (c) the reasons for the decision, and
  - (d) the nature of a limitation or suspension and the date it is in effect.
- (2) In addition to advising the membership and public, the chair of the Inquiry Committee may also notify the following of the member's limitation or suspension:



- (a) any college, regulatory body or association responsible for the regulation of the profession in every Canadian jurisdiction;
  - (b) on request, to any other college, regulatory body or association in a jurisdiction outside Canada;
  - (c) the institution where the member is or was employed.
- (3) If the chair of the Inquiry Committee is aware that the member is or was a member of another regulatory body, the chair must also notify that other body.

*Application of disciplinary decisions to CES*

6.37(1) If at the time of the suspension or termination of a Member's membership under this Section the suspended or terminated Member is also involved in the Association's Canadian Evaluation System at any stage, that Member's further participation in the CES is also suspended or terminated, as the case may be and on the same terms and conditions as were set out in the agreement reached or decision made under this Section.

(2) If at the time of the suspension or termination of a Member's membership under this Section, that suspended or terminated Member had obtained a Certificate of Interpretation, that COI is deemed to be automatically suspended or terminated, as the case may be and on the same terms and conditions as were set out in the agreement reached or decision made under this Section.

(3) If a Member has had his or her COI terminated pursuant to subsection (2), that Member must immediately return the Certificate to the Association on notification of that termination.

*Application of an approved Affiliate Chapter's disciplinary decisions*

6.38(1) If an approved Affiliate Chapter reaches a consent resolution agreement of a complaint made against a Member or issues a disciplinary order against a Member as a result of its disciplinary hearing into that Member's conduct,

- (a) such an agreement or decision is deemed to also apply to that Member as a member of the Association as if it were a decision made under this Section, and
- (b) that Member is subject to the same terms and conditions as set out in the approved Affiliate Chapter's agreement or decision as could be agreed to or imposed by the Association under this Section.

(2) Without limiting the generality of subsection (1):

- (a) if a Member has been suspended or has his or her membership terminated by an approved Affiliate Chapter as a result of that Chapter's consent resolution process or disciplinary hearing, that Member's membership with the Association is deemed to be automatically suspended or terminated, as the case may be and on the same terms and conditions, as if the agreement or decision of the approved Affiliate Chapter was the agreement or decision of the Association made under this Section;
- (b) if at the time of the suspension or termination of membership with the approved Affiliate Chapter, that suspended or terminated Member is also involved in the Association's Canadian Evaluation System at any stage, that Member's further participation in the CES is also suspended or terminated, as the case may be and on the same terms and conditions as were set out in the agreement or decision of the approved Affiliate Chapter;
- (c) if at the time of the suspension or termination of membership with the approved Affiliate Chapter, that suspended or terminated Member has obtained a Certificate of Interpretation, that COI is deemed to be automatically suspended or terminated, as the case may be and on the same terms and conditions as were set out in the agreement or decision of the approved Affiliate Chapter.



(3) If a Member has had his or her COI terminated pursuant to clause (2)(c), that Member must immediately return the Certificate to the Association on notification of that termination.

*Member under suspension or termination*

6.39) In addition to the requirements of bylaws 6.37 and 6.38, a Member while under suspension or whose membership has been terminated must not

- (a) represent herself or himself as a Member of the Association, or
- (b) display a certificate of registration as a Member.

MOVER:                   Alana McKenna  
SECONDER:             Ashley Campbell

