

**WESTCOAST ASSOCIATION OF VISUAL LANGUAGE INTERPRETERS**

**COMPLAINTS AND DISCIPLINE POLICIES AND PROCEDURES**

Prepared for the Professional Standards Committee  
by George Bryce, legal counsel

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## INTRODUCTION

These policies and procedures have been prepared and approved by the Board (as of the effective date noted above) pursuant to bylaw 5.2.6 which provides that the Professional Standards Committee “may submit for approval by the Board policies and procedures that are necessary for it to administer the applicable provisions of the procedures outlined herein.”

Where appropriate, guidance has been taken from the AVLIC Dispute Resolution Process in drafting these policies and procedures. However, as the national standards contemplate a process that is markedly different from the processes set out in the WAVLI Bylaws, none of the specific policies and procedures in the AVLIC Process are directly incorporated into the WAVLI policies and procedures.

The following policies and procedures are designed to provide more detailed guidance to the Members of the WAVLI Professional Standards Committee than may be set out in the Bylaws themselves.

This information may also be of assistance to Complainants, Respondent Members and others who may be involved in the investigation and resolution of complaints that may be filed against WAVLI Members.

These policies and procedures are focused on only the complaint investigation and resolution bylaws and the later disciplinary hearing bylaws as set out in Section 5 of the WAVLI Bylaws. These policies and procedures do not address appeals that Complainants or Members may be able to file with the Board flowing from the decisions of the Committee [ref. bylaw 5.13].

The bylaws that speak to the following administrative matters will also not be addressed in this document:

- establishing the Committee [ref. bylaw 5.1.2];
- defining its role in setting ethical standards or educating the public about those standards,
- maintaining a roster of Members to appoint to mediation or disciplinary panels.

For ease of reference, the specific bylaws that provide a foundation for these policies and procedures are set out in *italic font* in boxes throughout these policies and procedures.

## A) COMPLAINT INVESTIGATIONS AND RESOLUTION

### *Form of a complaint*

5.3.1 *A person who wishes to make a complaint against a Member shall deliver the complaint in writing (or video taped ASL) to the Chair of the Professional Standards Committee.*

- 1) A “person” would normally be the client of the Member, but may also be a third party who was not the Member’s client but was nonetheless adversely affected by the Member’s act or omission.

- 2) A complaint is not considered to be made simply if a Complainant contacts the Chair by phone or email to complain about a Member.
- 3) The requirement that a Complainant set out the complaint in either writing or video is intended to ensure that this step is one that the Complainant wants to pursue. It is also intended to ensure that the Committee will receive sufficient information to then undertake an initial assessment of the complaint (see below).
- 4) The Committee will not accept an anonymous complaint against a WAVLI Member; therefore, a written complaint must be dated and signed by a Complainant.
- 5) If the Complainant is a child, the complaint must also be sponsored and signed by the child's parent or legal guardian.

### ***Committee initiated investigations***

5.2.5 In the absence of a formal complaint, the Professional Standards Committee may on its own motion investigate a Member regarding any of the following matters:

- (a) contravention or failure to comply with the Constitution and Bylaws of the Association;*
- (b) contravention or failure to comply with the Code of Ethics and Guidelines for Professional Conduct of the Association;*
- (c) any type of professional misconduct;*
- (d) questions of the Member's competence to work as a visual language interpreter;*
- (e) a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs the Member's ability to work as a visual language interpreter.*

- 6) Generally speaking, the Committee may initiate an investigation of a Member under this bylaw if it receives or is aware of information that suggests a Member may have acted or failed to act as listed in this bylaw. This includes reports in newspaper or other media where no specific person may have filed a formal complaint under bylaw 5.3.1.
- 7) If the Committee ascertains that a Member is suffering from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs the Member's ability to work as a visual language interpreter, it may not take disciplinary action against a Member under bylaw 5.9, but – instead – shall try to resolve the matter by informal means and help the Member deal with his or her ailment, disturbance or addiction.

### ***Deadline for filing a complaint***

*5.3.2 Complaints shall be filed within three years of the alleged incident or behaviour of concern to the complainant.*

- 8) If a complaint is filed three years after the alleged incident or behaviour of concern, the Committee may nonetheless agree to pursue an investigation or try to resolve the matter but only so long as the Complainant provides the Committee with a sufficient explanation for the delay, and the Committee concludes that the delay was justified or excusable.
- 9) The time limit set out in bylaw 5.3.2 also applies to the ability of the Committee to investigate a Member on its own motion, as per bylaw 5.2.5.

