



IPIC

Sustaining Excellence: A Modernized Regulatory Framework for Patent and Trade-mark Agents

Details of a Possible Disciplinary Process

Important Note:

The following discipline by-laws were prepared in the context of the proposal for the College of Patent Agents and Trade-mark Agents. These by-laws were presented to the members of IPIC in 2003. At the Annual General Meeting of that year, the members voted in favour of having the College, upon its creation, adopt these by-laws.

The by-laws are now provided to the members, in the context of the 2010 consultation on a self-regulation proposal, solely for the purpose of providing an example of a disciplinary process.

What follows is the text that was adopted in 2003. If it were to be used, the text would obviously need to be modified to correspond to the realities of the chosen self-regulation regime.

**Discipline By-laws of the College
(As Proposed by the Intellectual Property Institute of Canada¹)**

Interpretation

By-law 1

1. In these By-laws,
 - (1) “agent” includes a registered trade-mark agent, a registered patent agent and a member of the College and further includes a patent or trade-mark agent trainee where appropriate in the context of these by-laws;
 - (2) “bilateral organization” means a provincial law society, the Barreau du Quebec, or any association governing barristers and solicitors in the territories of Canada;
 - (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) “Council” means the governing body of the College;
 - (7) “Courts” shall mean the Federal Court of Canada, the Federal Court of Appeal and the Supreme Court of Canada;
 - (8) “Executive Director” means the Executive Director of the College;
 - (9) “Investigation Team” means a team appointed pursuant to Section 4(7) of the By-laws;
 - (10) “Member of the College” or “Member” means an individual who has been admitted by the College into one of its classes of membership;
 - (11) “Offence” means a breach of the Code of Ethics or By-laws;
 - (12) “Respondent” means a member against whom a complaint has been laid or a charge has been filed;

¹ IPIC is grateful to the Canadian Institute of Actuaries for the permission to use their by-laws as a basis for this set of by-laws.

Appointment of Committees and Panels

By-law 2

- (1) The Council shall appoint a Discipline Committee for purposes of By-law 3. The members of the Discipline Committee shall include one member of the public, appointed by the Attorney General of Canada.
- (2) The Council 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 Council shall be members of the Disciplinary Tribunal Panel. Council shall also annually appoint two members of the Disciplinary Tribunal Panel to act as Chairperson and Vice-Chairperson of the Disciplinary Tribunal Panel.
- (3) Council may appoint task forces to consider issues of discipline.

Discipline of Members

By-law 3

Jurisdiction of the Discipline Committee

- (1) The Discipline Committee of the College is constituted to handle all disciplinary matters concerning the Members of the College and to provide them with counseling and education regarding disciplinary matters. The Discipline Committee shall deal with:
 - (a) every complaint alleging that a Member of the College has committed an Offence;
 - (b) every inquiry regarding the conduct of any Member of the College.

Composition and Quorum

- (2) The Discipline 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 a member.
- (3) The Executive Director of the College shall ensure that records of the Discipline Committee are kept.

By-law 3 cont'd*Immediate Past President Ex-Officio*

- (4) No member of Council shall sit as a member of the Discipline 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 Discipline Committee.

Conflict of Interest

- (5) Members of the Discipline 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 Discipline Committee shall hold meetings quarterly; and may hold meetings more often as required. Every decision of the Discipline 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 Discipline Committee may only be attended by members of the Discipline Committee and by any other person invited to attend by the Chairperson of the Discipline Committee.

Confidentiality of Deliberations

- (7) Except as provided in the By-laws, the deliberations of the Discipline Committee and any of the Investigation Teams, including records and minutes, are confidential unless the Discipline Committee otherwise decides in relation to a particular matter.
- (8) All persons present at a meeting of the Discipline 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. Every complaint shall be received by the Executive Director of the College.

