

# **BY-LAW NO. 7**

## **MEMBER CONDUCT, RIGHTS, RESPONSIBILITIES AND DISCIPLINE PROCESS**

### **Section I – Definitions**

The following definitions apply for the purposes of this By-Law.

a) **"Charging Official"**

The individual primarily responsible for initiating, managing and implementing the member discipline process, save and except any appeal:

- i) in branches by a senior staff member designated by the Branch/Local Union Board or Council, or a designate of the assigned senior staff member;
- ii) in any jurisdiction, by the National Executive Director or their designate.

b) **"Discipline Committee"**

The bodies responsible for managing and implementing the disciplinary appeal process:

- i) *Branch/Local Union Discipline Committee*: Committees established by each Branch/Local Union, each composed at a minimum of a Chair empowered to empanel members for the purpose of hearing Appeals; and
- ii) *National Discipline Committee*: Committee established by the National Council and composed at a minimum of a Chair empowered to empanel members for the purpose of hearing Appeals.

c) **"Discrimination"** means without limitation, unequal treatment with respect to membership and participation in ACTRA because of membership or work category, race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, language or disability.

d) **"Harassment"** means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome, without limitation, including in connection with characteristics protected under applicable human rights legislation such as race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, language or disability.

e) **"Member"** includes anyone admitted to any category of ACTRA Membership, Full Members, Apprentice Members, ACTRA Additional Background Performer Members, Work Permittees, and Temporary Members as defined in Article 3 of the Constitution. For greater clarity, the membership of ACTRA includes members not in good standing, suspended or on inactive membership status or resigned.

f) **"Sexual harassment"** means:

- i) engaging in a course of vexatious comment or conduct regarding sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome; or

- ii) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.

Sexual harassment includes without limitation, behaviour such as:

- iii) unwanted sexual attention of a persistent or abusive nature made by a person who knows or ought reasonably to have known that such attention is unwanted;
  - iv) implied or expressed promise of reward for complying with a sexually oriented request;
  - v) implied or expressed threat of reprisal, in the form of either actual reprisal or denial of opportunity, for refusal to comply with a sexually oriented request; and
  - vi) sexually oriented remarks and behaviour that may reasonably be perceived to create a negative psychological and/or emotional environment for work.
- g) **"Work-related environments"** can include but are not limited to: auditions or casting meetings, job interviews, industry events, festivals, awards, company functions, production studios and sets (whether local or remote), offices, and rehearsal, training and performance venues.

## Section II – Member Rights

### A. Members have the right to:

- a) Participate equally in the union, in an environment that is free of discrimination and harassment, where all members are treated with respect and dignity.
- b) Participate in union meetings and to enjoy due process consistent with the principles of natural justice if disciplined.
- c) Full members have the right to vote by secret ballot in elections; to run for office; and to have equal access as candidates to union publications in election campaigns.
- d) Exercise free speech. Members have the right to free speech in ACTRA. They have the right to criticize ACTRA's policies, officers, staff and candidates within the limits of both the laws of libel and defamation, and ACTRA's Constitution and By-Laws. They have the right to discuss union policies and issues. Members have the right to complain, protest, demand and advocate within the union.
- e) Assemble freely. Members have the right to organize with fellow members. Thus, members have the right to organize a committee or caucus; to meet without permission or participation from union officials or staff; to write and distribute leaflets, newsletters, etc.; to run candidates for office; and to take collective action to influence the union (information pickets, buttons, etc.) provided that such actions do not violate ACTRA's Constitution or By-Laws.
- f) Seek lawful redress: Members have the right to bring complaints about ACTRA before Labour Boards or the Courts without reprisal. In matters related to disciplinary action, except as otherwise provided under applicable law, members must first exhaust ACTRA's discipline and appeal procedures as set out in ACTRA's Constitution and By-Laws.

## **B. No corresponding claim on ACTRA funds or resources**

These rights do not give members the right to demand or appropriate ACTRA funds or resources in the pursuit of any particular cause or agenda, except as agreed by the appropriate duly elected Council or Board.

## **C. Right of elected Councils/Boards to ensure unity of purpose**

These rights do not prevent elected Councils from implementing reasonable guidelines for conduct within their own ranks.

## **Section III – Member Responsibilities**

With membership in ACTRA comes the responsibility to avoid acts prejudicial to ACTRA and the responsibility to respect ACTRA's Work Rules, including the responsibility to uphold workplace, industry and union environments free from discrimination and harassment.