### ***Preliminary matters***

*5.2.2 The Professional Standards Committee shall investigate ... complaints against Members regarding a Member's unethical and/or unprofessional conduct as outlined herein...*

*5.3.3 Upon receipt of a complaint, the Professional Standards Committee shall investigate the matter raised by that complaint as outlined herein as quickly as possible.*

*5.4.1 Where a complaint is delivered to the chair of the Professional Standards Committee, the Committee shall investigate the matter raised by the complaint ... as soon as possible after receipt of the complaint.*

- 10) On receipt of a written complaint the Committee will undertake an initial review of the complaint to ensure that it has the jurisdiction to investigate that complaint.<sup>1</sup>
- 11) The Committee shall determine whether the person named in the complaint is a WAVLI Member by confirming membership status on the current membership roster.
- 12) If the Committee determines that the person named in the complaint is not a Member of WAVLI or that the Association does not otherwise have the jurisdiction to investigate the complaint, the chair shall send a letter to the Complainant informing him or her of this finding.
- 13) If at any time during its investigation the Committee ascertains that another agency is also investigating the Respondent Member in relation to the same or substantially the same facts as alleged in the complaint, the Committee will decide if it will delay its investigation pending the outcome of that other agency's investigation.<sup>2</sup>

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<sup>1</sup> NOTE: There can be many reasons why the Committee may not have the legal jurisdiction to investigate a complaint against a Member. It is recommended that the Committee consult with legal counsel on these and related issues before pursuing a complaint past this initial stage.

<sup>2</sup> NOTE: There may be reasons why the Committee may want to delay its investigation, for example: *Are the events in question also being investigated by the police? Are criminal charges likely to be filed against the Member? If so, should the Committee delay its investigation pending a final resolution of the criminal trial so as not to compromise the police investigation or criminal prosecution?*

### ***Complainant's attempts to resolve a complaint***

- 14) As part of its mandate to try to resolve a complaint, the Committee should ascertain what steps the Complainant may have taken to bring his or her concerns to the attention of the Member and resolve those concerns informally by dealing directly with the Member.
- 15) If the Complainant did not attempt to resolve his or her concerns informally before filing the complaint, or if after filing the complaint the Complainant would like to try to resolve the complaint by dealing directly with the Member, the Committee may delay its investigation pending the outcome of that informal process.
- 16) For the purposes of assisting the Complainant to resolve his or her concerns informally with the Member, the Committee may appoint another WAVLI Member to assist the two parties in resolving the matter.
- 17) If the Complainant's concerns cannot be resolved informally, the other WAVLI Member may recommend to the Committee that a mediator be appointed pursuant to bylaw 5.5.1.
- 18) If the Complainant did not attempt to resolve his or her concerns informally before filing the complaint, or if after filing the complaint, the Complainant does not want to try to resolve the complaint by dealing directly with the Member, the Committee may proceed with its investigation.
- 19) No record of the Complainant's attempt or the other WAVLI Member's attempt to resolve a complaint at this preliminary stage will be kept, other than receipt of the originating complaint.

### ***Complaints involving financial matters***

- 20) For the purposes of the following policies, a WAVLI Member is deemed to be seeking payment for services from a Complainant if the Member issues a demand letter to a Complainant, assigns a debt owed by the Complainant to a collection agency, initiates a small claims action against the Complainant or takes similar action.
- 21) If the Committee receives a complaint against a Member that:
  - (a) arose out of or in response to a Member seeking payment for services from the Complainant, and
  - (b) does not raise an issue concerning patient safety,the Committee may, at its discretion, delay its investigation of that complaint pending the outcome of a civil action that involves or may involve the Member, and so advise the Complainant and Member.
- 22) If a court hearing a civil action involving a Member seeking payment for services finds that the Complainant does not owe the Member money, the Committee may at its discretion refuse to investigate the complaint.
- 23) If a court hearing a civil action involving a Member finds that the Complainant owes the Member money, the Committee may investigate the complaint providing that while doing so it does not consider the financial matters that were adjudicated by the court.

