

# Creating a College for the Future

A PROFESSIONAL REGULATORY BODY FOR PATENT AND TRADE-MARK AGENTS

## Proposed Discipline By-laws of the College

*These by-laws were first created in 2002 as an adaptation of the discipline by-laws of the Canadian Institute of Actuaries and we thank them for their permission to do so. They were posted on the IPIC web site and explained in the Bulletin. In October 2003, the members of IPIC at their Annual General Meeting adopted a motion that these by-laws be considered by the College as the by-laws for discipline. They were slightly modified in 2004 after consultations with experts and posted in October of 2004 for members to comment. Further revisions were made in July 2005 to ensure that the language of these by-laws is coherent with the text of the draft legislation.*

### Interpretation

#### By-law 1

1. In these By-laws,
  - (1) "Act" means the Patent Agents and Trade-mark Agents Act;
  - (2) "agent" includes a registered trade-mark agent and a registered patent agent within the meaning of the Act;
  - (3) "By-laws" means the By-laws of the College as in effect from time to time;
  - (4) "client" means any natural person or legal entity that takes advice or asks services of the agent or who seeks such services directly or indirectly on behalf of others;
  - (5) "Code of Ethics" means the code adopted by the College as in effect from time to time;
  - (6) "Board" means the Board of Governors of the College;
  - (7) "Executive Director" means the Executive Director of the College;
  - (8) "Investigation Team" means a team appointed pursuant to Section 4(7) of the By-laws;
  - (9) "Member of the College" has the meaning ascribed to "member" in Sections 23 and 24 of the Act;

- (10) “Offence” means a breach by an agent or trainee of the Code of Ethics or By-laws;
- (11) “professional organization” means any association governing barristers and solicitors or notaries in a province or in the territory of Canada, or any association of professionals, that has bilateral status with the College as described in these By-laws;
- (12) “Respondent” means an agent or trainee against whom a complaint has been laid or a charge has been filed;

### **Appointment of Committees and Panels**

#### **By-law 2**

- (1) The Board shall appoint a Professional Conduct Committee for purposes of By-law 3. The members of the Professional Conduct Committee shall include one person from the public, appointed by the Attorney General of Canada.
- (2) The Board shall annually appoint a Disciplinary Tribunal Panel which shall consist of at least 15 Members of the College, who have agreed in general terms to make themselves available for appointment to a Disciplinary Tribunal. None of the President, President-Elect or Immediate Past-President or a member of the Board shall be members of the Disciplinary Tribunal Panel. The Board shall also annually appoint two members of the Disciplinary Tribunal Panel to act as Chairperson and Vice-Chairperson of the Disciplinary Tribunal Panel.
- (3) The Board may appoint task forces to consider issues of discipline.

### **Discipline of Members**

#### **By-law 3**

##### *Jurisdiction of the Professional Conduct Committee*

- (1) The Professional Conduct Committee of the College is constituted to handle all disciplinary matters concerning agents and trainees and to provide them with counseling and education regarding disciplinary matters. The Professional Conduct Committee shall deal with:
  - (a) every complaint alleging that an agent or trainee has committed an Offence;

- (b) every information identifying an agent or trainee that raises an issue of professional conduct; and
- (c) every inquiry regarding the conduct of an agent or trainee.

*Composition and Quorum*

- (2) The Professional Conduct Committee shall consist of at least 10 members, including a chairperson. Five members shall constitute a quorum except that seven members shall constitute a quorum for the conduct of a vote to file a charge against an agent or trainee.
- (3) The Executive Director of the College shall ensure that records of the Professional Conduct Committee are kept.

*Immediate Past President Ex-Officio*

- (4) No member of the Board shall sit as a member of the Professional Conduct Committee except the Immediate Past President who shall sit as an ex-officio member and shall be entitled to vote. The Immediate Past President shall not act as Chairperson of the Professional Conduct Committee.

*Conflict of Interest*

- (5) Members of the Professional Conduct Committee must refuse to participate in any matter in which they consider themselves to be in a position of conflict of interest. If the Chairperson is in such a conflict, a Chairperson shall be appointed by the other members of the Discipline of Committee.

*Meetings*

- (6) Members of the Professional Conduct Committee shall hold meetings at least annually; and may hold meetings more often as required. Every decision of the Professional Conduct Committee shall be taken by a majority of the members present at the meeting. In the event of a tie, the motion is considered to be defeated. Meetings of the Professional Conduct Committee may only be attended by members of the Professional Conduct Committee and by any other person invited to attend by the Chairperson of the Professional Conduct Committee.

*Confidentiality of Deliberations*

- (7) Except as provided in the By-laws, the deliberations of the Professional Conduct Committee and any of the Investigation Teams, including records and minutes, are confidential unless the Professional Conduct Committee otherwise decides in relation to a particular matter.
- (8) All persons present at a meeting of the Professional Conduct Committee shall be bound to uphold the confidentiality of the deliberations and of any information obtained in connection with such meeting, whether verbal or in written form, and whether obtained before, during or after such a meeting.

## **Making a Complaint**

### **By-law 4**

- (1) A complaint may be made by any person or Member of the College, in writing. Every complaint shall be received by the Executive Director of the College.

### *Jurisdiction*

- (2) The Professional Conduct Committee shall determine whether it has jurisdiction, pursuant to By-law 15 to handle the complaint or information received. If the Professional Conduct Committee decides that the matter should be handled by another professional organization, the Executive Director shall forward the complaint or information to that organization. Should that organization refuse to handle the matter, the Committee shall retain jurisdiction to handle the complaint or information received in accordance with the By-laws.

