

# BYLAWS

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## **BY-LAW # 1 - USE OF UNIONIZED BUSINESSES**

*(adopted July 23, 2003)*

- B 1.1 The Association will use competitive unionized businesses for all services when available.

## **BY-LAW #2 - MEETINGS OF THE NATIONAL EXECUTIVE COMMITTEE**

*(adopted July 23, 2003)*

- B 2.1 Communications and documents distributed to all members of the NEC or of its Sub-committees shall be sent in both official languages.
- B 2.2 The agenda for NEC meetings is established by the President in consultation with the other members of the NEC. Members of the NEC may submit agenda items to the National Office no later than ten (10) working days prior to a regular scheduled meeting.
- B 2.3 All documentation shall be distributed to NEC members five (5) working days prior to a regular scheduled meeting of the NEC, except due to unforeseen circumstances.
- B 2.4 There shall be no regular meetings of the National Executive Committee in the months of July, August and December.
- B 2.5 A special meeting of the National Executive Committee shall be called by the President at the request of any four (4) members of the National Executive Committee. Upon receipt of such request a meeting shall be scheduled as soon as possible.

## **BY-LAW #3 - ELECTIONS AND RESOLUTIONS**

*(adopted November 21, 2014)*

### **ELECTIONS AND RESOLUTIONS COMMITTEE**

- B 3.1 No later than the end of February of each year, the National Executive Committee (NEC) shall issue a call to all Regular and Pending members asking for volunteers to set up an Elections and Resolutions Committee. The NEC shall confirm the composition of the Committee at its regular meeting in April, which shall include at least one member of each bargaining unit represented by the Association. Members of the Elections and Resolutions

Committee shall not campaign in support of or against a candidate nor publicly divulge their opinion on a resolution. They shall still be able to exercise their individual right to vote. The Committee shall have the right to revoke the appointment of a Committee member as a result of non-compliance with provisions of these By-Laws pertaining to their responsibilities. Such an action shall require two thirds (2/3) of the votes cast. The NEC replaces the person thus removed with a Regular or Pending member from the same bargaining unit.

- B 3.2 The Elections and Resolutions Committee shall have complete and full jurisdiction over the election process, in accordance with these By-Laws and Constitution. Non-compliance with these By-Laws may result in the nomination of a candidate being revoked by the Committee. Except where otherwise noted in these By-Laws, any decisions made by the Committee shall be the result of a majority vote.
- B 3.3 In accordance with these By-Laws the Elections and Resolutions Committee shall create a nomination form and, no later than June 1 in an election year, shall issue a call by regular mail and/or other means of communications for candidates for positions to be filled in accordance with Article 17 of the Constitution. The nomination form shall accompany this notification.

## NOMINATIONS

- B 3.4 All nominations to a Director's position shall be supported by one (1) Regular or Pending member of the Association. All nominations to the positions of President and Vice-President shall be supported by ten (10) Regular or Pending members of the Association. In each case, nominations shall not be accompanied by more supporting names than the number required.
- B 3.5 On the nomination form, candidates shall clearly indicate the following: position sought, name, home department, bargaining unit and telephone number where they can be reached during regular working hours; and the form must be signed. Anyone supporting the nomination of a candidate pursuant to B 3.4 is required to provide the same information and sign the nomination form.
- B 3.6 The nomination form may be provided in print or electronically and accompanied by two pages (8 1/2 x 11) of text using Arial 12 point font or equivalent in which the candidate may provide a biography, his/her reason for running, contact information and a website address. If the candidate does not provide the required documents in both official languages, the Association shall have the

presentation document translated. The candidate shall be allowed five (5) working days to review the translation produced by the Association.

- B 3.7 Completed nomination forms in any format with verifiable signatures shall be received at the National Office no later than September 1st. The Elections and Resolutions Committee shall verify all information provided and confirm the candidate's eligibility no later than September 15th. Candidates will be expected to observe recognized standards of conduct throughout an election campaign both in verbal and written communications.

#### ELECTIONS CALENDAR AND COUNTING OF BALLOTS

- B 3.8 After consultation with the candidates, the Elections and Resolutions Committee shall organize one public debate.
- B 3.9 Rulings of the Elections and Resolutions Committee may be appealed in respect to:
- a) A decision regarding candidate's material (3.6);
  - b) A decision regarding candidate's eligibility (3.7).