By-law 4 cont'd*Jurisdiction*

- (2) The Discipline Committee shall determine whether it has jurisdiction, pursuant to By-law 15 to handle the complaint or information received. If the Discipline Committee decides that the matter should be handled by a bilateral 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 has been received, the Executive Director shall promptly request that the complainant agree in writing to keep confidential any information provided to the complainant on a confidential basis concerning the clients or confidential details of the practice of the member of the College or decision of the Discipline Committee to privately admonish a Member of the College pursuant to By-law 8(6). If the complainant refuses or fails to provide such written agreement, the Discipline 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 a Member of the College, the Discipline 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 a Member of the College, the Discipline Committee shall deliver a copy of the complaint to the Member of the College, as well as any additional information obtained pursuant to By-law 5(3). Within 30 days of such delivery or such greater period as the Discipline Committee may consider appropriate in the circumstances, the Member of the College may provide a written response thereto or any other written explanation that may be warranted in the circumstances.

By-law 4 cont'd*Dismissal of Complaint*

- (6) Where, on the basis of all of the information obtained, the Discipline Committee is of the opinion that an Offence has not been committed by the Member of the College, it shall dismiss the complaint and shall notify in writing the Member, the complainant, within a reasonable period of time of its decision. It shall forward a copy of the complaint laid to the Member.

Referral of Complaint to Investigation Team

- (7) Where, on the basis of all of the information obtained, the Discipline Committee is of the opinion that an Offence has been committed by the Member of the College; 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 Discipline Committee for the acts or omissions committed while being a Member of the College.

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

- (1) When the Discipline 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 no more than three persons. No member of Council 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

- (2) 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 Discipline Committee. Once the Discipline Committee has accepted the report, it shall deliver the report to the

By-law 5 cont'd

Respondent. Within 30 days of such delivery, or such greater period as the Discipline 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

- (3) 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

- (4) In the course of its investigation, an 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 Member of the College, including the Respondent.

Co-operation with Investigation

- (5) It shall be an Offence for a Member of the College 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 Discipline 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 Discipline Committee shall:
 - (a) dismiss the complaint;
 - (b) mediate the dispute between the Member and the complainant, where in the opinion of the Discipline Committee, the dispute does not require a hearing before the Discipline Tribunal;
 - (c) proceed with private admonishment proceedings;
 - (d) sanction the Member of the College pursuant to By-law 9; or
 - (e) refer the complaint to the Discipline Tribunal where in the opinion of the Discipline 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 Discipline 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 Discipline Committee dismisses a complaint, it may send to the Respondent a letter of advice, which may include any education or counseling materials as the Discipline Committee may consider appropriate in the circumstances. The Discipline Committee shall disclose the letter of advice only to the Respondent and shall not keep a record thereof.

By-law 6 cont'd*Charge Against Member*

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

Mediation**By-law 7***Appoint a Mediator*

- (1) If the Discipline 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 Member of the College and the complainant, the Discipline 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 Discipline 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 Discipline 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 Discipline 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 Discipline 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 Discipline Committee, chosen by the Chairperson of the Discipline Committee for private admonishment proceedings. The three members shall not have been members of the Investigation Team.
- (2) The Discipline 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.

Member attends to Discuss Charge

- (3) Within 60 days of such delivery, or such greater period as the Discipline Committee may consider appropriate in the circumstances, the Respondent shall personally attend an informal meeting the representatives of the Discipline Committee in order to discuss the charge.
- (4) If the Respondent refuses or fails to attend such informal meeting, without reasonable excuse, the Discipline 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 Discipline 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. In the case of a dismissal, the complainant shall have a right of appeal to the Disciplinary Tribunal. The complainant must file

By-law 8 cont'd

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 Discipline Committee.

