

WESTCOAST ASSOCIATION OF VISUAL LANGUAGE INTERPRETERS
OCCUPATIONAL TITLE PROTECTION POLICIES AND PROCEDURES

Approved by the Board: April 15, 2013

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INTRODUCTION

This document will provide information and guidance with respect to the following issues:

- (a) The nature of the grant of occupational titles and initials that has been given to WAVLI pursuant to Part 10 of BC's Society Act;
- (b) Policies and procedures regarding how WAVLI members should use the occupational titles and initials they may be entitled to use pursuant to the WAVLI Bylaws; and
- (c) Policies and procedures concerning the investigation of and response to complaints that a non-member is using, contrary to the Society Act, one or more of the granted titles or initials.

A) GRANTED OCCUPATIONAL TITLES AND INITIALS

By way of a certificate issued by the Registrar of Companies on July 13, 2011, the Registrar granted the following titles and initials to WAVLI:

- Registered Sign Language Interpreter (R.S.L.I.)
- Registered ASL-English Interpreter (R.A.S.L.E.I.)
- Registered Visual Language Interpreter (R.V.L.I.)

The legal authority for the Registrar to issue this certificate is set out in sections 88 of the Society Act (emphasis added):

Registration

- 88(1) A society may apply to the registrar for registration under this Part by
- (a) having in its bylaws provisions respecting
 - (i) qualifications for admission to membership or a class of membership,
 - (ii) courses of study and examinations for members or applicants for membership,
 - (iii) the conduct of members, ethics and standards of practice, and
 - (iv) suspension, expulsion or other penalties for misconduct, incapacity or incompetence of members,
 - (b) completing the application form established by the registrar, and
 - (c) submitting the prescribed application fee.
- (2) If the registrar is satisfied that subsection (1) has been complied with, and the registrar considers that it is in the public interest, the registrar must register the society under this Part unless the registrar considers the name of the society or the initials associated with that name to be so similar to the name or initials of another similar organization that confusion will result.
- (3) On registration of a society under this Part, the registrar may designate
- (a) a word or combination of words that identifies a person as a qualified member of that society, and
 - (b) initials that identify the society or a person as a qualified member of that society.

Section 89(1) of the Society Act gives WAVLI certain specific legislative authorities to prevent the unauthorized use of these titles and initials by persons who are not members of the Association:

Effect of registration

89(1) If a society is registered under this Part, no person other than a qualified member of that society has the right to use, in connection with an occupation or profession the person practises that is similar to the occupation or profession represented by that society, the name of that society or the word or combination of words or initials designated under section 88 (3), in a way that identifies the person as a qualified member of that society.

The legal requirements of this section and the applicable policies and procedures will be discussed in more detail under Section C: *Unauthorized Use of Titles and Initials*, below.

B) WAVLI MEMBERS USE OF TITLES AND INITIALS

Under Bylaw 3.2.8 only a WAVLI Member who has been registered in the membership class of ASL-English Interpreter (as per Bylaw 3.1.1(a)) is entitled to use the granted titles or initials:

3.2 Conditions of Membership: ASL-English Interpreter

3.2.8 Only a member registered as an ASL-English Interpreter is entitled to use the occupational title “Registered Sign Language Interpreter” or “Registered ASL-English Interpreter” or “Registered Visual Language Interpreter”, or such other title as may be granted to WAVLI under Section 10 of the Society Act.

It is through Bylaw 3.2.8 that WAVLI can control which of its members are entitled to use one or more of the granted occupational titles or corresponding initials. The Association’s control over persons who are not members is addressed below in Section C.

Use of titles or initials

1. If an ASL-English Interpreter member is in good standing, that member is automatically entitled under Bylaw 3.2.8 to use any one of the granted occupational titles or initials, subject to such other policies and procedures as the Board may approve concerning the use of occupational titles and procedures as set out in this Section.
2. An ASL-English Interpreter must use a title and the corresponding initials in the exact form as set out in Section A, “Grant Occupational Titles and Initials”, and – in particular – may not use the shortened title of “Registered Interpreter”.¹

Suspension of membership

3. If an ASL-English Interpreter Member has had their membership suspended for any reason that Member is no longer entitled pursuant to Bylaw 3.8.4(c) to use any one of the occupational titles or initials granted under Bylaw 3.2.8.

Permanent loss of membership

4. If an ASL-English Interpreter Member ceases to be a member of WAVLI for any reason² or transfers to one of the other classes of Membership set out in Bylaw 3.1.1³, that former member is no longer entitled to use any one of the occupational titles or initials granted under Bylaw 3.2.8.