### *Confidentiality Agreement*

- (3) Once a complaint or information has been received, the Executive Director shall promptly request that the Complainant or informant agree in writing to keep confidential any information provided to the Complainant or informant on a confidential basis concerning confidential details of the practice of the agent or trainee or decision of the Professional Conduct Committee to privately admonish an agent or trainee pursuant to By-law 8(6). If the Complainant refuses or fails to provide such written agreement, the Professional Conduct Committee shall provide only such information as is permitted under these By-laws.

*Information from Complainant*

- (4) Before deciding whether an Offence may have been committed by an agent or trainee, the Professional Conduct Committee may obtain additional information regarding the complaint from the Complainant.

*Response by Member*

- (5) Before deciding whether an Offence may have been committed by an agent or trainee, the Professional Conduct Committee shall deliver a copy of the complaint to the agent or trainee, as well as any additional information obtained pursuant to By-law 5(4). Within 30 days of such delivery or such greater period as the Professional Conduct Committee may consider appropriate in the circumstances, the agent or trainee may provide a written response thereto or any other written explanation that may be warranted in the circumstances.

*Dismissal of Complaint*

- (6) Where, on the basis of all of the information obtained, the Professional Conduct Committee is of the opinion that an Offence has not been committed by the agent or trainee, it shall dismiss the complaint and shall notify in writing the agent or trainee and the Complainant within a 30 days of its decision. It shall forward a copy of the complaint laid to the agent or trainee.

*Referral of Complaint to Investigation Team*

- (7) Where, on the basis of all of the information obtained, the Professional Conduct Committee is of the opinion that an Offence may have been committed by the agent or trainee, it shall refer the complaint to an Investigation Team. It shall notify the Respondent and the Complainant within 30 days of making its decision.

*Ongoing Jurisdiction of the College*

- (8) Any Member of the College, who becomes disqualified from being a Member or voluntarily ceases to be a Member, shall remain subject to the disciplinary jurisdiction of the Professional Conduct Committee for the acts or omissions committed while being a Member of the College.

**The Investigation Team****By-law 5**

*Appointment of an Investigation Team*

- (1) When the Professional Conduct Committee refers a complaint to an Investigation Team under By-law 4(7), it shall appoint the Investigation Team to carry out an investigation. Such Investigation Team shall consist of at least two persons. No member of the Board and no Member of the College with a conflict of interest shall act as a member of the Investigation Team.

*Report and Response from Respondent Member*

An Investigation Team shall conduct its investigation within 3 months of being appointed. The Investigation Team shall prepare a report containing the findings of its investigation within four months of its appointment. The report shall be transmitted to the Professional Conduct Committee. Once the Professional Conduct Committee has accepted the report, it shall deliver the report to the Respondent. Within 30 days of such delivery, or such greater period as the Professional Conduct Committee may consider appropriate in the circumstances, the Respondent may submit to the Executive Director a written response to the report of the Investigation Team or any other written explanation which may be warranted in the circumstances.

*Interviews by the Team*

- (2) In preparing its report, an Investigation Team may carry out such inquiries as it deems proper under the circumstances. It shall interview the Respondent and the Complainant; and may interview any other Member of the College or person who may have relevant information. Any person being interviewed by an Investigation Team, including the Respondent, may be assisted or represented by legal counsel.

*Production of Documents*

- (3) In the course of its investigation, the Investigation Team may require the production of any books, documents, record or other papers relevant to an investigation and which may be in the possession or control of any agent or trainee, including the Respondent.

*Co-operation with Investigation*

- (4) It shall be an Offence for an agent or trainee to:

- (a) hinder in any way the work of an Investigation Team or any one of its members in the performance of its duties as carried out according to the By-laws;
- (b) fail to respond within 30 days to an inquiry from the Investigation Team;
- (c) mislead an Investigation Team or any one of its members by concealment or by false declarations;
- (d) refuse to produce any information or document relating to an inquiry; or
- (e) refuse to let a copy be made of any relevant document.

## **Decisions of the Professional Conduct Committee**

### **By-law 6**

#### *Decisions of the Committee*

- (1) After reviewing the report of an Investigation Team and the response provided by the Respondent, if any, the Professional Conduct Committee shall:
  - (a) dismiss the complaint;
  - (b) mediate the dispute between the agent or trainee and the Complainant, where in the opinion of the Professional Conduct Committee, the dispute does not require a hearing before the Discipline Tribunal;
  - (c) proceed with private admonishment proceedings;
  - (d) sanction the agent or trainee pursuant to By-law 9; or
  - (e) refer the complaint to the Discipline Tribunal where in the opinion of the Professional Conduct Committee, the complaint is of a severity that requires a hearing before the Discipline Tribunal pursuant to By-law 10.

#### *Dismissal of Complaint*

- (2) If the Professional Conduct Committee dismisses a complaint, it shall notify the Respondent and the Complainant within 30 days of the dismissal. The notice shall be in writing and shall state the reasons for the dismissal. The Complainant shall have a right of appeal to the Disciplinary Tribunal. The

Complainant must file its request for a hearing before the Disciplinary Tribunal within 60 days of delivery of the notice of the dismissal.

*Dismissal and Letter of Advice*

- (3) If the Professional Conduct Committee dismisses a complaint, it may send to the Respondent a letter of advice, which may include any education or counseling materials as the Professional Conduct Committee may consider appropriate in the circumstances. The Professional Conduct Committee shall disclose the letter of advice only to the Respondent and shall not keep a record thereof.

