



RESOLUTION SUBJECT:

DISCIPLINE

DESCRIPTION:

The resolution is a proposed amendment to the Bylaws.

In early 2018, CAPE's National Executive Committee (NEC) mandated the Constitution and Bylaws Committee with a comprehensive review of the process used by CAPE to manage complaints of members against members, i.e. Bylaw 5. Various iterations of Bylaw 5 were brought to the NEC for discussion over the course of several months. On November 29, 2019 the NEC approved the version that is being presented to the membership for a vote.

The purpose of the review was to develop a more efficient and timely screening process, to add greater clarity by adding more prescriptive language, and to ensure that the principles of natural justice continued to be applied to the parties of a complaint.

Changes by the NEC to Bylaws come immediately into effect and remain in effect subject to approval by the membership by a vote that must be carried out within a year. Therefore, the old language was replaced as of November 29, 2019 with the proposed language. The replaced language has not been in effect since that date. The new language, which is being proposed to the membership, has been in effect.

If the members do not support the proposed language, then Bylaw 5 will revert back to the replaced language.

The NEC had a fulsome discussion and decided to put to the membership the following proposed amendment to the Bylaws:

BE IT RESOLVED THAT:

Be it resolved that the text of Bylaw 5 identified as "Replaced Bylaw 5" be replaced with the text of Bylaw 5 identified as "Proposed Bylaw 5"

Matter to be decided by CAPE's Membership

I support that the Canadian Association of Professional Employees change the language of Bylaw 5 from the text called "Replaced Bylaw 5" to the text called "Proposed Bylaw 5":

YES

NO

REPLACED BY-LAW 5	PROPOSED BY-LAW 5
<p>5.1 National Executive Committee (NEC), pursuant to clause 6.6 of the Constitution, shall have the authority to expel, suspend or remove from office any Regular or Pending member who contravenes any provision of these By-Laws or the CAPE Constitution. NEC members shall be removed from office in accordance with Article 19. Any complaint under By-Law 5 being filed by a current NEC member requires the support of two additional NEC members prior to being admissible.</p>	<p>5.1 National Executive Committee (NEC), pursuant to clause 6.6 of the Constitution, shall have the authority to expel, suspend or remove from office any Regular or Pending member who contravenes any provision of these By-Laws or the CAPE Constitution. NEC members shall be removed from office in accordance with Article 20 of the Constitution.</p>
<p>5.3.1 The NEC, at its first meeting after an election, shall establish a Complaints Review Committee (CRC).</p>	<p>5.2 CAPE's General Counsel (GC) administers the by-law 5 in good faith and in conformity with CAPE's Constitution, and under the requirements of procedural fairness.</p> <p>The GC may delegate his or her administrative duties with another CAPE employee or manager for a limited period of time.</p> <p>Within the 60 calendar days following the entry into force of the present by-law, the GC shall present to the NEC the policy under which they will administer the by-law 5.</p> <p>If CAPE does not employ a GC, the President will, in consultation with the NEC and the HR Subcommittee, designate a member of the management staff to administer the by-law 5 and exercise the powers of the GC under this by-law.</p>
<p>5.3.2 The CRC shall be composed of no more than five (5) members and not fewer than three (3) members. The members shall be selected from members of the Local Leadership Council (LLC) who are not members of the NEC.</p>	<p>Repealed.</p>



REPLACED BY-LAW 5	PROPOSED BY-LAW 5
5.3.2.2 If three (3) members of the LLC do not volunteer for the CRC then the matter shall be returned to the NEC who shall appoint the three (3) person investigative committee pursuant to 19.3.	Repealed.

5.2 A member having committed any of the offenses listed below may be penalized as provided in paragraphs B 5.1 and B 5.3 of this By-Law:

- Violating any provision of the By-Laws and Constitution.
- Acting in a manner that is contrary to the solemn declaration.
- Instituting, urging or advocating that a member institute action in court against this Association or any of its officers without first exhausting all remedies through appeal within the organization.
- Publishing or circulating among the members' false reports or willful misrepresentations.
- Working in the interests of another union against CAPE. However, associating with members, officials or staff of another union is not in itself reason for discipline.
- Slandering, libeling or willfully wronging any member of this Association.
- Using abusive language or disturbing the peace of any meeting of this Association.
- Fraudulently receiving money due to this Association or any of its Locals or misappropriating the monies of this Association or any of its Locals.
- Using the name of a Local of this Association or the name of this Association for soliciting funds, advertising and the like, without the consent of the Local concerned or the NEC of this Association respectively.
- Furnishing a complete or partial list or any information on the

5.3 A member engaging in a conduct prejudicial to the good order and welfare of CAPE or its members may be penalized as provided by this By-Law.