### **A. Work rules**

Members are to:

- a) *Work for signatories*: A member must work only for an engager or producer who is a signatory to a relevant ACTRA collective agreement and consistent with the ACTRA Policy Statement respecting the engagement of ACTRA Performers (Appendix E).
- b) *Work for an engager in good standing*: A member must work for an engager who is in good standing – i.e. has not been declared an unfair engager.
- c) *Work for applicable minimum fees*: Notwithstanding By-Law #7, Section III A. ("Work Rules"), item a), a member must always work for fees that are at least equal to the minimum fees required by a relevant ACTRA collective agreement.
- d) *Fulfill engagement unless reasonable cause*: A member must fulfill a contracted engagement, unless they have reasonable cause not to do so. "Reasonable cause" in this case can include illness or another reason beyond the control of the member.
- e) *Be on time for an engagement or an audition unless reasonable cause*: A member must be on time for a contracted engagement or an audition unless they have reasonable cause not to do so. "Reasonable cause" in this case can include illness or another reason beyond the control of the member.
- f) *Work with qualified members only*: A member must only work with fellow members, or other people who are qualified under ACTRA's constitution to work in ACTRA's jurisdiction.
- g) *Work under a duly-executed contract*: A member must work under a duly executed contract of engagement and is not to sign a blank or incomplete contract.
- h) *Respect a reciprocal agreement between ACTRA and another professional organization, guild or union*: A member must respect a written agreement between ACTRA and other associations, guild or unions.
- i) *Remain in good standing before accepting work*: Members are not to work while their membership is suspended, revoked, when current fines are unpaid, or when on inactive membership status.

- j) *Refuse engagement* by a producer as a casting director or for any other position in which the member is responsible for engaging performers or negotiating terms for performers, except where the member satisfies each of the following conditions:
  - i) is not an agent for performers or the direct/indirect owner/operator of a talent agency;
  - ii) does not require performers to join a specific agency;
  - iii) does not receive commissions, fees or other consideration directly from performers, or from any talent agency for using performers represented by such agency;
  - iv) does not share personal information relating to any performer with any talent agency or other person(s), except for the agent/agency that represents such Performer;
  - v) does not accept work as a background performer or performer, excluding the categories of stunt coordinator and choreographer;
  - vi) negotiates in good faith the terms of engagement with performers or their agents and agrees to not apply undue pressure or coercion to accept minimum terms and conditions; and
  - vii) agrees to negotiate only the terms and conditions applicable to the particular engagement, without explicit or implicit reference to any other engagement or future work opportunities.
- k) *Refuse engagement* as a performer on any production for which the member receives any form of compensation as a talent agent or representative of any other performer engaged in the production.
- l) *Abide by Appendix F* when working as a stunt coordinator.
- m) *Participate in the Member Discipline Process and Cooperate with Investigations under this By-Law*, including reasonably providing requested information to a Charging Official or Investigator.

## **B. Professional Conduct: Prohibition against Discrimination and Harassment**

- a) Members are required to conduct themselves in a professional and respectful manner in all work and work-related environments, as defined in Section I (“Definitions”) of this By-Law. Members have a particular responsibility to uphold workplace, industry and union environments free from discrimination and harassment. Contraventions of a member's responsibility to maintain professional conduct include:
  - i) prejudicing the ability of co-workers to fulfill their contracted engagements in a normal manner;
  - ii) harassing or sexually harassing co-workers as defined in Section I (“Definitions”);
  - iii) abusing or harassing ACTRA staff; and
  - iv) otherwise acting in a manner which brings the profession into disrepute.

## **C. Conduct prejudicial**

A member is not to act in a manner prejudicial to the interest and welfare of ACTRA or its members. "Conduct prejudicial" includes:

- a) conduct prejudicial to the aims and objectives of ACTRA as defined in Article 2 of the ACTRA Constitution;
- b) violating Article 4 ("Rights and Obligations of Members"), parts 403, 404 and 405 of the ACTRA Constitution;
- c) violating By-Law 9 ("Rules for the conduct of members during a strike") of ACTRA's By-Laws;
- d) engaging in the promotion, implementation, furtherance or support of any other union or collective bargaining group with the purpose or intent of supplanting ACTRA or any Branch/Local union as the recognized bargaining agent;
- e) engaging in corrupt practices. "Corrupt practices" includes (but is not limited to) falsifying or otherwise misusing books, records, documents or other property of ACTRA, and absconding or otherwise improperly converting monies of ACTRA;
- f) engaging in repeated frivolous or spurious claims or upgrade requests;
- g) making a frivolous, vexatious or bad faith complaint against any other Member.