¹ Use of this or some similar shorter form of the title could create a problem with the occupational titles that have been granted to the Society of Translators and Interpreters of British Columbia, being: Certified Translator, Certified Conference Interpreter, Certified Terminologist or Certified Court Interpreter.

² It should be noted that, applying *Ross v. British Columbia Psychological Assn.* (1986), 1 B.C.L.R. (2d) 380 (BSCS), affd. 19 B.C.L.R. (2d) 145 (BCCA), a member of a society who resigns his or her membership may no longer need to comply with the complaint investigation and disciplinary bylaws that applied when that person was a member of the registered society. On the other hand, if a WAVLI Member did resign in the face of a complaint investigation or disciplinary proceeding, that former Member would automatically lose his or her right to use the granted occupational titles or initials.

³ While such a transfer may rarely (if ever) take place, this form of “loss of ASL-English Interpreter status” would also mean that such a former Member in that class could no longer use the granted titles or initials.

C) UNAUTHORIZED USE OF TITLES AND INITIALS

Sections 89 and 90 of the Society Act create the legal foundation for WAVLI to assert its control over the occupational titles and initials that have been granted to it under section 88. The application of sections 89 and 90 will be discussed in detail within the following unauthorized use of title (UUT) policies and procedures, which in turn will help the Association to take the appropriate steps to protect the granted titles and initials.

Filing an UUT complaint

5. WAVLI will accept a complaint from any person (the Complainant), which alleges that someone who is not an ASL-English Interpreter Member (non-member)⁴ is using one or more of the granted occupational titles or initials.
6. An UUT complaint should include the name and contact information of the Complainant, but WAVLI will accept an anonymous complaint, so long as such a complaint meets the requirement of Policy #11, below.
7. A complaint should be submitted either:
 - (a) in writing, and delivered either by mail, fax or email,⁵ or
 - (b) as a video (DVD or tape⁶), and delivered by mail to the WAVLI office or through any member of the Board.
8. If the Complainant cannot submit a written complaint, a member of the Board or staff person may transcribe the previously recorded verbal or sign language complaint into writing and then request the Complainant to confirm that the written record is an accurate transcription of the complaint.
9. Regardless as to how it has been submitted, an UUT complaint should be forwarded to the Chair of the Professional Standards Committee for initial review.
10. Notwithstanding the above, the Professional Standards Committee Chair or any member of the Professional Standards Committee may on its own motion initiate an UUT complaint investigation by filing information that meets the requirement of policies #11 through #14, below.

Initial review: Is there sufficient information in the complaint?

11. On receipt of an UUT complaint, the Chair shall review the complaint to ascertain whether or not it provides the following information:
 - (a) the name of the non-member who is allegedly using the title or initial, or sufficient information to allow the Committee to later identify the non-member;
 - (b) contact information for the non-member (including but not limited to a physical address or mailing address if different, phone number, fax number, email address, and website URL), or sufficient information to allow the Committee to later obtain contact information;

⁴ This would include a former ASL-English Interpreter Member who has lost his or her membership.

⁵ WAVLI may develop an online form that persons may use to file an UUT complaint.

⁶ Providing a video complaint posted on a website like YouTube would not be acceptable. The video must be in the physical possession of the Association to ensure the continuity of evidence should the need arise to prove that in a court of law.

- (c) the date(s) that the non-member is alleged to have been using the title or initial; and
 - (d) a description of or an example as to how the non-member is allegedly using the title or initial (such as a business card, letterhead, advertising or website page), or sufficient information to allow the Committee to later obtain such information.⁷
12. If an UUT complaint does not contain the information listed in the previous policy (or insufficient information that might later allow the Chair or Committee to obtain those details), the Chair may advise the Complainant that the missing details must be provided before the complaint can be considered by the Committee. In turn, the Complainant should be advised that he or she must provide those details within 30 days of the date of the request.
 13. If the UUT complaint was submitted by an anonymous Complainant or it is otherwise not possible for the Chair to contact that Complainant to request further details, the Chair may, with the agreement of the Committee, close the complaint file.
 14. If the Complainant cannot or will not provide the required additional details, or it is not otherwise possible for the Chair to obtain those details in a timely and cost-effective fashion, the Chair will then advise the Complainant in writing that it will not be possible to proceed with an investigation of the filed complaint.