### **Appointing an investigator**

*5.2.3 The Professional Standards Committee may appoint investigators internal or external to the Committee to collect information regarding complaints received.*  
*5.4.1(b) the Committee may appoint investigators to collect additional information pertinent to the complaint as per Bylaw 5.2.*

- 24) If the Committee does not have sufficient experience in investigation techniques and preparing initial assessment of the evidence that supports or does not support a complaint, it may consider the option to hire a trained investigator to provide this service and so report to the Committee.

### **Informing the Complainant**

- 25) If the Committee finds that the person named in the complaint is a Member of WAVLI and it has the jurisdiction to investigate the complaint, the chair shall inform the Complainant that an investigation of the complaint will proceed.
- 26) If the Committee has decided to proceed with an investigation of the accepted complaint, the chair of the Committee may include in the letter to the Complainant, the following information:
- (a) a copy of these policies and procedures;
  - (b) a statement indicating that copies of correspondence and documentation submitted by the Complainant may be provided to the Respondent, and vice versa.

### **Informing the Member**

*5.4.3 The Professional Standards Committee shall: (a) notify a Member when s/he becomes the subject of an investigation under these procedures;*

- 27) It is not necessary to immediately inform a Member that he or she is the subject of a complaint or that it will be investigated.
- 28) The Committee should act under this bylaw only after it has ensured that
- (a) it has sufficient jurisdiction to investigate the complaint, and
  - (b) it has determined that, if the allegations set out in the complaint were true, that the alleged act or omission would constitute professional misconduct or conduct unbecoming a Member.
- 29) If the Committee has decided to proceed with an investigation, the Chair of the Committee may include in the letter to the Respondent, the following information:
- (a) a copy of these policies and procedures;
  - (b) a statement indicating that copies of correspondence and documentation submitted by the Respondent may be provided to the Complainant, and vice versa;
  - (c) If the Committee has identified the issues within the complaint, the letter to the Respondent may also include an invitation for the Respondent to submit a letter of explanation to be considered by the Committee responding to those issues.

### ***Providing information***

**5.4.1 (a) the Professional Standards Committee may request the complainant and the Member who is the subject of an investigation under Bylaw 5.3 to provide any information regarding the matter under consideration;**

- 30) In most cases, the Complainant and Member will be asked by letter to provide the Committee with letters or other similarly written materials.
- 31) If the Committee determines that it is necessary, it may arrange at its own expense to interview a Complainant or a Member at such a time and location as may be agreed by the parties; it may also arrange to have such an interview recorded.
- 32) If a Member fails to respond in a timely fashion to a Committee request for information, that failure may constitute a new and separate complaint against the Member.
- 33) If a Complainant fails to respond in a timely fashion to a Committee request for information, the Committee may decide that such a failure means the Complainant no longer wishes to pursue the complaint and may then dismiss the complaint and so notify the Complainant and Member.

### ***Committee communications***

- 34) Where the Committee needs to prove that it has sent a letter to the Complainant, the Respondent or a third party, the Committee may send that letter by registered mail or courier, or serve the letter on the party.
- 35) If the Complainant or Respondent communicates with the Committee through a lawyer or other legal representative, the Committee will direct all future communications to the Complainant or Respondent through that lawyer or representative until such time as the Committee is informed otherwise or the Complainant or Respondent communicates directly to the Committee instead of through the lawyer or representative.
- 36) All communications to and from the Committee should be under the signature of the Chair or an appointed Member of the Committee.

### ***Document control***

- 37) To ensure the integrity of all information that is generated during an investigation, the chair should ensure that the originals of all documents and other evidence received by the Committee, or any communications received from or sent to the Complainant, the Respondent or a third party, are dated, recorded on a master list, and kept in a secure location.
- 38) Unless it is necessary to review the originals, the Committee should work from copies of all documents or other evidence it receives or generates during its investigation.
- 39) The chair should maintain an investigation chronology, setting out the date (if not also time) of major events during an investigation, including the dates of the following events:

- (a) the dates that documents or other evidence are received by or sent to the Committee,
  - (b) the dates of conversations with a Complainant, a Respondent and third parties, and
  - (c) the dates of meetings of the Committee, including telephone conference calls.
- 40) As the Committee's communications with legal counsel are privileged, these may be recorded pursuant to the above policy, but they should be maintained in a separate file and should not be disclosed to third parties.

**Timelines and deadlines**

- 41) Unless otherwise specified in the Bylaws or these policies and procedures, the Committee may establish time frames or impose deadlines on the Respondent or Complainant of such a period of time that the Committee believes is reasonable and necessary in the circumstances.