## **Section IV - Member Discipline Process**

### **A. General**

#### **1. Discipline Committees**

- a) Each Branch/Local Union and the National Council shall establish Discipline Committees, each composed at a minimum of a Chair empowered to empanel members for the purpose of hearing Appeals (Section IV D. "Appeal").
- b) Discipline Committee members will remove themselves from any case in which they may have an actual or perceived conflict of interest.

#### **2. Confidentiality**

Every member participating in and every person responsible for administering the member discipline process outlined in this section shall maintain confidentiality subject to the requirements of a fair process and any reporting requirements under this By-Law or as otherwise required by law.

#### **3. Time Limits**

- a) Time limits referenced in the procedures below may be extended on the mutual agreement of the Complainant and Respondent, or at the discretion of:
  - i) a Charging Official during the General Determination of Charges, Complaint, Mediation and Investigation processes; and/or

- ii) the Branch Discipline Committee or National Discipline Committee, as applicable, during the Appeal process.
- b) Where a time-limit is extended by a Charging Official, written notice will be provided to the Complainant and Respondent and their advisors, if any. Where a time-limit is extended by a Discipline Committee, written notice will be provided to the parties subject to the appeal, and their advisors, if any.

## **B. General Charges: Breaches of Member Responsibilities**

### **1. Application**

Section B applies generally to all allegations of breaches of Member Responsibilities, as defined in Section III (“Member Responsibilities”), except as specified in Section C below.

### **2. Laying Charges**

- a) Charges arising from alleged breaches of Member Responsibilities (as defined in Section III “Member Responsibilities”) are to be laid in writing and delivered to the relevant member by registered mail or other verifiable delivery service by the Charging Official.
- b) Except as specified in Section C below, charges may be laid at the discretion of the Charging Official on the basis of information available to them.
- c) If further investigation is required in order to lay or pursue a charge, the Charging Official may appoint an Investigator to complete an investigation in accordance with the procedure set out in Section IV C.8. (“Investigation”).
- d) Charges must be filed in a timely fashion once the facts leading to the charges are known.

### **3. Notice**

A member shall receive written notice of any charges laid. The written charge must include:

- a) the allegation against the member;
- b) the relevant date and place, if known, when the alleged violation occurred;
- c) the name of the relevant Engager/Producer (if any);
- d) the name of the complainant, if appropriate;
- e) the specific clause(s) of the Constitution or By-Laws alleged to have been violated;
- f) relevant documentation or information on which the Charging Official relies, if any;
- g) the applicable penalty/ies if the charge is upheld; and
- h) information regarding the member discipline process, including the member's right to receive disclosure, respond to the charge(s), and appeal (as applicable).

### **4. General Determination of Charges**

- a) Within 14 days of receiving notice of the charge, members may provide a response, in writing, to the Charging Official, setting out:

- i) an explanation of their conduct; and
  - ii) why in their view the charge and/or penalty is not warranted.
- b) Within 14 days of receiving the member's Response, the Charging Official will fairly determine the Charge based on full consideration of the information before them and make a finding as to whether the Respondent's conduct constituted a breach of Member Responsibilities.
  - c) The Charging Official will notify the member of their decision and reasons in writing, including the assessed penalty in accordance with Section E ("Discipline Orders").

## **C. Professional Misconduct: Discrimination, Harassment and/or Sexual Harassment Complaints**

### **1. Application**

- a) Section C applies to allegations of discrimination, harassment and/or sexual harassment contrary to a member's responsibility to maintain Professional Conduct, as set out in Section III ("Member Responsibilities").
- b) At any time prior to making a formal complaint as described in 3 below, a complainant may discuss the complaint with the charging official informally, to learn about options and resources available.
- c) At the discretion of the Charging Official, the Early Resolution, Complaint, Mediation and Investigation procedures set out below may be applied as appropriate, with necessary modifications, with respect to any alleged violations of Section III ("Member Responsibilities").

### **2. Early Resolution Process**

Any member who believes that they have been the recipient of professional misconduct, including harassment or sexual harassment, by another member is encouraged, where appropriate and on a voluntary basis, to discuss their concern(s) directly with the member believed to have engaged in discrimination or harassment, including requesting that the other individual(s) stop the unwelcome behaviour or comments.