Appeals shall be heard by a sub-committee of the NEC, composed of members who are not candidates or nominees in the current election. The sub-committee may invite a representative of the Elections and Resolutions Committee to provide advice. To reverse a decision made by the Elections and Resolutions Committee, the sub-committee shall require a majority of the votes cast.

- B 3.10 The Committee shall establish an elections schedule. The voting period shall end ten (10) working days after the Annual General Meeting. The counting of votes will take place on the eleventh (11th) working day after the Annual General Meeting. Results shall be announced on the twelfth (12th) working day after the Annual General Meeting.
- B 3.11 Once the Committee has certified the results of the vote, candidates shall be informed and the information shall be posted on the Association's website.
- B 3.12 Candidates shall be granted five (5) working days to appeal the results of an election. The Elections and Resolutions Committee shall investigate the complaint and render its decision within ten (10) working days following receipt of the complaint. The Committee may decide to do a recount or to take any other measure deemed appropriate in order ensure the transparency, honesty and integrity of the electoral process.

## RESPONSIBILITY FOR THE VOTING PROCESS

- B 3.13 The National Office is responsible for managing the voting process on resolutions that go to the general membership or to the membership of a bargaining unit, including proposals for changes to the Association's Constitution and By-Laws and ratification votes on a tentative agreement at the bargaining table.
- B 3.14 The National Office is responsible for managing the voting process for the election of national and local officers.

## GENERAL VOTING PROVISIONS

- B 3.15 Voting, whether for the election of an officer of the Association, for the approval of a resolution or for any other matter, must be organized and carried out in a manner that respects the following values and objectives: fairness, confidentiality, transparency, and independence from the interference of interested parties.
- B 3.16 Members authorized to vote will be entitled to reasonable accommodations if the chosen means for voting proves a barrier to their participation in the voting process.

## ELECTRONIC VOTING

- B 3.17 Electronic voting means to vote by using a computer or similar electronic device which is connected to the internet and linked to a secure web site designed to provide online voting.
- B 3.18 Voting by telephone is not available.
- B 3.19 The electronic voting instrument will be provided by an independent service provider chosen by the National Office and approved by the Elections and Resolutions Committee.
- B 3.20 The National Office will provide members, on request, with an explanation of how the voting instrument chosen for a vote meets the requirements of By-Law 3.15.
- B 3.21 The National Office will provide the service provider with all information, including membership information, in order to allow the service provider to establish the electronic vote, accept and control online voting, and report on the results of the vote to the Elections and Resolutions Committee.
- B 3.22 Some of the information required:
  - a) Information on the date and time of the election;
  - b) Information on when voting will open and close;

- c) Information which links each bargaining group member to the candidate for whom they are authorized to vote;
- d) Information on the candidates;
- e) Information on the membership which allows the service provider to link the member to a voting control number;
- f) Other information as required by the service provider to manage the electronic voting process.

B 3.23 The service provider's system will confirm the web site visitor's right to vote, accept their electronic vote, store the electronic vote until closing time of the poll and then report the results to the Elections and Resolutions Committee.

#### NEW - REGULAR MAIL VOTING PROCESS

B 3.24 The mail-in vote shall be cast using the system of "double envelopes". Only envelopes with a ballot inserted in an internal envelope and accompanied in the external envelope with a completed voter registration card signed by the voting member certifying his or her membership status shall be accepted. Any other envelope shall be considered a rejected envelope.

B 3.25 Blank ballots or ballots containing more votes than the maximum number of votes possible or any ballot containing a message or inscription other than the vote shall be considered as a spoiled ballot. Ballots containing fewer votes than the maximum number of votes possible shall be considered as valid.

B 3.26 Only valid ballots shall be used to calculate the percentage of votes cast for each candidate. The Elections and Resolutions Committee will report on the number of spoiled ballots and rejected envelopes.

B 3.27 Only members of the Elections and Resolutions Committee and designated staff shall be authorized to handle and open the envelopes containing the ballots and then handle the ballots.

B 3.28 Ballots shall be kept for thirty (30) working days following confirmation of the results by the Committee.

#### NEW - SCRUTINEERS

B 3.29 It is the responsibility of the candidate to advise the Elections and Resolutions Committee of the name of their one (1) scrutineer, in writing, at least five (5) working days prior to the voting deadline.

B 3.30 Scrutineers will be provided with a copy of the voting results and a copy of a report from the service provider confirming steps taken to ensure the accuracy of the results.

B 3.31 Scrutineers appointed for counting of the votes in the case of elections or a resolution shall be reimbursed for their relevant reasonable expenses. Such expenses must receive prior approval from the National Office.