A conduct prejudicial to the good order and welfare of CAPE or its members includes, but is not limited to:

- Violating any provision of the By-Laws and Constitution;
- Acting in a manner that is contrary to the solemn declaration;
- Instituting, urging or advocating that a member institute action in court against this Association or any of its officers without first exhausting all remedies through appeal within the organization;
- Publishing or circulating among the members' false reports or willful misrepresentations;
- Working in the interests of another union against CAPE. However, associating with members, officials or staff of another union is not in itself reason for discipline;
- Slandering, libeling or willfully wronging any member of this Association;
- Using abusive language or disturbing the peace of any meeting of this Association;
- Breaching confidentiality by disclosing details of closed session proceedings or personal information relating to other members or CAPE staff;
- Gaining office by dishonesty or misrepresentation;
- Interfering with the fair and proper conduct of elections;
- Fraudulently receiving money due to

REPLACED BY-LAW 5	PROPOSED BY-LAW 5
<p>membership of this Association or of any Local to any person or persons other than those whose official position entitles them to have such a list.</p> <ul style="list-style-type: none"> • Deliberately interfering with an official of this Association in the discharge of their duties. • Any other conduct prejudicial to the good order and welfare of CAPE or its members. 	<p>this Association or any of its Locals or misappropriating the monies of this Association or any of its Locals;</p> <ul style="list-style-type: none"> • Using the name of a Local of this Association or the name of this Association for soliciting funds, advertising and the like, without the consent of the Local concerned or the NEC of this Association respectively; • Furnishing a complete or partial list or any information on the membership of this Association or of any Local to any person or persons other than those whose official position entitles them to have such a list; • Deliberately interfering with an official of this Association in the discharge of their duties; • Failing to comply with a settlement agreed upon under by-law 5.14; and • Failing to comply with a motion adopted by the NEC under by-law 5.23.
<p>5.3 A complaint in writing shall be received by the National Executive Committee (NEC) within ninety (90) calendar days of the alleged offence having occurred or within ninety (90) calendar days of it having come to the attention of the complainant.</p>	<p>5.4 A complaint in writing shall be received by the National Executive Committee (NEC) within 60 calendar days of the alleged offence having occurred or within 60 calendar days of it having come to the attention of the Complainant(s).</p>

REPLACED BY-LAW 5	PROPOSED BY-LAW 5
	<p>5.5 The complaint shall include:</p> <ul style="list-style-type: none"> a) the Complainant(s)' email address and postal address; b) the alleged offence(s); c) the date(s) when the alleged offence(s) took place and when they have come to the attention of the Complainant(s); and d) A list of the evidence supporting the allegations – including the names of witness(es), if any – to be presented during the investigation, if any.
<p>5.3.3 Any complaint in writing that is received by the National Office shall immediately be forwarded to the CRC for review. Any CRC member with a real or apparent conflict of interest shall recuse themselves from the CRC.</p>	<p>5.6 Any complaint in writing that is received by the National Office shall immediately be forwarded to the GC for review.</p>
<p>5.3.4 The CRC shall review the complaint within thirty (30) working days to determine:</p> <ul style="list-style-type: none"> a) is the alleged offense covered under this by-law; or b) is the alleged offense frivolous, vexatious or in bad faith. 	<p>5.7 The GC shall review the Complaint within 20 working days. The Complaint shall be rejected if:</p> <ul style="list-style-type: none"> a) The complaint does not fulfill the requirements of by-law 5.5; b) The matter of the Complaint is being, or has already been, dealt with under an ongoing, or completed, dispute resolution process under this by-law; c) The Complaint is trivial or vexatious, or made in bad faith.
<p>5.3.5 When circumstances warrant, the CRC shall recommend that the NEC engage the services of an outside investigator to assist with or conduct the review under the supervision of the CRC.</p>	<p>5.8 The GC may contact the Complainant(s) to request information about the Complaint.</p> <p>The GC may accept requests made in good faith to amend the Complaint in order to correct mistakes, make editorial changes or add necessary information that does not change the substance of the initial Complaint.</p>