**Dismissing of certain complaints**

*5.4.2 After considering the complaint and any related information, the Professional Standards Committee may take one of the following disciplinary/resolution actions: (a) dismiss the complaint and take no further action if the Professional Standards Committee determines that the matter is trivial, frivolous, vexatious or made in bad faith or that the conduct or competence to which the matter relates is satisfactory;*

- 42) The ability of the Committee to dismiss a complaint as being trivial, frivolous, vexatious or made in bad faith can be exercised at any time during the complaint investigation process.
- 43) The ability of a Committee to dismiss a complaint because it found that the conduct or competence of the Member was satisfactory would normally be exercised at the end of its complaint investigation.
- 44) If the Committee dismisses a complaint under this bylaw, it shall advise both the Complainant and the Member in writing of its reasons for so deciding.

**Extraordinary action to protect the public**

*5.6.1 If the Professional Standards Committee has evidence that action is necessary to protect the public during the investigation of a Member or pending a disciplinary hearing, it may set limits, impose conditions or issue suspension.*

*5.6.2 If the Professional Standards Committee acts to protect the public, it shall notify the Member in writing of its decision, of the reasons for the decision and of the Member's right to appeal that decision to the Board.*

*5.6.3 A decision under this Bylaw is not effective until (a) the Member is notified under Bylaw 5.14, or (b) three days after the notice is sent by registered mail to the Member at the last address for the Member recorded in the register of the Association (whichever of (a) or (b) occurs first).*

*5.6.4 If the Professional Standards Committee determines that action taken under this Bylaw is no longer necessary to protect the public, it shall cancel the limits, conditions or suspension and shall notify the Member in writing of this as soon as possible.*

*5.6.5 A Member against whom action has been taken under this Bylaw may appeal the decision to the Board.*

- 45) As acting under these bylaws may expose WAVLI to a complaint under the *Human Rights Code*, the Committee shall not apply these bylaws without first consulting with legal counsel.

## **B) RESOLUTION OF COMPLAINTS**

### **General**

*5.2.2 The Professional Standards Committee shall ... attempt to resolve complaints against Members regarding a Member's unethical and/or unprofessional conduct as outlined herein...*

*5.4.1 Where a complaint is delivered to the chair of the Professional Standards Committee, the Committee shall ... seek to resolve the complaint as soon as possible after receipt of the complaint...*

- 46) Attempts to resolve a complaint (such as by mediation) can occur at any time during the Committee's investigation of a complaint through to the formal disciplinary hearing, so long as a Disciplinary Panel has not yet rendered a final decision.
- 47) The WAVLI Bylaws contemplate two different paths to resolve complaints: (a) mediation, and (b) consent resolutions.

### **RESOLUTION BY MEDIATION**

#### **Mediation**

*5.4.2 After considering the complaint and any related information, the Professional Standards Committee may take one of the following disciplinary/resolution actions: (b) refer the parties involved to mediation in an attempt to resolve the dispute and protect the public interest as outlined in Bylaw 5.5.*

*5.5 Mediation: Where the Professional Standards Committee determines that a further investigation and disciplinary action are not required and where the complainant and Member agree to mediation, the Professional Standards Committee may recommend that a complaint be mediated as outlined below.*

#### **Appointing the mediator**

*5.5.1 Following a recommendation for mediation, the Professional Standards Committee shall appoint a mediator who is acceptable to both the complainant and the Member.*

- 48) Unless the Respondent Member agrees otherwise, WAVLI will bear the costs of any mediator appointed under this bylaw.

- 49) Where possible and appropriate, the mediator will be an External Mediator from the firm contracted by AVLIC to provide mediation services.

**Agreement to mediate (mediation contract)**

*5.5.2 The mediator shall conduct the mediation process in accordance with the terms of a written mediation contract executed by the complainant and the Member.*

- 50) The mediation contract must include a confidentiality provision.
- 51) If the mediation is between the Complainant and the Respondent Member, a representative of the Committee may attend their mediation only if both parties agree.
- 52) If the mediation is between the Committee and the Respondent Member, the Complainant may attend their mediation only if both parties agree.
- 53) Any other persons may attend the mediation only if both parties agree, and such other persons may include an interpreter or personal advocate (or legal counsel).
- 54) Before mediation may commence, all participants must sign a “Mediation Participation Agreement” which must include a confidentiality clause.