- B 3.32 Request for approval shall be submitted by scrutineers at least ten (10) working days before counting of the votes.
- B 3.33 Living and travel expenses shall be reimbursed pursuant to rates and terms established in the National Joint Council's Travel Directive. Leave without pay for union affairs shall also be reimbursed, where appropriate.

## RESOLUTIONS

- B 3.34 In accordance with these By-Laws, the Elections and Resolutions Committee will receive resolutions to be discussed at the Annual General Meeting (AGM). A resolution shall be subject to a vote by the membership of the Association. To pass, it must be approved by a majority of votes cast.
- B 3.35 All resolutions shall be submitted by two (2) Regular or Pending members. Authors of the resolutions shall clearly indicate their name, their home department, bargaining unit and a telephone number where they can be reached during regular working hours, and sign their submission. The resolutions and accompanying remarks shall not exceed a one page (8 1/2 x 11) text using Arial 12 point font or equivalent. The text shall not refer to any list nor mention individuals or locals who are in support of the resolution. If the authors of the resolution do not provide the document in both official languages, the Association shall have the document translated. The authors shall be granted 5 working days to review the translation produced by the Association.
- B 3.36 Resolutions in any text medium format with verifiable signatures shall be received at the National Office. Resolutions must be received ninety (90) days before the AGM. Once resolutions have been received and their admissibility confirmed in consultation with the President, the National Office shall organize a vote concurrent with the elections schedule.
- B 3.37 All resolutions will be reviewed by the Finance Committee for monetary implications.
- B 3.38 If the Finance Committee determines that implementing a resolution will require funds not available in the current budget; it will inform the authors of the resolution and offer them an opportunity to make changes to the resolution before it is sent to the membership. Any changes must be received sixty-five (65) days before the AGM.
- B 3.39 The Finance Committee has the authority to amend any resolution to include a special levy or budget amendment to ensure that the funds are available to implement the resolution.
- B 3.40 Authors of the resolution may delegate one (1) scrutineer to the counting of votes. All other provisions under paragraphs B 3.11 to B 3.36 inclusive shall apply, mutatis mutandis, excluding B 3.14.

## **BY-LAW # 4 - LOCALS**

*(adopted December 21, 2017)*

- B 4.1 A Local may choose to receive an annual rebate to finance its activities or to have its expenses paid by CAPE.
- B 4.2 The rebate is paid out once a year, at the written request of the Local to the National Office.
- B 4.3 The rebate is paid based on the number EC, TR, or LoP dues-paying employees working in that Local according to the table below:
- 1 - 25 members: \$500
  - 26 - 50 members: \$750
  - 51 - 75 members: \$1,000
  - 76 - 100 members: \$1,500
  - 101 - 500 members: \$2,750
  - 501 - 1000 members: \$4,500
  - 1001 - 1500 members: \$6,000
  - 1501 - 2000 members: \$8,000
  - 2000 plus members: \$9,000
- B 4.4 Any Local may apply for additional funds where its annual allotment is insufficient for planned expenses. Such application must be submitted to the NEC before expenses are incurred. The NEC shall consider such application at the meeting immediately following its submission. The Local may not incur additional expenses as long as the NEC has not made a determination on its application.
- B 4.5 Should a Local choose not to receive an annual rebate, its reasonable operating expenses are paid by CAPE. Any outlay in excess of \$500 must be pre-approved by CAPE's National Office.
- B 4.6 Authorized travel to attend meetings or courses offered by the Association are reimbursed by CAPE.

## **FISCAL ACCOUNTABILITY**

- B 4.7 Locals which receive a rebate shall submit to the Association every six (6) months all receipts and supporting documents, except receipts for food or meeting rooms, and an annual financial report with copies of receipts and supporting documents attached. Locals must meet all financial accountability requirements herewith set out prior to issuance of a rebate for the following fiscal year.

## **BY-LAW # 5 - DISCIPLINE**

*(adopted November 26, 2020)*

B 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.

B 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.

The GC may delegate his or her administrative duties with another CAPE employee or manager for a limited period of time.

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.

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.

B 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 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 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.

B 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).

B 5.5 The complaint shall include:

- 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.

B 5.6 Any complaint in writing that is received by the National Office shall immediately be forwarded to the GC for review.

B 5.7 The GC shall review the Complaint within 20 working days. The Complaint shall be rejected if:

- 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.

B 5.8 The GC may contact the Complainant(s) to request information about the Complaint.

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.