Investigating an UUT complaint

15. The purpose of investigating an UUT complaint is to ensure that the Committee has obtained a sound and factual basis⁸ for proceeding to either issue a cease and desist letter or, if necessary, to seek an injunction in court (see Policies #25 through #27).
16. In investigating an UUT complaint, the Committee may do one or more of the following:
 - (a) review the documents or other physical evidence provided in the originating complaint to identify the precise nature of an allegation of unauthorized use of title, and to continue to review and revise this initial assessment throughout the investigation process;
 - (b) undertake a search of information from public sources (e.g. a search on the internet, newspapers, telephone directories, etc.) to identify if there is additional evidence of the alleged unauthorized use of the title or initials by the person named in the originating complaint;
 - (c) identify potential witnesses (e.g. the Complainant, the non-member or any third party) who may be able to provide oral testimony in support of the

⁷ For example, a position advertisement using one of the granted titles would probably be sufficient information for an unauthorized use. A situation like this would not require that the non-member first be hired into the advertised position.

⁸ Such information must be reliable and capable of proving on a balance of probabilities that a non-member used a protected title or initials.

originating complaint,⁹ and prepare a list of questions to be asked of each identified witness;¹⁰

- (d) Interview each witness concerning the nature or form of the alleged unauthorized use of the title or initials,¹¹ and, in turn, prepare a written Witness Statement for each witness so interviewed;¹²
 - (e) Prepare a written plan of investigation, and revise this plan throughout the investigation.
17. As WAVLI has no capacity under the Society Act to issue a search warrant, to compel a non-member to produce any document, or to issue a subpoena to force the non-member to provide the Association with a document, the Committee will not during the course of an investigation assert that it has these or related legal authorities.
18. 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 hire a trained investigator to provide this service and so report to the Committee.¹³

Assessing the UUT complaint: Society Act requirements

19. If after the Committee has obtained sufficient information during its investigation, but before it takes steps to respond to the filed UUT complaint, the Committee must assess the complaint in relation to the legal requirements of section 89(1) of the Society Act. In doing so, the Committee should answer the following questions:
- (a) Is the non-member using the protected title or initial (emphasis added): “in connection with an occupation or profession the person practises that is similar

⁹ Waiting too long might mean that a potential witness is no longer available, has become intimidated or otherwise influenced, has forgotten important details, or has gone on vacation and is thus unavailable when needed. Knowing who the witnesses are is necessary for the scheduling of witnesses, and the order of interviews can make a big difference in the development of the facts. Always be ready to add to the witness list if other names come up during the investigation.

¹⁰ A good investigator will make a list of questions that must be answered for the type of investigation being done. Each situation demands different questions, since the elements of each problem are rarely the same. Generally, each witness will need to answer questions relating to what they saw, when they saw it, who else was there, why something happened (if known), what happened next, and so on. However, some witnesses will know a lot more than others, which is why it may be necessary to customize the questions asked of certain people. The investigator needs to have a talent for thinking of new questions on the spot to follow up on information as the witness gives it.

¹¹ An interview should be commenced as soon as possible. The scope and limits of confidentiality will need to be explained, in particular if it may be necessary to call upon the witness to provide an affidavit or appear in court. A good investigator will remain objective, take good notes, hold the interview in a quiet, private and neutral location. The focus should be on obtaining good information that is relevant and reliable. Skill in investigation techniques is important.

¹² Such a statement may later become the foundation for an affidavit in support of an application for an injunction.

¹³ Choosing the right investigator can be very important. The investigator has to be someone who is credible, respected, regarded as fair and impartial, and knowledgeable about occupational title protection issues and related legal issues. In addition, they need to have good interviewing skills, be well-organized, be able to develop and follow a plan, and be able to communicate well with the various types of persons who will be interviewed. Finally, the Committee should consider how well the investigator will stand up in court if called upon to testify in an application for an injunction, and whether the investigator can be safely trusted with all the confidential information that is likely to come up during the process.

to the occupation or profession represented by that society?” If the occupation or profession the non-member is engaged in is sufficiently different than the occupation of an ASL-English Interpreter, it is then likely that that non-member is not in breach of this provision of the Act even if that non-member is using just the title “Interpreter” or some similar title.¹⁴

- (b) Is the non-member using (emphasis added): “the word or combination of words or initials designated under section 88 (3), in a way that identifies the person as a qualified member of that society?” If the non-member is not using either the same titles or initials as have been granted to WAVLI or any combination of them in a way that would allow a reasonable person to conclude that the non-member is an ASL-English Interpreter, it is then likely that that non-member is not in breach of this provision of the Act.

20. Before making a final assessment decision on an UUT complaint, the Committee should obtain a legal opinion from WAVLI’s legal counsel.