### **3. Initiating a Formal Complaint**

- a) Where informal discussions with the Respondent are unsuccessful or inappropriate, a member may initiate a written complaint on the basis of allegations of discrimination or harassment contrary to a member's responsibility to maintain Professional Conduct under Section III B ("Professional Conduct: Prohibition against Discrimination and Harassment").
- b) Complaints must be submitted in writing within twelve (12) months of the incident or the last in any series of incidents which is the subject of the complaint.
- c) The complaint must set out the following:
  - i) the nature of the complaint of discrimination and/or harassment;
  - ii) the name of the Respondent(s);
  - iii) the relevant dates;

- iv) the relevant places;
  - v) the relevant incidents and/or behaviour and/or conduct;
  - vi) the relevant witnesses;
  - vii) the relevant supporting documentation;
  - viii) the remedy sought. See Section E (“Discipline Orders”)
- d) The complaint will be submitted to the appropriate Charging Official set out in Section I (“Definitions”).
  - e) The Complainant may withdraw their complaint at any point in the complaint process prior to the completion of the investigation by means of a written request to the Charging Official. The Charging Official will notify the Respondent of the request to withdraw the complaint where the Respondent has received notice of the complaint.
  - f) At their discretion, the Charging Official may initiate and/or pursue a complaint in the absence of an individual complainant, including where a complaint has been withdrawn.
  - g) The Complainant and Respondent have a right to a support person and/or advisor of their choice, and at their own expense, throughout the complaint process including during mediation, investigation, appeal and/or implementation of discipline.

#### **4. Threshold Assessment**

- a) Within seven (7) days of receiving a complaint, the Charging Official will conduct a threshold assessment of the complaint to determine whether the allegations set out in the complaint, if true, have a reasonable prospect of being found to constitute discrimination, harassment and/or sexual harassment contrary to a member's responsibility to maintain Professional Conduct, as set out in Section III B (“Professional Conduct: Prohibition against Discrimination and Harassment”) of this By-Law.
  - i) If it is determined that the allegations in the complaint meet the threshold of discrimination or harassment, the complaint will proceed to an investigation in accordance with this By-Law.
  - ii) If it is determined that the allegations in the complaint do not meet the threshold of discrimination or harassment, the Charging Official may elect not to proceed to the investigation phase and may dismiss the complaint. In so doing, the Charging Official must give reasons for their decision.
- b) Where the Charging Official dismisses a complaint following a Threshold Assessment, the Complainant may, within seven (7) days, submit a written request for reconsideration to the Charging Official or their designate. Such written request must contain the reasons for the request along with all relevant material, including any new information and documentation supporting the request.
  - i) Within seven (7) days of receipt of the request for reconsideration, the Charging Official or their designate will reconsider the Threshold Assessment based on whether the information available gives rise to allegations of professional misconduct within the scope of discrimination or harassment. The Charging Official or their designate will provide a written decision and such decision shall be final. Where the Charging Official

or their designate upholds the decision not to proceed to an investigation, the decision shall include reasons.

## **5. Notice**

- a) Within seven (7) days of concluding a Threshold Assessment, the Charging Official will forward a copy of the following to the Respondent:
  - i) particulars of the allegations contained in the complaint;
  - ii) applicable penalties if a finding of a breach of Member Responsibilities is made on the basis of the complaint;
  - iii) a copy of this By-Law and relevant policies or procedures, if any; and
  - iv) notification that, in the event no response is submitted, the complaint may proceed to an investigation and determination without further notice and based solely on the available information.

## **6. Response to Complaint**

- a) The Respondent may submit a response to the Charging Official within fourteen (14) days of receipt of the complaint.
- b) The response must include relevant:
  - i) dates;
  - ii) places;
  - iii) parties;
  - iv) incidents and/or behaviour and/or conduct;
  - v) witnesses; and
  - vi) supporting documentation.
- c) If the Respondent does not submit a response within fourteen (14) days of receiving the notice of the complaint, an investigation may proceed without further notice and based solely on the available information.

## **7. Mediation**

- a) The Complainant or Respondent may request mediation within fourteen (14) days of the date on which notice of the complaint was received by the Respondent.
- b) Participation in mediation is voluntary and no negative inference will be made from a party's decision not to participate in mediation.
- c) Should the Complainant and Respondent both agree to mediation, the Charging Official will assign a Mediator within fourteen (14) days of the request for mediation. The Mediator shall not be an individual who has previously been involved in the complaint or underlying issues.