*Charge Against Agent or Trainee*

- (4) If the Professional Conduct Committee finds that a complaint is justified and that the provisions of By-law 6(1)(b), 6(1)(c), or 6(1)(d) are not appropriate, it must then file a charge against the Respondent and refer it to a Disciplinary Tribunal for hearing. The Professional Conduct Committee shall notify the Respondent and the Complainant within 30 days of its decision.

**Mediation**

**By-law 7**

*Appoint a Mediator*

- (1) If the Professional Conduct Committee finds, having regard to the relative gravity of the matter and the interests of the public and the College, that the complaint is justified but that it may be resolved through mediation between the Respondent and the Complainant, the Professional Conduct Committee shall appoint a mediator. The mediator shall be a Member of the College or such other person as the Respondent and Complainant agree to and the Professional Conduct Committee approves.

*Resolution by Mediator*

- (2) The mediator shall meet with both the Complainant and the Respondent. If a resolution is arrived at, the mediator shall record the resolution in writing. Once the Professional Conduct Committee accepts the resolution, it shall be

delivered to the Respondent and to the Complainant within 30 days of the acceptance.

*Failure to Resolve Complaint*

- (3) Where the mediator cannot resolve the issues between the Complainant and the Respondent, the matter shall be referred back to the Professional Conduct Committee for disposition pursuant to By-law 6(1)(c), (d), or (e).

**Admonishment of the Member**

**By-law 8**

*Refer to Private Admonishment*

- (1) If the Professional Conduct Committee finds, having regard to the severity of the matter and the interests of the public and the College, that the complaint is justified, but that proceedings pursuant to By-laws 6(1) (d) or (e) are not appropriate, it shall file a charge and refer it to three members of the Professional Conduct Committee, chosen by the Chairperson of the Professional Conduct Committee for private admonishment proceedings. The three members shall not have been members of the Investigation Team.
- (2) The Professional Conduct Committee shall deliver the charge and a written notice of private admonishment proceedings to the Respondent within 30 days of its decision to file a charge.

*Agent or Trainee attends to Discuss Charge*

- (3) Within 60 days of such delivery, or such greater period as the Professional Conduct Committee may consider appropriate in the circumstances, the Respondent shall personally attend an informal meeting with the representatives of the Professional Conduct Committee in order to discuss the charge.
- (4) If the Respondent refuses or fails to attend such informal meeting, without reasonable excuse, the Professional Conduct Committee may refer the charge against the Respondent to a Disciplinary Tribunal for a hearing, and shall notify the Respondent and the Complainant in writing within 30 days of such decision.
- (5) At the informal meeting, the Respondent shall have an opportunity to respond to the charge. The Respondent may be represented by counsel at the meeting.

*Charge may be Dismissed or Private Admonishment given*

- (6) After considering the response provided by the Respondent, the representatives of the Professional Conduct Committee shall decide whether to dismiss the charge or to issue a private admonishment. They shall forthwith inform the Respondent of the decision to dismiss the charge or shall give the private admonishment in person. Within 15 days of their decision, they shall deliver a confirmation to the Respondent and a notice to the Complainant, subject to By-law 4(2), in writing of the decision to dismiss the charge or to issue a private admonishment. The notice shall be in writing and shall state the reasons for the dismissal, if this is the case. In the case of a dismissal, the Complainant shall have a right of appeal to the Disciplinary Tribunal. The Complainant must file its request for a hearing before the Disciplinary Tribunal within 60 days of delivery of the notice of the dismissal.
- (7) The written confirmation of a private admonishment shall contain a summary of the facts, the charge filed against the Respondent, reasons for the decision and a copy of any written response and documents provided by the Respondent at the informal meeting. The written confirmation shall be signed by all three representatives of the Professional Conduct Committee.

*Private Admonishment Confidential for Five Years*

- (8) The Professional Conduct Committee shall ensure that a copy of the written confirmation of the private admonishment is kept in a confidential file for a period of five years from the date it is signed, after which time it shall be destroyed. A private admonishment shall not be disclosed other than to:
- (a) The Complainant, provided the Complainant has agreed in writing to the confidentiality of the admonishment under to By-law 4(3);
  - (b) The Professional Conduct Committee members to the extent necessary for the performance of their duties; or
  - (c) The Disciplinary Tribunal or Appeal Tribunal in a subsequent hearing against the Respondent provided the alleged Offence being considered by the Tribunal is similar in nature to the matter that was the subject of the private admonishment.

**Charge and Recommendation of Sanction**

**By-law 9**

*Powers of the Committee*

- (1) If the Professional Conduct Committee finds, having regard to the relative gravity of the matter and the interests of the public and the College, that the complaint is justified and that proceedings pursuant to By-laws 6(1)b, 6(1)c, 6(1)e, 7, and 8 are not appropriate, it shall file a charge and make a recommendation that the Respondent admit guilt in writing for the acts of omissions that form the basis of the charge, and accept a reprimand.

In addition, the recommendations of Committee may require that the Respondent agree to one or more of the following sanctions:

- (a) completion of one or more courses of instruction prescribed by the Professional Conduct Committee;
- (b) a periodic audit of the books and records of the Respondent;
- (c) a periodic review of the Respondent's correspondence and work product;
- (d) payment of the legal fees and expenses incurred by the Professional Conduct Committee;
- (e) such corrective or remedial action as the Professional Conduct Committee considers appropriate.

*Agent or Trainee can Admit to Guilt*

- (2) The Professional Conduct Committee shall deliver the charge and its recommendation of sanction to the Respondent. Within 30 days of such delivery, or such greater period as the Committee may consider appropriate in the circumstances, the Respondent, shall in writing either admit guilt and accept the recommendation of sanction or decline to do so.
- (3) If an admission of guilt is entered and the recommendation of sanction is accepted, both in writing by the Respondent, the Respondent shall comply with the conditions thereof, and the Complainant shall be informed within a reasonable period of time in writing of the admission of guilt and the accepted recommendation of sanction.