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<p>5.3.7 Following the review, the CRC shall provide its recommendation and rationale in writing to the NEC and the Complainant.</p>	<p>5.9 If the GC rejects the Complaint, the GC sends to the Complainant(s) a notification including:</p> <ul style="list-style-type: none"> - The rationale for the rejection of the Complaint under by-law 5.7; - The text of by-law 5.10; - The date of the earliest NEC meeting scheduled after, at least, 15 calendar days of the notification.
<p>5.3.6 The NEC shall vote on any such recommendation from the CRC at its next regular scheduled meeting.</p>	<p>5.10 Within 15 calendar days of the notification sent under by-law 5.9, the Complainant(s) may request in writing (the Request) that the NEC declare the Complaint to be admissible.</p> <p>Representations made in the Request may only respond to the GC’s rationale to reject the Complaint.</p> <p>Upon receiving the Request, the NEC immediately forwards the following to the Respondent(s) at their last known email or postal addresses:</p> <ul style="list-style-type: none"> - The Request; - The Complaint; - The GC’s notification made under by-law 5.9; - The date of the NEC meeting specified under by-law 5.9; and - The text of by-law 5.11.
	<p>5.11 Within 5 working days after the NEC notifies the Respondents of the Request under 5.10, the Respondent(s) may make written representations to the NEC, and only to the effect that the Complaint is trivial or vexatious, or made in bad faith.</p>
<p>5.3.6 The NEC shall vote on any such recommendation from the CRC at its next regular scheduled meeting.</p>	<p>Repealed.</p>

REPLACED BY-LAW 5	PROPOSED BY-LAW 5
<p>5.3.8 The NEC, at its next monthly meeting, shall vote (by simple majority) on the CRC recommendation. The options for action are outlined below.</p>	<p>Repealed.</p>
<p>5.3.9 If the NEC adopts option 1A or option 28, then it shall establish a subcommittee composed of three (3) NEC members to investigate the complaint.</p>	<p>Repealed</p>
	<p>5.12 At the meeting scheduled at the date specified in the notification sent under by-law 5.9, the NEC shall vote (on simple majority) on whether the Complaint should be considered admissible under by-law 5.13.</p> <p>The NEC shall debate whether a Complaint should be considered admissible under by-law 5.13 <i>in camera</i>.</p> <p>When debating whether the Complaint should be considered admissible under by-law 5.9, the NEC shall only consider:</p> <ul style="list-style-type: none"> - The Complaint as presented under by-law 5.4; - The GC's notification for dismissing the Complaint under by-law 5.9; - Written representations made by the Complainant(s) in conformity with by-law 5.9; and - Written representations made by the Respondent(s) in conformity with by-law 5.11.
	<p>5.13 If the Complaint is considered admissible under by-laws 5.7 or 5.12, the GC notifies the Complainant(s) and forwards the Complaint to the Respondent(s)' last known email or postal addresses.</p>

REPLACED BY-LAW 5	PROPOSED BY-LAW 5
<p>5.3.10 The sub-committee shall meet with the Complainant and the Respondent separately.</p>	<p>5.14 The GC shall call all parties to attend a mediation session to attempt to settle the dispute.</p> <p>The mediation session shall take place within 60 calendar days after a notification was sent under by-law 5.13.</p> <p>The call to attend the mediation session shall include the text of by-law 5.18.</p> <p>At the request of a party or on their own motion, the GC may omit to call a mediation session with sufficient cause. The GC determines whether cause is sufficient in light of the conduct of the parties, the requirements of procedural fairness, and the policy adopted under bylaw 5.2.</p>
	<p>5.15 If the Complaint is not resolved after the mediation session held under by-law 5.14, the GC forms a Dispute Resolution Subcommittee (DRS), composed of three CAPE members who are neither involved in the dispute, in a conflict of interests, nor NEC members.</p> <p>NEC members may sit on the DRS on request from the GC, but only when no other CAPE member is available.</p>
	<p>5.16 The GC shall set the date of a hearing in front of the DRS. The hearing shall take place within 30 calendar days after the formation of the DRS.</p> <p>In consultation with the DRS, the GC sets the procedures of the hearing and the presentation of the evidence.</p> <p>The GC informs the parties of the date of the hearing and its procedures as soon as possible, at least 20 calendar days before the hearing. The GC shall include the text of by-law 5.18.</p>
	<p>5.17 The hearing is organized by the GC and chaired by a member of the DRS.</p>