**Mediated agreement reached**

*5.5.3 Where an agreement between the complainant and the Member is reached through mediation, the terms of the mediation agreement shall be brought to the Professional Standards Committee for approval.*

*5.5.4 Where the terms of an agreement between the complainant and the Member requires the Member to take or consent to resolution action(s) referred to in Bylaw 5.7, and where the Professional Standards Committee considers the terms to be appropriate in the circumstances, the Committee may require the Member to comply with the action(s) prescribed in the mediation agreement.*

*5.5.5 Where an agreement is approved by the Professional Standards Committee, the Professional Standards Committee shall:*

- (a) report the resolution of the matter to the Board;*
- (b) monitor the Member to ensure compliance with the resolution actions agreed upon; and*
- (c) retain a copy of the mediation agreement on file for a minimum of seven years.*

**Mediated agreement not reached**

*5.5.6 Where an agreement is not reached through mediation, the mediator shall refer the matter back to the Professional Standards Committee and may recommend that the Professional Standards Committee take one or more actions described herein.*

- 55) Before acting under these bylaws, the Committee will first consult with a mediator.

## RESOLUTION BY CONSENT

### ***Letter of agreement (consent resolution)***

*5.7.1 In relation to a matter investigated, the Professional Standards Committee may impose one or more of the following resolution actions. The Committee may require that the Member agree:*

- (a) not to repeat the conduct to which the matter relates;*
- (b) to take educational courses specified by the Professional Standards Committee;*
- (c) to work under supervision by a designated colleague or panel of colleagues;*
- (d) to consent to a reprimand;*
- (e) to consent to any other resolution action specified by the Professional Standards Committee*

*5.7.2 Resolution actions determined shall be submitted to the Member in writing with a request for the Member to sign a letter of agreement consenting to the decision.*

- 56) The consent resolution contemplated in these bylaws is separate and distinct from a mediation process outlined above.
- 57) Before acting under these bylaws, the Committee will first consult with legal counsel.

### ***Refusal to try to resolve a complaint***

*5.4.4 In the event the Member refuses to comply with the disciplinary/resolution actions required by the Professional Standards Committee, a Disciplinary Panel will be established and the matter will be referred for a formal disciplinary hearing as outlined in Bylaw 5.8.*

*5.7.3 Where a Member refuses to sign a letter of agreement consenting to the decision, the Chair of the Professional Standards Committee may appoint a Disciplinary Panel to conduct a disciplinary hearing regarding the matter in accordance with Bylaw 5.10.*

- 58) Before acting under these bylaws, the Committee will first consult with legal counsel.

### ***Notification of disposition***

*5.4.3 The Professional Standards Committee shall: (b) notify the Member and any complainant of the disposition of the investigation and any action taken;*

- 59) If the Committee determines that the matter should proceed to a formal disciplinary proceeding, it would so notify the Member by issuing a letter of citation (see below).
- 60) The Committee may then either notify the Complainant by providing a copy of the citation to the Complainant or by notifying the Complainant that a disciplinary hearing has been ordered for a specific date, time and location.

- 61) If the Committee determines that a complaint has been resolved, then it shall notify both the Complainant and the Member of that outcome, even if either or both were involved in the resolution.
- 62) If the Committee determines that a complaint should be dismissed, it shall notify both the Complainant and the Member of its reasons for that decision.

### **C) INITIATION OF DISCIPLINARY PROCEEDINGS**

#### ***Letter of citation***

*5.9.1 Upon constitution, the Chair of the Professional Standards Committee shall issue a letter of citation:*

- (a) identifying the affected Member as Respondent;*
- (b) describing the nature of the complaint or other matter that is to be the subject of the hearing, including the particulars of any evidence in support of that subject matter;*
- (c) specifying the time, date and place of the hearing;*
- (d) advising the Respondent that the Disciplinary Panel has been established and is entitled to proceed with the hearing in her/his absence.*

*5.9.2 The Chair of the Professional Standards Committee shall have the letter of citation delivered to the Respondent by personal service or sent by registered mail to the last known address for that person not fewer than 30 days before the date of the hearing;*

*5.9.3 Where the subject matter of the letter of citation is a complaint, the Chair of the Professional Standards Committee shall notify the Complainant in writing of the date, time and place of the hearing not fewer than 14 days before the date of the hearing.*

- 63) The triggering event for initiating a disciplinary proceeding and appointing a Disciplinary Panel is the issuing of a letter of citation under bylaw 5.9.1.