Private Admonishment Confidential for Five Years

- (8) The Discipline 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, subject to By-law 4(3);
 - (b) The Discipline Committee members to the extent necessary for the performance of their duties; or
 - (c) Disciplinary 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 Discipline 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 7 or 10 are not appropriate, it shall file a charge and make a recommendation of one or more of the following sanctions:
- (a) completion of one or more courses of instruction prescribed by the Discipline Committee;
 - (b) a periodic audit of the books and records of the Respondent;

By-law 9 cont'd

- (c) a periodic review of the Respondent's correspondence and work product;
- (d) payment of the legal fees and expenses incurred by the Discipline Committee;
- (e) such corrective or remedial action as the Discipline Committee considers appropriate.

Member can Admit to Guilt

- (2) The Discipline 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 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 Discipline 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 Discipline Committee shall notify the complainant in writing of this decision within 30 days of the decision.

Disciplinary Tribunal: Hearing of a Charge

By-law 10

Appointment of Tribunal

- (1) The Chairperson of the Tribunal Panel shall appoint a Disciplinary Tribunal to hear a charge filed against a Member of the College. 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 Tribunal Panel. The third member, who shall be a retired judge or other member of the public, 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 a Tribunal Panel, the Chairperson or the Vice-Chairperson may appoint a Member of the College to sit as a member of a Disciplinary Tribunal. None of the President, the Immediate Past President, the members of Council, the members of the Discipline Committee and the members of the Investigation Team that investigated the complaint laid against the Respondent, the Chairperson of the Tribunal or the Vice-Chairperson of the Tribunal Panel shall be eligible to sit as a member of a Disciplinary Tribunal.

Mediation

- (3) The Discipline 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 Discipline Committee shall be a party to the hearing and shall conduct the prosecution before the Disciplinary Tribunal. The complainant may be subpoenaed to give evidence at the hearing, in accordance with the Rules of Practice and Procedure referred to in By-law 10(11) below.

By-law 10 cont'd*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 date, time and place of the hearing of the Disciplinary Tribunal and a summary of the charge, but shall not disclose the name of the Member of the College.

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, professional secrecy or 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 Discipline Committee and members of the Disciplinary 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. A Member of the College testifying before a Disciplinary Tribunal shall be bound to answer all questions. The evidence given by such witnesses is privileged and cannot be used against that individual before any court of justice.

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 Discipline 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) A Disciplinary Tribunal shall decide, to the exclusion of any other court or tribunal, in the first instance, 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 is 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 said decision has been rendered. The Discipline Committee shall notify the complainant within a reasonable period of time in writing of the decision rendered by the Disciplinary Tribunal.

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.

By-law 11 cont'd

Costs

- (7) 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 said decision has been rendered. The Discipline 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 a Member of the College 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 College;
 - (c) an expulsion from the College.

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

Refresher training

- (2) A Disciplinary Tribunal may also require a Member 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.

By-law 12 cont'd

- (3) A Disciplinary Tribunal may also require 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

- (4) A Disciplinary Tribunal may require a Member of the College 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) 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 after the receipt of said decision within the time period specified by the *Federal Court Act*. 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 after the receipt of the decision on penalty within the time period as is specified by the *Federal Court Act*.
- (2) A party shall serve and file its notice of appeal in accordance with *the Federal Court Act* and the Rules of the Federal Court of Canada. The Discipline Committee shall notify the complainant within a reasonable period of time in writing of the notices filed, if any.

Publication of Decisions and Reports

By-law 14

Decision sent to Council

- (1) The Executive Director shall send to Council the admission of guilt and acceptance of a recommendation of sanction or the decision of a Disciplinary 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 Federal Court of Canada. The notice shall contain;
 - (a) the name of the Member of the College;
 - (b) the principal practice address of the Member of the College;
 - (c) the specialty area in which the Member 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 College” or “Notice of Expulsion from the College”, as the case may be.

Notice shall be Published

- (3) Except as provided in By-laws 14 (4), 14 (5) and 14 (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 the Member of the College principally 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;

By-law 14 cont'd

- (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 Federal Court of Canada (and any appeals therefrom) have been rendered.