*Referral to Tribunal for Hearing*

- (4) If the Respondent fails either to admit guilt or to comply with the recommendation of sanction or its terms and conditions, or if the Respondent

declines to accept the recommendation of sanction within the 30 days referred to in subsection (2) above, the Professional Conduct Committee must then refer the charge against the Respondent to a Disciplinary Tribunal for a hearing and shall notify the Respondent within a reasonable period of time in writing of this decision. The Professional Conduct Committee shall notify the Complainant in writing of this decision within 30 days of the decision.

#### **By-law 10**

##### *Appointment of Tribunal*

- (1) The Chairperson of the Disciplinary Tribunal Panel shall appoint a Disciplinary Tribunal to hear a charge filed against ~~a Member of the College~~ an agent or trainee. If the Chairperson is in a conflict of interest or is otherwise unable to appoint a Disciplinary Tribunal, the Vice-Chairperson shall appoint the Disciplinary Tribunal in accordance with this By-law. A Disciplinary Tribunal shall consist of three members, two of whom shall be members of the Disciplinary Tribunal Panel. The third member, who shall be a retired judge or similarly qualified individual, shall be the Chairperson of the Disciplinary Tribunal.

##### *Member of Tribunal*

- (2) In the event that two members of a Disciplinary Tribunal cannot be appointed from the Disciplinary Tribunal Panel, the Chairperson or the Vice-Chairperson may appoint a Member of the College under S. 23 of the Act to sit as a member of a Disciplinary Tribunal. None of the President, the Immediate Past President, the members of the Board, the members of the Professional Conduct Committee and the members of the Investigation Team that investigated the complaint laid against the Respondent, shall be eligible to sit as a member of a Disciplinary Tribunal.

##### *Mediation*

- (3) The Professional Conduct Committee and the Respondent may retain the services of a mediator prior to the scheduled hearing and on mutually agreed terms and conditions. The mediator shall be an impartial person whose role is to assist the parties to communicate in good faith with each other and, where appropriate, to assist and encourage the parties to agree on a statement of facts, a recommended penalty and any other submissions and materials that may subsequently be presented to the Disciplinary Tribunal for its consideration.

##### *Parties to the Hearing*

- (4) The Respondent shall be a party to the hearing. The Professional Conduct Committee shall be a party to the hearing and shall conduct the prosecution before the Disciplinary Tribunal.

*Right to Counsel*

- (5) A party appearing before a Disciplinary Tribunal has the right to be assisted or represented by legal counsel.

*Notice of Hearing*

- (6) The Executive Director shall give prior notice of at least 15 days of the date, time and place of any hearing of a Disciplinary Tribunal to the parties and to their legal counsel, if known, unless a hearing date is set during a hearing, all parties being present. Approximately 15 days before the date of the commencement of the hearing before the Disciplinary Tribunal, the Executive Director shall publish a notice available to the public and the membership in such manner as the Executive Director may determine. Such notice available to the public and the membership shall include the name of the Respondent, the date, time and place of the hearing of the Disciplinary Tribunal and a summary of the charge.

*Absence of Respondent*

- (7) A Disciplinary Tribunal may conduct a hearing in the absence of the Respondent if said Respondent does not appear on the date and at the time and place set out in the notice.

*Hearing shall be public*

- (8) Except as provided herein, every hearing before a Disciplinary Tribunal shall be public. Nevertheless, of its own initiative or upon request, the Disciplinary Tribunal may, at its discretion, order that a hearing be held *in camera* or ban the publication or release of any information or document it indicates to preserve the client's privilege, to maintain professional secrecy, to protect a person's privacy or reputation, or in the interest of public order.

*In camera hearing*

- (9) Where an *in camera* hearing is ordered, all those present at the hearing shall be personally bound to secrecy, subject to the right of the members of the Professional Conduct Committee and members of the Appeal Tribunal, as described below, to be informed about the proceedings to the extent necessary for the performance of their duties.

**By-law 10 cont'd***Parties, legal counsel and witnesses*

- (10) A Disciplinary Tribunal shall hear the parties, their legal counsel and their witnesses, may inquire into the relevant facts and may call any person to testify on such facts. The witnesses may be examined or cross-examined by the parties. An agent or trainee testifying before a Disciplinary Tribunal shall be bound to answer all questions.

*Procedure and practice*

- (11) The practice and procedure before a Disciplinary Tribunal shall be governed by the Rules of Practice and Procedure of a Disciplinary Tribunal of the College as may be adopted by the College from time to time. A Disciplinary Tribunal may adopt rules of procedure or practice, not in conflict with these By-laws or the Rules of Practice and Procedure of a Disciplinary Tribunal, for the conduct of a hearing and as necessary to carry out its duties.

*Suspension during Inquiry*

- (12) The Professional Conduct Committee may request a Disciplinary Tribunal to order that the Respondent be suspended for the duration of the inquiry.

*Death or incapacity of member of Tribunal*

- (13) If a member of a Disciplinary Tribunal dies before a decision is rendered or, for any reason, is unable to fulfill such member's duties at any stage of the process, after the expiry of 10 days of the parties being informed of the death or incapacity of the member of the Disciplinary Tribunal by the Executive Director, the remaining members of the Disciplinary Tribunal shall proceed to hear the charge and render its decision, unless within the 10 day period a party has made a request that a new member be appointed in accordance with By-law 10(1). If such a request is made, the newly constituted Disciplinary Tribunal shall proceed in the manner agreed to by the parties, or failing agreement, in the manner determined by the Disciplinary Tribunal.