#### ***Investigation information is confidential***

*5.11.1 While a concern is being pursued by the Professional Standards Committee prior to establishing a Disciplinary Panel, all information shall be kept confidential within the Professional Standards Committee.*

- 64) The Committee may disclose such information as it thinks is necessary so as to resolve a complaint before it issues a letter of citation.
- 65) Once a letter of citation is issued, all the information gathered by the Committee (except solicitor-client information) may be disclosed to the Respondent Member, automatically as per bylaw 5.11.2, or on request.

### ***Disclosure of information to Respondent Member***

*5.11.2 At the time a citation is issued pursuant to Bylaw 5.9 or at least 30 days before a disciplinary hearing is scheduled, the Chair of the Professional Standards Committee shall disclose to the Respondent all information in its possession relating in any way to the allegations set out in the citation, whether it be inculpatory or exculpatory of the conduct of the Member.*

*5.11.3 The Chair of the Professional Standards Committee shall make full disclosure. The information to be disclosed includes, but is not limited to:*

- (a) the particulars known regarding the Member's conduct;*
- (b) proposed exhibits;*
- (c) a list of witnesses expected to be called;*
- (d) copies of witness statements;*
- (e) the investigator's notes;*
- (f) the originating complaint.*

*5.11.4 This Bylaw does not require information be released that is protected by a recognized form of privilege.*

*5.11.5 If privileged information is not disclosed in accordance with this Bylaw, the Chair of the Professional Standards Committee shall at the time a citation is issued or at least 30 days before the scheduled hearing advise the Respondent what information is not being disclosed and the reason why.*

- 66) Before acting under these bylaws, the Chair will first consult with legal counsel.

### **D) DISCIPLINARY HEARINGS**

- 67) A disciplinary hearing is not initiated until a letter of citation has been issued and served pursuant to bylaw 5.9.1.

### ***General authority***

*5.2.2 The Professional Standards Committee ... may impose disciplinary... actions as outlined in Bylaw 5.7.*

*5.4.2 After considering the complaint and any related information, the Professional Standards Committee may take one of the following disciplinary/resolution actions: (c) identify and impose appropriate disciplinary/resolution actions as outlined in Bylaw 5.7;*

*5.8.1 A Disciplinary Panel shall adjudicate complaints against Members and conduct disciplinary hearings in accordance with this Bylaw when mediation and attempts by the Professional Standards Committee to resolve a complaint have failed.*

*5.8.3 When a Disciplinary Panel has been appointed pursuant to this Bylaw, it may exercise all of the powers and duties assigned to the Professional Standards Committee.*

*5.10.1 The Disciplinary Panel shall hear and determine a matter which has been set for hearing by a letter of citation pursuant to Bylaw 5.9.*

- 68) While the Committee has the authority under bylaw 5.2.2 to take disciplinary actions against a Member, bylaws 5.2.4(b), 5.8.1, 5.8.3 and 5.10.1 make it clear that this can only be done through a separate Disciplinary Panel.

***Appointing a separate Disciplinary Panel***

*5.2.4(b) [The Professional Standards Committee] may appoint a Disciplinary Panel to conduct a disciplinary hearing and to recommend appropriate disciplinary/resolution actions as outlined in the Bylaw 5.8.*

*5.8.2 The Chair of the Professional Standards Committee shall appoint a disciplinary panel, consisting of at least three Members, one of whom must be a certified interpreter, to hear any matter set down for hearing by citation and shall designate one Member to be the chair of that panel.*

*5.8.4 No person may sit on the Disciplinary Panel when s/he is a member of the Professional Standards Committee.*

*5.8.5 No one named in the complaint or having any prior involvement in the complaint to be heard may sit on the Disciplinary Panel.*

*5.8.6 No member of the Board of the Association may sit on the Disciplinary Panel.*

- 69) A WAVLI Member who was involved in the investigation or an attempted resolution of a complaint that proceeded to a formal disciplinary proceeding must not sit on the appointed Disciplinary Panel.
- 70) No Member of the Board may sit on the Panel, as the Board may later have to hear an appeal to any decision made by that Panel.