Exceptions

- (4) A Disciplinary 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 may not vary the requirement that the name of the Member 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 the Federal Court of Canada (and any appeals therefrom) has been issued.

Powers of Council

- (5) In the case of a decision where no suspension or expulsion has been ordered, Council may reduce the above requirements for publication of the notice, but Council may not;
 - (a) change any direction given by a Disciplinary Tribunal under By-law 14 (4); or
 - (b) vary the requirement that the Member'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 a Member of the College not guilty of a charge, no notice in relation to that charge shall be published if the Member of the College 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 Federal Court of Canada (and any appeals therefrom) has been issued.

Annual report to Council

- (7) The Executive Director must make an annual report to Council on the activities of the Discipline Committee, the Disciplinary Tribunals and the Courts. The report shall include, at a minimum,
 - (a) the number and nature of complaints laid;

By-law 14 cont'd

- (b) the number of private admonishments issued without disclosing the nature of the private admonishments or the names of the Members 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 Discipline Committee, the Disciplinary Tribunals and the Courts; and
- (e) to the extent such information is made available to the Discipline Committee, the number and nature of complaints laid concerning the practice of Members of the College in the jurisdiction of bilateral organizations, as well as the number and nature of decisions rendered with respect to members of bilateral 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 Discipline Committee and of Disciplinary Tribunals. The report shall include, at a minimum,
 - (a) the number and nature of complaints laid, including complaints laid concerning the practice of Members of the College in the jurisdiction of bilateral 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 Members of the College charged;
 - (c) the number of private admonishments issued without disclosing the nature of the private admonishments or the names of the Members of the College;
 - (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, who wishes to request more information about charges which have been filed or tribunal proceedings, may obtain that information.

Reciprocal Arrangements

By-law 15

Entering into Agreements with Bilateral Organizations

- (1) The College may enter into agreements with bilateral organizations for the purpose of dealing with disciplinary matters arising from Members of the College who are also members of and subject to the rules and regulations of one or more bilateral organization.
- (2) In instances where both the College and the bilateral organization would have investigatory jurisdiction over an individual, the Chairperson of the Discipline Committee and such Chairperson's counterpart in the bilateral 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. 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 will conduct the investigation.

Determination of guilt by College

- (3) Where the College takes jurisdiction over an individual, a determination by the College that a Member 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 bilateral 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 bilateral organization with a copy of the guilty plea or the Disciplinary Tribunal and appeal decision(s), the transcripts and if requested, the documents filed in evidence with the Disciplinary Tribunal and the Courts, unless communication thereof is restricted by law or by order of the Disciplinary Tribunal.

Public sanction

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

By-law 15 cont'd*Bilateral organization*

- (6) Questions concerning the practice or professional conduct in the jurisdiction of a bilateral organization by a Member who is also a member of the bilateral organization shall be governed by the bilateral organization in accordance with its rules and procedures. The bilateral 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 bilateral organization

- (7) A determination by a bilateral organization that a Member 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 bilateral 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 bilateral organization any final determination that a Member breached the rules of professional conduct, standards of practice or eligibility requirements of the bilateral organization when practicing in its jurisdiction. The Executive Director shall request from that bilateral 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 bilateral organization makes a determination that a Member breached the rules of professional conduct, the standards of practice or the eligibility requirements of the bilateral 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 Member. The College shall receive a recommendation from that organization that the College consider imposing public sanctions against the Member and shall determine an appropriate sanction for it to impose against its Member in accordance with the By-laws.

By-law 15 cont'd*Process*

- (10) More specifically, the determination of guilt by a bilateral organization in respect of a Member 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 Discipline Committee's consideration;
 - (b) as guilt has already been determined by the bilateral organization the Discipline 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 bilateral organization.

The Disciplinary Tribunal's decision on penalty may be appealed in accordance with By-law 13 and it is subject to the publication requirements of By-law 14.