B 5.9 If the GC rejects the Complaint, the GC sends to the Complainant(s) a notification including:

- 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.

B 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.

Representations made in the Request may only respond to the GC's rationale to reject the Complaint.

Upon receiving the Request, the NEC immediately forwards the following to the Respondent(s) at their last known email or postal addresses:

- 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.

B 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.

B 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.

The NEC shall debate whether a Complaint should be considered admissible under by-law 5.13 *in camera*.

When debating whether the Complaint should be considered admissible under by-law 5.9, the NEC shall only consider:

- 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.

B 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.

B 5.14 The GC shall call all parties to attend a mediation session to attempt to settle the dispute.

The mediation session shall take place within 60 calendar days after a notification was sent under by-law 5.13.

The call to attend the mediation session shall include the text of by-law 5.18.

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..

B 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.

NEC members may sit on the DRS on request from the GC, but only when no other CAPE member is available.

B 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.

In consultation with the DRS, the GC sets the procedures of the hearing and the presentation of the evidence.

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.

B 5.17 The hearing is organized by the GC and chaired by a member of the DRS.

B 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.

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.

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.

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.

B 5.19 Notwithstanding by-laws 5.14 and 5.16, and only after considering:

- 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.

B 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.

The GC may assist the DRS in the drafting of the report.

Recommendations shall primarily aim to resolve the dispute between the parties.

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.

The DRS may recommend measures that could prevent similar disputes in the future.

B 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.

B 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.

The Response may only make representations on one or more of the following matters:

- 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.

B 5.23 The NEC shall debate the recommendations made by the DRS *in camera*, taking in consideration any Response made under by-law 5.22.

When considering a Response made under by-law 5.22, the NEC will endeavor to uphold procedural fairness in the complaint process.

The DRS is dissolved after the NEC decides upon the complaint.

B 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.

B 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.

## **BY-LAW # 6 - COMMUNICATION OF ASSOCIATION**

*(adopted January 22, 2004)*

B 6.1 No representative may use the name of the Association or their title as a representative of the Association except with respect to the official business of the Association.

B 6.2 Any statement made by a representative of the Association shall be consistent with the Constitution, By-Laws and policies of the Association.



## **BY-LAW # 7 - COLLECTIVE BARGAINING**

*(adopted February 26, 2004)*

### **B 7.1 COLLECTIVE BARGAINING COMMITTEE**

**B 7.1.1** The NEC will strike a Collective Bargaining Committee (CBC).

- i. The NEC will call for volunteers from the general membership of the appropriate bargaining unit no later than three (3) months prior to the earliest date for notice to bargain. The call for volunteers to negotiate the TR Financial Incentive Program will be made no later than 6 months prior to the expiry of the agreement.
- ii. Members of the NEC may volunteer to be on the CBC.
- iii. Volunteers will submit their reasons for wanting to serve on the CBC.
- iv. The NEC will appoint no more than eighteen (18) members to the EC CBC, no more than ten (10) members to the TR CBC and no more than five (5) members to the Library of Parliament (LoP) CBC.
- v. The negotiator, as defined in paragraphs 9.2 and 9.12 of the Constitution and paragraph 7.3 of the By-Laws, is an ex officio member of the CBC.

**B 7.1.2** The NEC will endeavour to choose the members of a CBC in a manner that will allow the committee to reflect the demographic and professional composition of the bargaining unit, and negotiate effectively on behalf of the members.

- i. Demographic and professional factors to be considered include the following: gender, years of service, regional representation, departmental representation, occupational interests.
- ii. To negotiate effectively on behalf of the members means that the member (1) has taken or is prepared to take the appropriate training offered by the Association, or has served on previous CUPTE, SSEA or CAPE bargaining committees; (2) has a good knowledge of the collective agreement; and (3) is judged capable of making a positive contribution to the bargaining process.

**B 7.1.3** The roles of the CBC are to prepare proposals (positional bargaining) or define problems (interests-based bargaining), select the members of the Collective Bargaining Team, work to an agreement or reject a final offer from the employer.

**B 7.1.4** The preparation of proposals or the definition of problems means exclusively:

- i. To review proposals or problems brought to the committee by the National Office as a result of input from members and

- research.
- ii. To refine and select proposals or problems according to the will expressed by the membership and according to recommendations from the professional staff on the CBC.
- iii. To act upon requests from the negotiator to prepare a proposal or to define a problem.
- iv. To discuss, then communicate to the bargaining team the impact of contemplated changes to the collective agreement on the working conditions of members.
- v. On its own initiative, where two-thirds of the CBC including the negotiator agree, the CBC may discuss and add new proposals or problems.