## **Disciplinary Tribunal: Decisions**

### **By-law 11**

#### *Decision*

- (1) After a Disciplinary Tribunal has heard the parties, their evidence and all other relevant evidence, it must then render its decision within 90 days from the date of the end of the hearing.

#### *Powers*

- (2) Subject to the provisions of these By-laws, a Disciplinary Tribunal shall decide, to the exclusion of any other court or tribunal, whether or not the Respondent is guilty of an Offence.

#### *Record of hearing*

- (3) The Executive Director shall ensure that the record of the hearing and the decision of a Disciplinary Tribunal are placed in a special file. This record shall constitute *prima facie* proof of its contents.

#### *Decision in writing*

- (4) A Disciplinary Tribunal shall record its decision in writing with reasons, and dissenting opinions, if any. The decision shall be signed by all members of the Disciplinary Tribunal. If the Disciplinary Tribunal decides that the publication or release of certain information or documents is banned, its written decision shall include this fact, and the reasons for this decision.

#### *Decision sent to parties*

- (5) A Disciplinary Tribunal shall send its decision to all parties, within 10 days after the decision has been rendered. If the Complainant was not a party to the proceedings, the Professional Conduct Committee shall notify the Complainant within a reasonable period of time in writing of the decision rendered by the Disciplinary Tribunal.

**By-law 11 cont'd***Hearing on penalty*

- (6) In the event that the Respondent has been found guilty, the parties may then be heard by the Disciplinary Tribunal with respect to the penalty within 30 days after its decision, as to whether or not the Respondent is guilty of an Offence, has been rendered. The Disciplinary Tribunal shall render a decision with respect to the penalty within 15 days from the date of the end of this hearing.

*Costs*

- (7) Subject to the Act and these By-laws, a Disciplinary Tribunal shall have the power to order any of the parties to pay all or part of the fees and expenses of legal counsel of the other party incurred to commence and complete the proceedings.

*Decision on penalty*

- (8) The Disciplinary Tribunal shall send its decision with respect to the penalty to all parties, within 10 days after the decision has been rendered. If the Complainant was not a party to the proceedings, the Professional Conduct Committee shall notify the Complainant within a reasonable period of time in writing of the decision with respect to the penalty rendered by the Disciplinary Tribunal.

**Disciplinary Tribunal: Penalties****By-law 12***Penalty options*

- (1) A Disciplinary Tribunal shall impose on an agent or trainee found guilty of an Offence, one of the following penalties, in respect of one or more of the counts:
- (a) a reprimand;
  - (b) a suspension from the register or registers on which the agent is registered and from the College, if the agent or trainee is a Member of the College ;
  - (c) an expulsion from the register or registers on which the agent is registered and from the College, if the agent or trainee is a Member of the College.

A Disciplinary Tribunal may also impose a fine on an agent or trainee found guilty of an Offence, in respect of one or more of the counts.

*Refresher training*

- (2) A Disciplinary Tribunal may also require an agent or trainee found guilty of an Offence to take a refresher course or courses and may restrict or suspend the individual's right to be a Member of the College until completion of the course or courses.
- (3) A Disciplinary Tribunal may also require an agent or trainee who is a Member of the College to be supervised by another Member of the College by means of a review of applications, opinions, correspondence or such other things as the Disciplinary Tribunal may decide and for such period of time as the Disciplinary Tribunal may fix.

*Audits*

A Disciplinary Tribunal may require an agent or trainee to be subject to periodic audits of books and records for such period of time as the Disciplinary Tribunal may fix.

*Terms and conditions*

- (5) A Disciplinary Tribunal may fix the terms and conditions of the penalties it imposes.

*Implementation of Penalties*

- (6) The penalty imposed by a Disciplinary Tribunal shall be implemented upon the expiry of the period for appeal, provided no notice of appeal is filed, in accordance with the terms and conditions indicated in the By-laws, unless the Disciplinary Tribunal orders provisional implementation of the decision upon its receipt by the Respondent.

*Payment of a sum of Money*

- (7) When a decision of a Disciplinary Tribunal obliges a party to remit a sum of money for costs or a fine, or both, the Respondent must pay the amount in question to the College or the College must pay the amount in question to the Respondent within 10 days after the expiry of the period for appeal, provided no notice of appeal is filed, unless otherwise ordered by the Disciplinary Tribunal. Should the party fail to pay the amount within the specified period, said party shall be liable to interest charges, at the prime rate of the Bank of Canada plus two percentage points, as well as collection costs. If the party is a

Member of the College, said Member shall be automatically suspended from the College until such time as all amounts have been paid in full.

## **Appeal**

### **By-law 13**

#### *Filing of notice of Appeal*

- (1) Subject to By-law 13(5), a party before a Disciplinary Tribunal may file a notice of appeal from a decision rendered by the Disciplinary Tribunal finding the Respondent not guilty of a charge within 30 days after the receipt of said decision. If the Disciplinary Tribunal renders a decision finding the Respondent guilty of a charge, a party may file a notice of appeal from such decision or from the decision on penalty within 30 days after the receipt of the decision on penalty. The other party may file a notice of cross-appeal within 10 days after the receipt of the notice of appeal.

The notice of appeal and the notice of cross-appeal shall state the decision appealed and summarily expose the reasons for which the appeal or cross-appeal is filed, and the conclusions sought. A party shall file its notice with the Executive Director and shall send a copy to any other party within the specified period. The Professional Conduct Committee shall notify the Complainant within a reasonable period of time in writing of the notices filed, if any.