Assessing the UUT complaint: additional legal requirements

21. In addition to assessing the complaint in relation to the requirements of section 89(1) of the Society Act, the Committee should also assess the information it has gathered by asking (this is not an exhaustive list):
- (a) What type of evidence is it (e.g. physical, testimony, third party, etc.)?
 - (b) Is the information direct or indirect evidence of an apparent breach? For example, is one of the titles used on a business card or letterhead, and does that document in turn belong to an identifiable non-member?
 - (c) If the information comes from a webpage posted on the internet, what proof exists that an identifiable non-member was responsible for creating the content for that page?
 - (d) Who does the information indicate was responsible for the breach?
 - (e) Collectively, does the evidence indicate that, on the balance or probabilities, that an identified person used one of the granted titles when not a Member of the Association?
 - (f) Which evidence does not support such a conclusion, and why?

An inappropriate UUT complaint

22. If at any time during the initial review of the UUT complaint or a subsequent investigation, the Committee believes that a complaint was filed for an inappropriate reason,¹⁵ the Committee may:
- (a) direct that the complaint file be closed; and
 - (b) so notify the Complainant, unless the complaint is an anonymous complaint.

¹⁴ It is worth noting that WAVLI has no legal capacity to prevent any person from providing visual language interpretation services, such as a special education assistant who may sign. The Association’s authority is limited to protecting only the occupational titles and initials that it has been granted.

¹⁵ This would include a complaint that was trivial, frivolous, vexatious or made in bad faith.

Issuing a cease and desist letter

23. If after considering all of the information gathered during its investigation of an UUT complaint, and after considering any legal opinion provided by WAVLI's legal counsel, the Committee believes that the non-member is in breach of section 89(1) of the Act, the Committee may, on its own initiative, instruct legal counsel to issue a cease and desist letter to be sent to that non-member under counsel's letterhead.
24. If after receiving the issued cease and desist letter, the non-member refuses to or fails to comply with the demands set out in that letter and in a timely fashion¹⁶, the Committee may then proceed to seek Board approval to apply for an injunction against that non-member.

Applying for injunctive relief

25. If WAVLI believes it is in the public's and its members' interest, under section 90 of the Society Act, WAVLI "may apply for injunctive relief from the court" to obtain a court order to stop the non-member who WAVLI believes is in contravention of section 89(1) of the Act.
26. Before the UUT Committee proceeds to give instructions to legal counsel to apply for an injunction under section 90, the Committee must first obtain the consent of the Board for such a course of action.
27. In seeking Board consent, the UUT Committee must provide the following information to the Board:
 - (a) a copy of the originating UUT complaint;
 - (b) a summary of the results of the Committee's investigation into the complaint, including a copy of any correspondence received from the non-member, if any;
 - (c) a copy of any legal opinion that was provided to the Committee pursuant to the previous Bylaws; and
 - (d) an estimate of the cost of seeking an injunction under section 90, including any possible award of cost against the Association if the injunction is not granted.

Committee communications

28. Where the Committee needs to prove that it has sent a letter to the Complainant, the non-member or a third party, the Committee may send that letter by registered mail, courier, or serve the letter on the party.
29. If the Complainant or non-member communicates with the Committee through a lawyer or other legal representative, the Committee will direct all future communications to the Complainant or non-member through that lawyer or representative until such time as the Committee is informed otherwise or the Complainant or non-member communicates directly to the Committee instead of through the lawyer or representative.

¹⁶ At a minimum, this should be within 30 days.

30. All communications to the Committee should be directed to the Chair, and all communications from the Committee should be under the signature of the Chair or an appointed Member of the Committee.

Document control

31. To ensure the integrity of all information that is generated during an UUT complaint 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 non-member or a third party, are dated, recorded on a master list, and kept in a safe and secure location.¹⁷
32. 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.
33. 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 non-member and third parties, and
 - (c) the dates of meetings of the Committee, including telephone conference calls.
34. 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

35. Unless otherwise specified in the Bylaws or these Policies and Procedures, the Committee may establish timeframes or impose deadlines on the Complainant, non-member, or third party, of such a period of time that the Committee believes is reasonable and necessary in the circumstances.

Retention of records

36. The Committee shall keep records of the UUT complaint, its investigation, and any other records in a safe and secure location 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.¹⁸

¹⁷ As WAVLI is required under the *Personal Information Protection Act* (PIPA) to have a privacy policy in place, this and any other information gathered during an UUT complaint investigation should be stored and later disposed of in accordance with that policy.

¹⁸ Under PIPA, the Association is required to retain all information that it has gathered during an UUT complaint investigation that may be the personal information of some person to be stored and later disposed of in accordance with its PIPA policies and procedures. It would be best to retain all such records in a lockable file drawer, with only identified Association officials having access to that drawer.