B 7.1.5 Attendance at CBC meetings in person or otherwise is a requirement. The CBC may ask the NEC to remove from the Committee a member who misses meetings regularly.

## B 7.2 THE COLLECTIVE BARGAINING TEAM (CBT)

- B 7 .2.1 The CBC will choose from among its members the members of the Collective Bargaining Team (CBT). The negotiator, as defined in paragraphs 9.2 and 9.12 of the Constitution and paragraph 7.3 of the By-Laws, is an ex officio member of the CBT.
- B 7.2.2 The CBC will apply the criteria enunciated in sub-paragraph 7.1.2 in order to choose the members of the Bargaining Team.
- B 7.2.3 A CBC will select no more than six members for the CBT of the EC bargaining unit or the CBT of the TR bargaining unit, in addition to the negotiator. It may choose up to 2 alternates.
- B 7 .2.4 The CBC will select no more than four members for the CBT of the LoP bargaining unit, in addition to the negotiator. It may choose up to two (2) alternates.
- B 7.2.5 The roles of the CBT are exclusively:
- i. To review, discuss and approve bargaining strategies.
  - ii. To negotiate in good faith.
  - iii. To recommend a tentative agreement to the CBC or to recommend rejection of a final offer and referral of outstanding issues to arbitration or conciliation.

## B 7.3 THE NEGOTIATOR

- B 7.3.1 The negotiator, as defined in paragraphs 9.2 and 9.12 of the Constitution, is a member of the CBC and of the CBT.
- B 7.3.2 The negotiator is responsible for leading the CBC and the CBT.
- B 7.3.3 The negotiator can override a decision of the CBC or of the CBT if the negotiator judges that a decision is arbitrary, discriminatory, in bad

faith, detrimental to the interest of the bargaining unit or the Association, or in contravention of the Constitution or By-Laws of the Association. The matter must be discussed with the committee prior to a decision being rendered. Reasons for the override must be provided both to the committee and to the NEC in writing.

- B 7.3.4 The negotiator will chair the meetings of the CBC and of the CBT, according to the rules of order chosen by the Association.
- B 7.3.5 The negotiator will inform the NEC regularly on progress with the preparation and conduct of bargaining.
- B 7.3.6 The negotiator will inform the CBC regularly on bargaining table progress.

#### **B 7.4 PROFESSIONAL SERVICES**

- B 7.4.1 The National Office is responsible for all technical and professional aspects of collective bargaining including decisions requiring an expert knowledge of labour relations.
- B 7.4.2 The National Office is accountable to the NEC through the office of the President on matters regarding all professional functions related to bargaining.
- B 7.4.3 The National Office will initiate preparations for the bargaining table no later than 5 months prior to the earliest date for notice to bargain.
- B 7.4.4 The National Office carries out research and analysis as requested by the negotiator.

#### **BY-LAW # 8 - TRAVEL AND LIVING EXPENSES**

*(adopted February 26, 2004)*

- B 8.1 Reasonable travel and living expenses of members of the NEC, of the Local leadership, of bargaining committees and other committees of the Association shall be reimbursed to allow them to attend meetings of these bodies; authority to travel and an estimate of expenses must receive prior approval from the National Office. Expenses shall be reimbursed pursuant to rates and terms established in the National Joint Council Travel Directive.
- B 8.2 Where members from outside the National Capital Region wish to attend General Meetings as defined in Articles 27 and 28 of the Constitution, the number of people for whom expenses will be reimbursed shall be determined by the NEC.

## **BY-LAW # 9 - RULES OF PROCEDURE**

*(adopted February 26, 2004)*

- B 9.1 Meetings of the Association shall be governed by the latest edition of Bourinot's Rules of Order. Additional rules of procedures may be adopted through By-Laws.
- B 9.2 Any member in a meeting may appeal a decision from the Chair, except in cases of interpretations of the Constitution made by the Association's President in accordance with Clause 9.3 of the Constitution. Two thirds of members present must vote against the Chair's decision for it to be reversed.

## **BY-LAW # 10 - RETIRED MEMBERS**

*(adopted November 29, 2011)*

- B 10.1 The National Executive Committee may appoint a retired member of CAPE or its predecessors as a non-voting advisor to any sub-committee of the Association. Only former members who were members in good standing when they left the Association may be appointed.