#### *Constitution of Appeal Tribunal*

- (2) In the event that a notice of appeal is filed, an Appeal Tribunal shall be appointed by the Board. Except as provided in By-law 14(11), an Appeal Tribunal shall consist of three members, two of whom shall be members of the Tribunal Panel, and the third shall be a retired judge and shall be the Chairperson of the Appeal Tribunal. In the event that two members of an Appeal Tribunal cannot be appointed from the Tribunal Panel, the Board may appoint a Member who is a member of the Board at the time of appointment or a Member who is a past Officer. None of the President, the President-elect, the Immediate Past President, the members of the Investigation Team that investigated the complaint laid against the Respondent, or the members of the Disciplinary Tribunal shall be eligible to sit as a member of an Appeal Tribunal.

#### *Conflict of Interest*

- (3) The parties to a hearing before an Appeal Tribunal shall be notified by the Executive Director of the composition of the Appeal Tribunal within 10 days after its appointment. A party may request the removal of a member of the Appeal Tribunal, should there be a conflict of interest between said member of the Appeal Tribunal and one of the parties, or should a member of the Appeal Tribunal appear biased for any other reason under the circumstances.

A member of an Appeal Tribunal who is aware of grounds for such member's removal must so declare forthwith.

*Jurisdiction of Appeal Tribunal*

- (4) An appeal can be made to an Appeal Tribunal in respect of
  - a. a decision of a Disciplinary Tribunal ordering a temporary suspension of a an agent or trainee, allowing or dismissing a charge, imposing a penalty or awarding costs; or
  - b. any other decision of a Disciplinary Tribunal, with leave of the Appeal Tribunal.

*Limitation on Right of Appeal*

- (5) The Professional Conduct Committee shall make an appeal to an Appeal Tribunal pursuant to By-law 13(4) only on a question of law or jurisdiction.

**Appeal Tribunal: Hearing of an Appeal**

**By-law 14**

*Parties*

- (1) The parties before the Disciplinary Tribunal shall be the parties before the Appeal Tribunal.

*Right to Legal Counsel*

- (2) Every party to the appeal has the right to be assisted or represented by legal counsel.

*Suspension of Implementation*

- (3) The filing of a notice of appeal shall suspend the implementation of the decision of the Disciplinary Tribunal, unless the Disciplinary Tribunal orders the provisional implementation thereof. However, an order for temporary suspension from the College shall be automatically implemented, notwithstanding appeal, unless the Appeal Tribunal decides otherwise.

*Hearing and Decision*

- (4) An Appeal Tribunal shall hear the appeal within 60 days after the period for the filing of a notice of cross-appeal has expired, or leave has been granted, and shall render a final decision within 30 days after the end of the hearing.

*Prior Notice*

- (5) The Executive Director shall give prior notice of at least 15 days of the date, time and place of any hearing of an Appeal Tribunal to the parties and to their legal counsel, if known, unless a hearing date is set during a hearing, all parties being present. Approximately 15 days before the date of the commencement of the hearing before the Appeal Tribunal, the Executive Director shall publish a notice available to the public and the membership in such manner as the Executive Director may determine. Such notice available to the public and the membership shall include the name of the agent or trainee, the date, time and place of the hearing before the Appeal Tribunal and a summary of the charge.

*Absence of a Party*

- (6) An Appeal Tribunal may conduct a hearing in the absence of a party if said party does not appear on the date and at the time and place set out in the notice.

*Hearing shall be Public*

- (5) Except as provided herein, every hearing before an Appeal Tribunal shall be public. Nevertheless, of its own initiative or upon request, the Appeal Tribunal may, at its discretion, order that a hearing be held *in camera* or ban the publication or release of any information or document it indicates to preserve professional secrecy or to protect a person's privacy or reputation, or in the interest of public order.

*In Camera Hearing*

- (8) Where an *in camera* hearing is ordered, all those present at the hearing shall be personally bound to secrecy, subject to the right of the members of the Professional Conduct Committee to be informed about the proceedings to the extent necessary for the performances of their duties.

*No New Evidence*

- (9) No new evidence shall be presented before an Appeal Tribunal. However, an Appeal Tribunal may, by reason of exceptional circumstances and where the ends of justice require, authorize the presentation of additional written or verbal evidence.

*Procedure and Practice*

- (10) An Appeal Tribunal shall be master of its own procedure and practice. It may adopt rules of procedure or practice, not in conflict with these By-laws, for the conduct of a hearing and as necessary to carry out its duties.

*Death or Incapacity of Member of Tribunal*

- (11) If a member of an Appeal Tribunal dies before a decision is rendered or, for any reason, is unable to fulfill such member's duties at any stage of the process, after the expiry of 10 days of the parties being informed of the death or incapacity of the member of the Appeal Tribunal by the Executive Director, the remaining members of the Appeal Tribunal shall proceed to hear the appeal and render its decision, unless within the 10 day period a party has made a request that a new member be appointed in accordance with By-law 13(2). If such a request is made, the newly constituted Appeal Tribunal shall proceed in the manner agreed to by the parties, or failing agreement, in the manner determined by the Appeal Tribunal.

**APPEAL TRIBUNAL: DECISIONS**

**By-law 15**

*Powers*

- (1) An Appeal Tribunal may confirm, alter or quash any decision appealed from, and render the decision, which it considers should have been rendered in the first instance.

*Record of Hearing*

- (2) The Executive Director shall ensure that the record of the hearing and the decision of an Appeal Tribunal are placed in a special file. This record shall constitute *prima facie* proof of its contents.