- d) The Charging Official may assign an External Mediator at its discretion where the mediation is expected to be complex, with regard to:
  - i) the nature of the issues in dispute; and/or
  - ii) whether the Respondent is an ACTRA official who is also a member of ACTRA; and/or
  - iii) whether there is a potential conflict of interest for Internal Mediators because of the nature of the issues.
- e) Mediation will be scheduled as soon as possible and all reasonable efforts will be made to ensure that mediation occurs within twenty-one (21) days of the appointment of a mediator.
- f) At mediation, the Mediator will provide the Complainant and Respondent with an opportunity to present relevant facts and assist them in identifying a mutually agreeable resolution by settlement, if possible.
- g) The mediation process is confidential and any information exchanged during mediation cannot be used by any party for any purpose outside of the mediation process unless written consent is obtained from all parties.
- h) If the mediation does not result in settlement, the Mediator will notify the Charging Official and the complaint will proceed to an investigation within seven (7) days.

## **8. Investigation**

- a) Where a complaint satisfies the Threshold Assessment, the Charging Official will assign an Investigator within fourteen (14) days. The assigned Investigator may be the Charging Official, another individual internal to ACTRA, or an External Investigator subject to section IV A.8.b) ("Investigation").
- b) The Charging Official may assign an External Investigator at their discretion where the investigation is expected to be complex, with regard to:
  - i) the nature of the issues in dispute; and/or
  - ii) whether the Respondent is an ACTRA official who is also a member of ACTRA; and/or
  - iii) whether there is a potential conflict of interest for Internal Investigators because of the nature of the issues.
- c) The investigation shall include the following:
  - i) analysis of the complaint, response and any supporting material;
  - ii) interviews of witnesses identified by the Complainant, Respondent or by the Investigator;
  - iii) review of any other material identified as relevant by the Investigator; and
  - iv) consultation with individuals with expertise identified as relevant by the Investigator.
- d) At any time during the investigation, where the Investigator considers it appropriate to do so, the Investigator may recommend to the Complainant and Respondent that they attempt to resolve the complaint through voluntary mediation and settlement.

- e) All individuals interviewed during an investigation are expected to fully cooperate and provide the Investigator with all relevant information and documents in their possession. Where a Respondent declines to cooperate or to provide relevant documents or information, the Investigator may conclude their investigation without any further notice and based solely on the available information.
- f) The Investigator will provide each party with sufficient information regarding the other party's position in order to have a reasonable opportunity to respond.
- g) At the conclusion of the investigation, the Investigator will provide a final report to the Charging Official, which will include:
  - i) a determination of whether the complaint is substantiated or unsubstantiated; and
  - ii) any recommendation(s) for penalty or penalties.
- h) Where an Investigator substantiates a complaint, the Charging Official may make a finding of a breach of Member Responsibilities and assess a penalty in accordance with Section E.
- i) Following determination of a complaint, the Charging Official will notify the Complainant and Respondent of their decision in a timely manner, in writing. Notice of the decision will include information about the Appeal process.

## **D. Appeals**

### **1. Application**

- a) This section applies to:
  - i) Section IV B (“General Charges: Breaches of Member Responsibilities”); and
  - ii) Section IV C (“Professional Misconduct: Discrimination, Harassment and/or Sexual Harassment Complaints”)
- b) A Charging Official and Respondent are parties to an appeal, as applicable.

### **2. Appeal to Branch/Local Union Discipline Committee**

- a) Appeals in Writing
  - i) An appeal shall be in writing where the penalty assessed by the Charging Official is limited to any of the following:
    - 1) oral or written reprimand;
    - 2) education, training, counselling and/or a third party assessment to be completed within a defined period of time;
    - 3) a verbal or written apology;
    - 4) a fine of up to \$1000; or
    - 5) where the Respondent and Charging Official agree that the appeal should be determined in writing.
  - ii) A Respondent may appeal the finding of a breach of Member Responsibilities and/or the assessed penalty in writing by filing an appeal to the applicable Branch/Local Union

Discipline Committee within fourteen (14) days of receiving notice of the Charging Official's decision.