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	<p>5.18 If the Complainant(s) refuse or fail to attend a mediation session or a hearing scheduled under by-laws 5.14 or 5.16 without sufficient cause, the Complaint shall be considered withdrawn, the matter settled, and the DRS, if formed, dissolved.</p> <p>If the Respondent(s) refuse or fail to attend a mediation session or a hearing scheduled under by-laws 5.14 or 5.16 without sufficient cause, the DRS may draw a negative inference against the Respondent(s). Such negative inference may result, depending on the circumstances and the conduct of the parties, in the DRS recommending that more severe penalties be imposed on the Respondent(s) under by-law 5.23.</p> <p>Cause shall be submitted as soon as possible in writing to the GC and (if formed) the DRS and notified to all parties. In the case of a mediation session, the GC determines whether cause is sufficient in light of the conduct of the parties and the requirements of procedural fairness. In the case of a hearing, the DRS determines whether cause is sufficient in light of the conduct of the parties and the requirements of procedural fairness.</p> <p>If one of the parties provides sufficient cause not to attend a mediation session or a hearing scheduled under by-laws 5.14 or 5.16, the GC reschedules the mediation session or hearing as early as possible.</p>

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	<p>5.19 Notwithstanding by-laws 5.14 and 5.16, and only after considering:</p> <ul style="list-style-type: none"> - Each parties' interest in the timely resolution of the dispute; - CAPE's interest in the swift processing of the Complaint; - Whether delaying the mediation session can increase the chance of settlement; and - Whether a party has sufficient cause not to attend a mediation session, in consultation with the DRS (if formed), the GC may exceptionally schedule the mediation session or the hearing after the times prescribed under by-laws 5.14 and 5.16.
<p>5.3.11 Upon completion of its investigation, the sub-committee shall make a recommendation to the NEC.</p>	<p>5.20 The DRS shall report on its findings and make recommendations in writing within 45 calendar days of the hearing. The DRS sends its report to the NEC and the parties. The report shall include the text of by-law 5.22.</p> <p>The GC may assist the DRS in the drafting of the report.</p> <p>Recommendations shall primarily aim to resolve the dispute between the parties.</p> <p>Disciplinary measures may be recommended against any party to the Complaint, including the Complainant(s). These measures may be recommended not only in light of the Complaint, but also of any prejudicial conduct that occurred during the proceedings leading to the report.</p> <p>The DRS may recommend measures that could prevent similar disputes in the future.</p>
	<p>5.21 The NEC will vote on the recommendations made by the DRS at the earliest regularly scheduled meeting taking place at least 30 calendar days after the report was sent to the Parties.</p>

REPLACED BY-LAW 5	PROPOSED BY-LAW 5
	<p>5.22 A party to the Complaint may respond to the DRS report in writing. The Response shall be sent to the NEC at least 15 calendar days before the report is to be considered by the NEC. The Response will be added as an annex to the DRS report.</p> <p>The Response may only make representations on one or more of the following matters:</p> <ul style="list-style-type: none"> - Whether the DRS failed to consider evidence listed in the Complaint and presented at the hearing; - Whether the DRS denied a party the opportunity to be heard in contravention with by-law 5; - Whether one or more recommendations do not rationally result from the evidence and the arguments presented at the hearing, in substance or in severity; and/or - Whether one or more new and essential facts, discovered in good faith after the DRS hearing, would have substantially affected the deliberations of the DRS should they had been presented at the hearing. Such an argument shall be stricken from the Response unless it includes evidence of the new fact and of the timing of its discovery.
	<p>5.23 The NEC shall debate the recommendations made by the DRS <i>in camera</i>, taking in consideration any Response made under by-law 5.22.</p> <p>When considering a Response made under by-law 5.22, the NEC will endeavor to uphold procedural fairness in the complaint process.</p> <p>The DRS is dissolved after the NEC decides upon the complaint.</p>



REPLACED BY-LAW 5	PROPOSED BY-LAW 5
<p>5.3.12 If the complaint is against the President of the Association, he/she (during consideration of the complaint by the NEC and the CRC) shall delegate his/her authority related to the complaint itself and the complaint process under Article 9 of the Constitution to a member of the NEC who will be chosen by the NEC.</p>	<p>5.24 If the Complaint is against the President of the Association, he/she shall delegate his/her authority related to the Complaint itself and the Complaint process under Article 9 of the Constitution to a member of the NEC who is not a party to the Complaint.</p>
<p>5.4 A Local directly affected may request the presence of one of the National Executive Officers at one of their meetings to explain the cause of the suspension action.</p>	<p>5.25 A Local directly affected may request the presence of one of the National Executive Officers at one of their meetings to explain the outcome of the dispute resolution process.</p>