*Decision in Writing*

- (3) An Appeal Tribunal shall record its decision in writing with reasons, and dissenting opinions, if any. The decision shall be signed by all members of the Appeal Tribunal. If the Appeal Tribunal decides that the publication or release of certain information or documents is banned, its written decision shall include this fact, and the reasons for this decision.

*Decision Sent to Parties*

- (4) An Appeal Tribunal shall send its decision to all parties, within 10 days after the decision has been rendered. If the Complainant was not a party to the proceedings, the Professional Conduct Committee shall notify the Complainant within a reasonable period of time in writing of the decision rendered by the Appeal Tribunal.

*Costs*

- (5) An Appeal Tribunal shall have the power to order any of the parties to pay all or part of the fees and expenses of legal counsel of the other party incurred to commence and complete the proceedings before the Disciplinary Tribunal and the Appeal Tribunal.

*Implementation of Penalties*

- (6) The penalty imposed by an Appeal Tribunal shall be implemented upon receipt of the decision rendered by an Appeal Tribunal by the Respondent, in accordance with the terms and conditions indicated in the By-laws.

*Payment of a Sum of Money*

- (7) When a decision of an Appeal Tribunal obliges a party to remit a sum of money for costs or a fine, or both, the party who is not the College must pay the amount in question to the College or the College may pay the amount in question to the parties within 10 days after the receipt of the decision rendered by an Appeal Tribunal, unless otherwise ordered by the Appeal Tribunal. Should the party fail to pay the amount within the specified period, said party shall be liable to interest charges, at the prime rate of the College's chartered bank or trust company plus two percentage points, as well as collection costs. If the party is a Member, said Member shall be automatically suspended from the College until such time as all amounts have been paid in full.

## Publication of Decisions and Reports

### By-law 16

#### *Decision sent to Board of Governors*

- (1) The Executive Director shall send to the Board the admission of guilt and acceptance of a recommendation of sanction or the decision of a Disciplinary Tribunal or Appeal Tribunal within 10 days after the admission and acceptance or the decision of a tribunal has been made.

#### *Notice of decision*

- (2) The Executive Director shall ensure that a notice is prepared of the admission of guilt and acceptance of recommendation of sanction, or of the decision of the Disciplinary Tribunal, provided no notice of appeal has been filed, or of any decision of the Appeal Tribunal. The notice shall contain;
  - (a) the name of the agent or trainee;
  - (b) the principal practice address of the agent or trainee;
  - (c) the specialty area in which the agent or trainee practices, if any;
  - (d) the charge;
  - (e) the date and a summary of the admission of guilt and acceptance of a recommendation of sanction or the decision; and
  - (f) in the case of a suspension or expulsion, a heading "Notice of Suspension from the Register and the College" or "Notice of Expulsion from the Register(s) and the College", as the case may be.

#### *Notice shall be Published*

- (3) Except as provided in By-laws 16 (4), 16 (5) and 16 (6), the Executive Director shall ensure that the notice is published to each Member of the College. In the case of a suspension or expulsion, the Executive Director shall publish a summary of the notice in a newspaper having general circulation in the place where agent or trainee principally practices in if the agent or trainee practices in Canada. The publication of the notice shall take place;
  - (a) within 60 days after the Board has received the admission of guilt and acceptance of a recommendation of sanction;

- (b) within 60 days after the expiry of the period for appeal, provided no notice of appeal has been filed; or
- (c) within 60 days after a final decision of the Appeal Tribunal has been rendered.

*Exceptions*

- (4) A Disciplinary Tribunal or an Appeal Tribunal may direct that the above requirements for publication of the notice be varied. However, in the case of a suspension or expulsion, a Disciplinary Tribunal or an Appeal Tribunal may not vary the requirement that the name of the agent or trainee and the sanction imposed be published to each Member of the College within 60 days after the expiry of the period for appeal, provided no notice of appeal has been filed, or within 60 days after a final decision of Appeal Tribunal has been rendered.

*Powers of The Board of Governors*

- (5) In the case of a decision where no suspension or expulsion has been ordered, the Board may reduce the above requirements for publication of the notice, but The Board of Governors may not;
  - (a) change any direction given by a Disciplinary Tribunal or an Appeal Tribunal under By-law 16(4); or
  - (b) vary the requirement that the agent's or trainee's name and the sanction imposed be published to each Member of the College.

*No notice to be Published*

- (6) In the case of a decision which finds an agent or trainee of the College not guilty of a charge, no notice in relation to that charge shall be published if the agent or trainee so notifies the Executive Director within 30 days after the expiry of the period for appeal provided no notice of appeal has been filed, or within 30 days after the final decision of the Appeal Tribunal has been rendered.

*Annual report to Council*

- (7) The Executive Director must make an annual report to the Board on the activities of the Professional Conduct Committee, the Disciplinary Tribunals and the Appeal Tribunals. The report shall include, at a minimum,

- (a) the number and nature of complaints laid;
- (b) the number of private admonishments issued without disclosing the nature of the private admonishments or the names of the agents or trainees admonished;
- (c) the number and nature of admissions of guilt and acceptances of a recommendation of sanction made;
- (d) the number and nature of decisions rendered by the Professional Conduct Committee, the Disciplinary Tribunals and the Appeal Tribunals; and
- (e) to the extent such information is made available to the Professional Conduct Committee, the number and nature of complaints laid concerning the practice of agents and trainees in the jurisdiction of other professional organizations, as well as the number and nature of decisions rendered with respect to members of other professional organizations.