- iii) A member's appeal will include:
  - 1) the reasons for the appeal;
  - 2) any documents and information relied upon, including any new information not reviewed by the Charging Official; and
  - 3) the remedy requested.
- iv) Where a member files an appeal, the Branch/Local Union Discipline Committee will provide a copy of the member's appeal to the Charging Official, who will have 14 days to provide a response to the member and Branch/Local Union Discipline Committee.
- v) Within seven (7) days from receiving the Charging Official's response, the member may submit a written reply to the Branch / Local Union Discipline Committee. The Branch / Local Union Discipline Committee shall provide the Charging Official with a copy of the member's reply.
- vi) Following receipt of appeal materials from the member and the Charging Official, the Branch/Local Union Discipline Committee will determine the matter and issue a final decision with reasons within fourteen (14) days.

b) Appeals Not in Writing: Hearing Procedure

- i) If the penalty under appeal is not one of those listed above in Section 2.a)i), an oral hearing will be convened before a panel of the Branch/Local Union Discipline Committee.
- ii) The Branch/Local Union Discipline Committee Chair will deliver written notice of hearing to all parties of the date, time and place of the hearing within fourteen (14) days.
- iii) The hearing will normally be held within two (2) months of the date the appeal is requested. A Branch/Local Union Discipline Committee may consider personal or professional circumstances in scheduling or re-scheduling a hearing, but is not required to do so.
- iv) In the event any party or witness declines to attend a hearing the Branch/Local Union Discipline Committee has the right to proceed to hear and decide the appeal.
- v) All parties have a right to retain legal advisors at their own expense. The Branch/Local Union Discipline Committee may also retain a legal advisor at the relevant Council/Board's expense. Unless required by law or otherwise permitted by the Branch Discipline Committee, legal advisors will neither be permitted to present evidence nor will they be permitted to participate actively in the hearing.
- vi) The practice, procedure and decision of a Branch/Local Union Discipline Committee must be consistent with the principles of natural justice; must respect the right of the parties to a fair hearing; and must not conflict with ACTRA's Constitution and By-Laws.
- vii) Subject to the terms of this By-Law, a Branch/Local Union Discipline Committee determines its own procedure; may accept such oral or written representations as it considers proper; and may in whole or in part base its decision on any such representations or evidence.

- viii) The parties will inform each other and the Chair of the Branch/Local Union Discipline Committee of any witnesses they intend to call and provide each other with relevant documents which they intend to use no later than seven (7) days before the hearing.
  - ix) The Chair of the Branch/Local Union Discipline Committee may exclude witnesses and documents not relevant to the appeal.
  - x) Similar or relevant prior findings under ACTRA's Constitution and By-Laws are deemed relevant evidence.
  - xi) At the hearing, the relevant Charging Official will present all known facts pertaining to the charge. The Respondent may present their full answer to the charge.
  - xii) All parties may make argument regarding the appropriate penalty.
- c) Decision of the Branch/Local Union Discipline Committee
- i) The Branch/Local Union Discipline Committee will render a decision within thirty (30) days of the end of the hearing.
  - ii) The Branch/Local Union Discipline Committee does not have the power to amend, add to or delete any of the provisions of the Constitution or By-Laws.
  - iii) The written decision must be dated and signed by a majority of the Branch/Local Union Discipline Committee panel and must contain findings of fact and reasons. A dissenting member may file a dissenting opinion, which will be appended to the Branch Discipline Committee's decision. A copy of the written decision will be delivered to all parties.
  - iv) The decision of a Branch/Local Union Discipline Committee is final and binding upon all parties, subject to any available appeal to the National Discipline Committee as set out in Section 3 below.

### **3. Appeal to National Discipline Committee**

- a) A party to a Branch/Local Union Discipline Committee hearing may appeal the decision of a Branch/Local Union Discipline Committee in the following circumstances:
  - i) when the Branch/Local Union Discipline Committee has imposed a heavier penalty than originally assessed;
  - ii) when the party can prove to the satisfaction of the Chair of the National Discipline Committee, at the Chair's sole discretion, that:
    - 1) a member of the Branch/Local Union Discipline Committee had a conflict of interest and nevertheless participated in the hearing;
    - 2) the timelines or rules of procedure were substantially violated during the appeal.
  - iii) In determining an appeal on the ground of 3a)ii) above, the National Discipline Committee Chair may hear and consider representations from the parties and the Chair of the Branch/Local Union Discipline Committee.
- b) All of the rules and provisions of this By-Law, including procedures and timelines, apply to the National Discipline Committee in its consideration of a valid appeal.