## **BY-LAW # 11 - SOLEMN DECLARATION**

*(adopted December 9, 2010)*

- B 11.1 "I, \_\_\_\_\_, having been (elected or appointed) an officer of CAPE, solemnly declare that, for my term of office, I shall abide by and uphold the Constitution and By-Laws of the Canadian Association of Professional Employees. I will faithfully, and to the best of my abilities, fulfill the duties and responsibilities incumbent upon me as an officer and will always keep confidential all internal matters concerning the Association that are brought to my attention. At the completion of my term of office, I will promptly deliver all books, paper, monies or other property of the Association in my possession to my duly elected successor."
- B 11.2 As per clause 18.4 of CAPE's Constitution, the execution of the solemn declaration will consist of reading the declaration, signing the declaration and sending the original signed declaration or a copy to the National Office before January 1<sup>st</sup> following the election. The original signed declaration must be provided to the National Office no later than five (5) working days prior to the first meeting of the National Executive Committee in January.
- B 11.3 If a member is appointed to the National Executive Committee by the NEC, then the member must provide a signed copy of the declaration to the National Office no later than five (5) working days prior to taking office as a member of the NEC.
- B 11.4 As per clause 21.4 of CAPE's Constitution the execution of the solemn declaration will consist of reading the declaration, signing the declaration and sending the original signed declaration to the National Office before taking office as a local leader.

## **BY-LAW # 12 - LOANS TO MEMBERS**

*(adopted November 29, 2011)*

- B 12.1 Neither, the CAPE National Office, its employees or volunteers, nor a CAPE Local, its executive or members, shall loan any membership monies or other valuables to any member of CAPE or any other party.
- B 12.2 Loan means to lend to someone temporarily, on condition that it be returned or repaid at a later date, a sum of money or other valuable from the CAPE National Office or a CAPE Local.

## **BY-LAW # 13 - CONSTITUTIONAL AMENDMENT PROCESS**

*(adopted December 21, 2017)*

### **B 13.1 PETITION TO AMEND THE CONSTITUTION BY ANY REGULAR OR PENDING MEMBER, OR LOCAL.**

- B 13.1.1 The petitioner shall submit the original petition including the name and contact information of the sponsor to the National Office by postal mail, courier or by hand.
- B 13.1.2 Signatures, as it relates to this By-Law, means an original hand-written signature.
- B 13.1.3 The National Office will provide a receipt to the sponsor(s) of the petition.
- B 13.1.4 The National Office will verify the names on the petition are Regular or Pending Members and ensure the appropriate count of supporters.
- B 13.1.5 The National Office will place the petition on the Agenda of the next monthly meeting of the National Executive (NEC).
- B 13.1.6 The NEC will accept the petition and send the petition to the Constitution and By-Laws Committee (CBC) for review and recommendation.
- B 13.1.7 The CBC will, at its next monthly meeting, place the petition on its Agenda and conduct a review of the petition to determine its impact on CAPE's Constitution and By-Laws. The CBC has 60 days from the date of the CBC meeting where the petition was placed on the agenda to complete the review.
- B 13.1.8 On completion of the review the CBC will return the proposed amendments to the NEC with a recommendation on the amendment's constitutional validity.
- B 13.1.9 The NEC will then vote on the proposed amendment(s) constitutional validity. A majority vote of those present is required for approval. If the proposed amendment is found to be constitutionally valid the NEC

will refer the proposed amendment to the membership for a vote.

### **B 13.2 PROPOSAL TO AMEND THE CONSTITUTION BY THE NATIONAL EXECUTIVE COMMITTEE (NEC)**

- B 13.2.1 Upon receiving a proposal from a member or members of the NEC, the National Office will place the proposal to amend the Constitution on the agenda of the next monthly meeting of the National Executive Committee (NEC).
- B 13.2.2 The NEC will discuss the proposed amendment to the Constitution and vote on referring the proposed amendment to the Constitution and By-Laws Committee (CBC) for review and recommendation.
- B 13.2.3 The CBC will, at its next monthly meeting, place the NEC's proposed amendment to the Constitution on its agenda, and conduct a review of the proposed amendment to determine its impact on CAPE's Constitution and By-Laws. The CBC has 60 days from the date of the CBC meeting where the proposed amendment was placed on the agenda to complete its review.
- B 13.2.4 On completion of its review the CBC will return the proposed amendment to the NEC with a recommendation on the advisability and constitutional validity.
- B 13.2.5 The NEC will then vote to recommend the proposed amendment to a vote of the membership. A two-thirds vote of those present is required for approval, as per Clause 36.3 of the Constitution.