*Periodic report to Members*

- (8) The Executive Director must make a periodic report, at least twice per year, to each Member of the College on the activities of the Professional Conduct Committee and of Disciplinary and Appeal Tribunals. The report shall include, at a minimum:
  - (a) the number and nature of complaints laid, including complaints laid concerning the practice of agents and trainees in the jurisdiction of other professional organizations;
  - (b) the number and nature of charges filed which are referred to a Disciplinary Tribunal or with respect to which a recommendation of sanction is offered, without disclosing the names of the agents and trainees charged;
  - (c) the number of private admonishments issued without disclosing the nature of the private admonishments or the names of the agents and trainees;
  - (d) any notices of admissions of guilt and acceptances of a recommendation of sanction or decisions which have been finalized since the last report; and
  - (e) an explanation as to how a Member or other person, who wishes to request more information about charges which have been filed or tribunal proceedings, may obtain that information.

## **Reciprocal Arrangements**

### **By-law 17**

#### *Entering into Agreements with Professional Organizations*

- (1) The College may enter into agreements with professional organizations for the purpose of dealing with disciplinary matters arising from agents or trainees who are members of and subject to the rules and regulations of one or more professional organization.
- (2) In instances where both the College and the professional organization would have investigatory jurisdiction over an individual, the Chairperson of the Professional Conduct Committee, who shall be the designate of the Board under Section 30(1) of the Act for this purpose, and such Chairperson's counterpart in the professional organization shall agree between themselves as to which organization can provide the most appropriate forum for the investigation based on the totality of the facts of the case or whether both organizations should jointly exercise jurisdiction in the matter. Such factors as the physical location of the individual's practice, the nature of the work performed, and the nature of the individual's practice will be considered in deciding which organization may conduct the investigation. If the Chairperson and his or her counterpart agree that the other professional organization or both jointly shall exercise jurisdiction with respect to the complaint, the Chairperson shall forward the complaint to the other professional organization.

#### *Determination of guilt by College*

- (3) Where the College takes jurisdiction over an individual, a determination by the College that an agent or trainee has breached the Code of Ethics or the By-laws shall be made solely by the College.

#### *Communication of Determination*

- (4) The Executive Director shall communicate to the professional organization any final determination that a member of that organization breached the Code of Ethics or By-laws. The Executive Director shall also provide the relevant professional organization with a copy of the guilty plea or the Disciplinary Tribunal and any appeal decision(s), the transcripts and if requested, the

documents filed in evidence with the Disciplinary Tribunal and the Appeal Tribunal, unless communication thereof is restricted by law or by order of the Disciplinary or Appeal Tribunal.

*Public sanction*

- (5) If the Respondent pleads guilty or a Disciplinary or Appeal Tribunal makes a determination that a member of one or more professional organizations has breached the Code of Ethics or the By-laws, the College shall not recommend a specific penalty to be imposed by the professional organization against its member, but shall recommend that the professional organization consider imposing public sanctions against the member.

*Professional organization*

- (6) Questions concerning the practice or professional conduct in the jurisdiction of a professional organization by an agent or trainee who is also a member of the professional organization shall be governed by the professional organization in accordance with its rules and procedures. The professional organization shall make a determination of non-guilt, or shall make a determination of guilt and impose an appropriate penalty against its member in accordance with its rules and procedures.

*Determination of guilt by professional organization*

- (7) A determination by a professional organization that an agent or trainee has breached the rules of professional conduct, standards of practice or eligibility requirements of that organization when practicing in that jurisdiction shall be made solely by that organization. The determination by the professional organization will be deemed final by the College when the appeal process of that organization has been exhausted.

*Communication of Determination*

- (8) The Executive Director shall receive from a professional organization any final determination that an agent or trainee breached the rules of professional conduct, standards of practice or eligibility requirements of the professional organization when practicing in its jurisdiction. The Executive Director shall request from that professional organization a copy of the decision-making body's decision(s), the hearing transcripts and the documents filed in evidence with or considered by the decision-making body in rendering its decision(s), unless communication thereof is restricted by law or by order of the decision-making body.

*Recommendation of public sanction*

- (9) If a professional organization makes a determination that an agent or trainee

breached the rules of professional conduct, the standards of practice or the eligibility requirements of the professional organization when practicing in its jurisdiction, the College shall not act upon a recommendation from the decision-making body of that organization to the effect that a specific penalty be imposed by the College against the agent or trainee. The College shall receive a recommendation from that organization that the College consider imposing public sanctions against the agent or trainee and shall determine an appropriate sanction for it to impose against its agent or trainee in accordance with the By-laws.

*Process*

- (10) More specifically, the determination of guilt by a professional organization in respect of an agent or trainee practicing in that jurisdiction shall be received by the Executive Director and considered as a complaint indicating that an Offence has been committed, pursuant to By-law 4. By-laws 1-13 shall be followed to the extent that they are applicable, except that:
- (a) an Investigation Team shall not investigate the complaint or prepare a report for the Professional Conduct Committee's consideration;
  - (b) as guilt has already been determined by the professional organization the Professional Conduct Committee's powers provided in By-law 6 shall be limited to filing a charge and issuing a private admonishment, filing a charge and making a recommendation of sanction to the Respondent, or filing a charge and referring it to a Disciplinary Tribunal only to decide upon an appropriate penalty; and
  - (c) the Disciplinary Tribunal shall hold a hearing with respect to the penalty within 30 days after the appointment of the Disciplinary Tribunal, based on the documents provided by the professional organization.

The Disciplinary Tribunal's decision on penalty may be appealed in accordance with By-laws 13 to 15 and it is subject to the publication requirements of By-law 16.