***Amending a letter of citation***

*5.9.4 The Chair of the Disciplinary Panel may direct the Professional Standards Committee to cancel a citation that has been issued on its direction if the Disciplinary Panel afterwards determines that a hearing is not required and the Chair of the Professional Standards Committee shall then cancel the citation and notify the Respondent and the complainant, if any, of the cancellation.*

*5.9.5 The Disciplinary Panel may:*

- (a) join one or more complaints or other matters which are to be the subject of a disciplinary hearing in one citation as appropriate in the circumstances;*
- (b) sever one or more complaints or other matters which are to be the subject of a disciplinary hearing as appropriate in the circumstances;*
- (c) amend a citation issued under this Bylaw.*

*5.9.6 Where a citation is amended prior to a disciplinary hearing, the amended citation shall be delivered to the Respondent by personal service or sent by regular mail to the Respondent at the last known address for the person not fewer than 14 days before the date of the hearing.*

*5.9.7 Where a citation is amended prior to a disciplinary hearing as to the date, time or place of the hearing, the Chair of the Professional Standards Committee shall notify any complainant of the amendment not fewer than 14 days before the date of the hearing.*

- 71) Before acting under these bylaws, the Chair will first consult with legal counsel.

**Parties at the hearing**

*5.10.2 The Respondent, an investigator, any Member of the Professional Standards Committee, or any other person authorized by the Disciplinary Panel may appear as parties and with counsel at a hearing of the Disciplinary Panel.*

- 72) Separate legal counsel would be appointed by the Chair of the Committee to prosecute the letter of citation on behalf of the Committee.
- 73) Separate legal counsel would be appointed by the Chair of the Panel to advise the Panel throughout the hearing and when drafting its decision.
- 74) As the disciplinary hearing is a proceeding against the Respondent Member, the Disciplinary Panel would normally allow only the Respondent Member to have legal counsel attend the hearing to cross-examine witness(es) and generally defend the Respondent Member's interests.
- 75) As the Complainant is not a "party of the proceeding", the Panel should not allow the Complainant's legal counsel to cross-examine the Member or other witnesses. To be clear, the Complainant's legal counsel may attend but may not participate in the disciplinary hearing unless expressly authorized to do so by the Panel.

**Details of the hearing**

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

- 76) While the date, time and nature of the hearing may be disclosed to anyone on request, all or part of the hearing itself may be held in camera if the Disciplinary Panel so decides pursuant to bylaw 5.10.4.

**Public hearing, unless...**

*5.10.4 A hearing of the Disciplinary Panel shall be in public unless:*  
*(a) the complainant or the Respondent requests the Disciplinary Panel hold the hearing in private; and*  
*(b) the Disciplinary Panel is satisfied that a private hearing would be appropriate under the circumstances.*

- 77) Before deciding to close all or part of a hearing under these bylaws, the Panel will first ask for submissions on whether it should make such a decision.

**Oath**

*5.10.5 At a hearing of the Disciplinary Panel:*  
*(a) testimony of witnesses shall be taken on oath, which may be administered by any Member of the Disciplinary Panel;*

- 78) A witness may give an oath by swearing on a holy book or by affirmation.

### ***Rights of cross-examination and calling evidence***

*5.10.5 At a hearing of the Disciplinary Panel:  
(b) there shall be a full right to cross-examine witnesses and call evidence in defense and reply.*

- 79) As the Complainant is not a “party of the proceeding”, the Panel should not allow the Complainant or the Complainant’s legal counsel to:
- (a) cross-examine the Member or other witnesses, or
  - (b) call evidence.

### ***Interpretation costs***

- 80) The costs of interpretation during a disciplinary hearing, if needed, will be covered by WAVLI.

### ***Failure to attend***

*5.10.6 Where the Respondent does not attend, the Disciplinary Panel may:  
(a) proceed with the hearing in the Respondent’s absence on proof of receipt of a letter of citation by the Respondent as per Bylaw 5.9; and  
(b) without further notice to the Respondent, take any action that it is authorized to take under these procedures.*

### ***Notice to witnesses***

*5.10.7 The Disciplinary Panel may order a person to attend a hearing to give evidence and to produce records in the possession of or under the control of that person.*

*5.10.8 The Disciplinary Panel shall provide notice by registered mail or by personal service to a person who is required to attend a hearing.*

- 81) If the Respondent Member has been provided with information about the date, time and location of the hearing as part of the letter of citation, the Panel need not provide that Member with separate notice under these bylaws.