### **B 13.3 EXCEPTIONS**

Refer to Article 15 of the Constitution.

## **BY-LAW # 14 - SUSPENSION DUE TO ABSENTEEISM** *(adopted November 29, 2011)*

- B 14.1 The objective of this By-Law is to describe the process by which the National Executive Committee (NEC) can suspend a member of the NEC or a member of one of its sub-committees from membership in the NEC itself or one of its sub-committees due to absenteeism from meetings.

### **B 14.2 DEFINITIONS**

Suspension means to deprive an elected or appointed member of the NEC or of a NEC sub-committee of their right to attend meetings or receive information for a specified period of time.

Absenteeism is the habitual failure to attend meetings of the NEC or NEC subcommittee.

Habitual occurrence of absence for the purpose of this By-Law means:

- a) The NEC Member has missed 3 consecutive regular NEC meetings; or
- b) The NEC Member has missed 3 of the last 4 regular NEC meetings.
- c) The Member of the NEC sub-committee has missed 3 consecutive regular meetings; or
- d) The Member of the NEC sub-committee has missed 3 of the last 4 regular NEC sub-committee meetings.

#### **B 14.3 SUSPENSION PROCESS - NATIONAL EXECUTIVE COMMITTEE (NEC) MEMBER**

B 14.3.1 The President, on their own motion or as identified by a NEC member, will place the matter of absenteeism on the agenda of the next monthly NEC meeting.

B 14.3.2 The President will forthwith advise the NEC member in question that the issue of his or her absenteeism has been identified, that it will be addressed at the next monthly NEC meeting, and invite the NEC member to provide a justification for his or her absences in writing and/or in person at the NEC monthly meeting.

B 14.3.3 At the NEC monthly meeting addressing the absenteeism, the President will:

- a) Speak to the matter identifying the member;
- b) If the NEC member in question is in attendance, invite the member to address The NEC to explain his or her absences;
- c) If written submissions have been provided by the NEC member in question, subject to any privacy concerns, provide copies of the submissions to NEC members in attendance;
- d) If, after considering any justification provided, a suspension is still requested, state the end date of the suspension; and
- e) Call the motion for suspension to be voted on by the NEC.

B 14.3.4 If approved by a 2/3 majority of the NEC the period of suspension begins immediately.

B 14.3.5 The National Office will advise the NEC Member of the suspension in writing.

B 14.3.6 If the motion for suspension is not approved by the NEC, the matter of absenteeism of the NEC member cannot be placed back on the agenda until the 2nd NEC meeting after the meeting in which the vote was taken.

B 14.3.7 If a vote of suspension against a NEC member fails twice, the matter cannot be placed back on the agenda of the NEC for the remainder of the member's term of office.

#### **B 14.4 SUSPENSION PROCESS - NEC SUB-COMMITTEE MEMBER**

The Chair of the NEC Sub-Committee will provide a written recommendation to the President of CAPE for the suspension of a NEC sub-committee member. The recommendation will include the rationale for and the recommended period of suspension. The President will then pursue the suspension process, set out in 14.3 of this By-Law, at the next monthly meeting of the NEC.

## B 14.5 QUORUM

Following a suspension, a suspended member does not count in the calculation of the quorum required for meetings of the NEC or of a sub-committee.

## B 14.6 SUSPENSION PERIOD

Suspensions from membership in the NEC itself or one of its sub-committees will range from 3 months to 12 months in length. In determining the length of suspension to be imposed, aggravating and mitigating factors will be considered.

## B 14.7 TERMINATION OF A SUSPENSION

A suspension from the NEC itself or one of its sub-committees ends upon the earliest of the following events:

- a) the date of expiry of the imposed suspension;
- b) the date of expiry of the member's term of office;
- c) the effective date of the member's removal from office in accordance with Article 19 of the Constitution; or
- d) the effective date of the member's resignation from the NEC itself or one of its sub-committees.

## **BY-LAW # 15 - SUSPENSION DUE TO CONFLICT OF INTEREST RELATED TO LITIGATION**

*(adopted by the NEC on November 27, 2020; to be voted on by the membership at the 2021 AGM)*

## B 15.1 SCOPE

B 15.1.1 The objective of this By-law is to describe the process by which the National Executive Committee (NEC) can suspend an elected or appointed member due to a conflict of interest related to litigation.