### ***Recording the hearing***

*5.10.9 All disciplinary hearings shall be recorded ...*

- 82) The Panel may simply record a hearing or it may hire a court reporter to prepare a set of transcripts.

### ***Transcript of a hearing***

*5.10.9 ...any person may obtain, at her or his expense, a transcript of any part of the hearing which s/he was entitled to attend. If ASL is used, that testimony shall be recorded on video and held as part of the official record.*

- 83) If transcripts are requested and the hearing was recorded, the Panel may charge the requesting party for all or part of the cost of making the requested transcript.

- 84) If transcripts are requested and the hearing was recorded by a court reporter, the Panel may charge the requesting party for all or part of the costs of the court reporter.

***Limits or conditions during or after a hearing***

*5.10.10 Where the Disciplinary Panel considers the action necessary to protect the public between the time a hearing is commenced and the time it makes a determination under this Bylaw, the Disciplinary Panel may: (a) set limits or conditions on the practice of visual language interpretation by the Member;*

- 85) Before acting under this bylaw, the Panel will first consult with legal counsel.

***Deliberations by the Disciplinary Panel***

- 86) All Members of the Panel, who will later decide whether the allegations set out in the citation have been met, must be present for the presentation and consideration of the evidence during a hearing.
- 87) Upon completion of the hearing, the Panel shall review and discuss the allegations set out in the citation and evidence in private with due diligence.

***Action by the Disciplinary Panel***

*5.12.1 On completion of a disciplinary hearing, the Disciplinary Panel may take one or more of the following actions:*

- (a) dismiss the matter;*
- (b) reprimand the Respondent;*
- (c) impose limits or conditions on the Respondent, including practicing under supervision for a defined period of time, additional education, etc.;*
- (d) suspend the Respondent's membership in the organization for a designated period of time;*
- (e) recommend the suspension of the Respondent's Certification of Interpretation for a designated period of time;*
- (f) fine the Respondent an amount not to exceed \$25,000;*
- (g) expel the Respondent as a member of the Association;*
- (h) assess costs or part of the costs of the investigation into the Respondent's conduct and of the hearing of the citation.*

*5.12.2 An order of the Disciplinary Panel shall be in writing and shall be delivered to the Respondent and to the complainant, if any.*

*5.12.3 In determining the penalty to be imposed on a Member after making a determination on the facts, the Disciplinary Panel may consider previous relevant disciplinary decisions regarding the Member by the Association.*

- 88) In rendering its decision under bylaw 5.12.1, the Panel may vote on whether each allegation in the citation has been proven on the balance of probabilities and the majority vote of the members of the Panel constitute the decision of the whole Panel.

- 89) The Panel shall make reasonable efforts to:
- (a) render its decision within 15 days of the end of the hearing, and
  - (b) issue written reasons in support of its decision within 30 days of the end of the hearing.

***Publication and notification of a decision***

*5.14.1 Where disciplinary proceedings result in the limitation or suspension of a Member's practice, after the expiry of the 60-day limitation period in Bylaw 5.13 or after the completion of any appeal, the Board may advise every Member of the Association:*

- (a) name of the Respondent;*
- (b) facts of the case;*
- (c) reasons for the decision; and*
- (d) nature of the limitation, or duration of the suspension or the expulsion, and the date it is in effect.*

*5.14.2 Where disciplinary proceedings result in the limitation or suspension of a Member's practice, or the suspension or expulsion of the Member, the Board may notify:*

- (a) any associations or boards responsible for the regulation of the profession in all Canadian and US jurisdictions;*
- (b) the institution where the Member is employed or primary agencies/institutions through which the Member provides contract work;*
- (c) any other regulatory bodies of which the Member is associated.*

**E) RECORD RETENTION**

*5.4.3 The Professional Standards Committee shall: (c) retain a copy of all disciplinary/resolution agreements on file for a minimum of seven years.*

*5.15 Retention of records: The Professional Standards Committee shall keep records of the discipline hearing and decision of the Discipline Panel for a period of not less than seven years, but if the circumstances warrant and after consulting with legal counsel, may keep these records for a longer period of time.*

- 90) Before acting under these bylaws, the Committee will first consult with legal counsel.<sup>3</sup>

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<sup>3</sup> NOTE: The WAVLI information policy, as required under the *Personal Information Protection Act*, may also address the issue of record retention.