B 15.1.2 For the purpose of this By-law, it is presumed that when an elected or appointed member is actively engaged in litigation against CAPE, the member is not able to hold the interests of CAPE ahead of their own personal interest and that this actual, potential and/or perceived conflict of interest between the elected or appointed member and the best interests of the organization is prejudicial to the good order and welfare of CAPE.

B 15.1.3 Nothing in this By-Law precludes the NEC from taking any action under By-law 5 in addition to, or independently of, this By-law.



## B 15.2 DEFINITIONS

*Conflict of interest due to litigation* means a conflict of interest resulting from a member who has commenced a legal action and is actively involved in legal proceedings against CAPE. Litigation is considered active until such time as it has been withdrawn or otherwise resolved.

*Elected or appointed member* includes a member of the NEC or one of its sub-committees, a member of the Presidents' Council, and/or a member of the Local Leadership Council.

*Potentially conflicted member* refers to any elected or appointed member of CAPE who is presumed to be in a conflict of interest due to litigation under this By-law.

*Suspension* means to deprive an elected or appointed member of their right to fulfill their role as an elected or appointed member including attending meetings or receiving information for a specified period of time.

## B 15.3 SUSPENSION PROCESS

B 15.3.1 The President, on their own motion or as identified by a NEC member, will place the matter of conflict of interest due to litigation on the agenda of the next monthly NEC meeting.

B 15.3.2 The President will forthwith advise the potentially conflicted member that the issue of his or her conflict of interest due to litigation has been identified and that it will be addressed at the next monthly NEC meeting.

B 15.3.3 The President will invite the potentially conflicted member to provide written and/or in person representations at the NEC monthly meeting to rebut the presumption that he or she is in an actual, potential and/or perceived conflict of interest that is prejudicial to the good order and welfare of CAPE. The President will determine the allowed length for the written and/or in person representations.

B 15.3.4 At the NEC monthly meeting addressing the conflict of interest due to litigation, the President will:

- a) Speak to the matter identifying the member.
- b) If the potentially conflicted member is in attendance, invite the member to address the NEC to explain his or her conflict of interest due to litigation.
- c) If written submissions have been provided by the potentially conflicted member pursuant to By-law 15.3.3, subject to any privacy concerns, provide copies of the submissions to NEC members in attendance.
- d) Begin an in-camera discussion to be held without the presence of the potentially conflicted member as the discussion relates to an active litigation matter.
- e) During the in-camera discussion, inform the NEC members in attendance of any

legal opinion obtained and call a motion for the suspension to be voted on by the NEC.

B 15.3.5 If approved by a majority of the NEC, the period of suspension begins immediately.

B 15.3.6 The National Office will advise the NEC Member of the suspension in writing.

B 15.3.7 If the motion for suspension identified in By-law 15.3.4 d) is not approved by the NEC, the matter of conflict of interest due to litigation of the potentially conflicted member cannot be placed back on the agenda until the 2nd NEC meeting after the meeting in which the vote was taken.

B 15.3.8 If a vote of suspension against a potentially conflicted member fails twice, the matter cannot be placed back on the agenda of the NEC for the remainder of the member's term of office or appointment unless substantive new evidence comes to light which would warrant reconsideration by the NEC.

#### B 15.4 QUORUM

B 15.4.1 Following a suspension, a suspended member does not count in the calculation of the quorum required for the meeting of the NEC to continue.

#### B 15.5 SUSPENSION PERIOD

B 15.5.1. The suspension is for such time as the litigation against CAPE is active.

#### B 15.6 PRESIDENT AND VICE-PRESIDENT

B 15.6.1 In the event of a suspension of the President or Vice-President under By-Law 15, the suspension shall be considered as an incapacity under clauses 21.1 and 21.2 of the Constitution.

#### B 15.7 APPEAL

B 15.7.1 A suspended member may appeal the suspension by providing notice to the President under this section. The suspension shall remain in effect for the duration of the appeal process.

B 15.7.2 The appeal shall be heard by an independent third-party adjudicator mutually agreed to by the parties.

B 15.7.3 The third party's mandate shall be limited to making a determination, based on the terms of this By-law, of whether the conflict of interest due to litigation is of such significance as to merit a suspension for the period of time that the litigation is active.

B 15.7.4 The third party shall be provided with all of the information that was considered by the NEC in making its decision as well as any additional information that is relevant to the determination. The parties shall also be provided with the

opportunity to make in person representations to the third party.

B 15.7.5 The determination made by the third party shall be binding on the parties.