## **E. Discipline Orders**

### **1. Available Penalties**

- a) Upon making a finding of a breach of Member Responsibilities, a Charging Official or Discipline Committee may make or uphold appropriate penalties with regard to the aims of:
  - i) general deterrence of similar misconduct among the membership;
  - ii) specific deterrence against the individual member reoffending;
  - iii) protection of other members; and
  - iv) rehabilitation of the member, where the member has demonstrated such potential.
- b) Penalties or remedial orders may include, the following, as befitting the aims of penalty:
  - i) oral or written reprimand;
  - ii) education, training, counselling and/or a third party assessment to be successfully completed within a defined period of time and which may be ordered to be completed at the member's expense;
  - iii) a verbal or written apology;
  - iv) removal from office, if applicable;
  - v) bar on running for office for a specified time or until satisfaction of specified conditions;
  - vi) suspension of membership, for a specified time or until satisfaction of specified conditions;
  - vii) expulsion from membership, with or without the right to reapply after a specified period of time and/or upon satisfaction of specified conditions;
  - viii) fines payable to ACTRA in an amount to be determined by the Charging Official or Discipline committee. In circumstances where there have been earnings in breach of the By-Laws, a fine payable to ACTRA up to the amount earned, or up to \$100,000 in the event the member refuses to credibly disclose the amount earned;
  - ix) in the case of a Work Permittee, a bar on future permits for a specified time or until satisfaction of specified conditions.

### **2. Harassment and Discrimination**

- a) Where a finding of a breach of Member Responsibilities results from misconduct involving harassment, sexual harassment or discrimination, the Charging Official or Discipline Committee shall consider the following factors in determining an appropriate penalty:
  - i) Mitigating factors include, but are not limited to:
    - 1) isolated or first-time infraction;
    - 2) member's demonstrated remorse and insight; and

- 3) capacity for rehabilitation.
- ii) Aggravating factors include, but are not limited to:
  - 1) prior findings of misconduct under this By-Law;
  - 2) finding of repeated incidents of misconduct;
  - 3) severity of misconduct;
  - 4) graphic language or content;
  - 5) physical or sexual touching;
  - 6) impact on harassed;
  - 7) dishonesty or a failure to cooperate or participate during the member discipline process;
  - 8) reprisal or abusive conduct against anyone involved in the member discipline process, including any Complainant, witness, staff or official.

### **3. Implementation of Penalties**

- a) The imposition of any penalty upon a member generally comes into effect only after the member's right(s) of appeal has been exhausted.
- b) However, if an investigation under Section III B ("Professional Conduct: Prohibition against Discrimination and Harassment") substantiates a serious complaint of discrimination, harassment and/or sexual harassment and the Charging Official has a reasonable basis to believe that the substantiated conduct gives rise to a significant risk of immediate, continuing harm to the Complainant and/or any other member, the Charging Official may make a recommendation that a Branch/Local Union senior staff member or their designate or the National Executive Director or their designate restrict any privileges of membership in ACTRA as appropriate until any appeal is finally determined.
- c) Any fines must be paid in full by the member within thirty (30) calendar days of coming into effect unless other arrangements are negotiated with the Charging Official. In the event that a fine is not paid in full and on time, the member's membership is deemed suspended until the fine is paid in full. In the further event that a fine is not fully paid after one year from the date when the fine was first issued, the member shall be expelled from ACTRA.
- d) Any non-monetary penalty must be completed to the satisfaction and within the timeline specified by the Charging Official or the Discipline Committee. In the event that the penalty is not satisfactorily completed on time, the member's membership is deemed suspended until the penalty is completed. In the further event that the penalty is not satisfactorily completed after one year from the date when the penalty was first issued, the member shall be expelled from ACTRA.

### **4. Failure to Comply with Discipline**

Where a member refuses to comply with a Discipline Order, the member's membership may be suspended and/or the member may be expelled.

### **5. Reporting of Discipline Decisions**

All Discipline Orders shall be reported at Branch/Local Union Council/Board meetings through in camera sessions.

## **6. Readmission into ACTRA**

- a) In the case where a member is expelled from ACTRA, but the final decision contemplates a right to re-apply for membership at some point in the future, the following rules apply:
  - i) Notwithstanding any standard membership application rules or practices in place, an application for re-admission by a member who has been expelled must be submitted, after the appropriate time has elapsed, in the first instance to the individual charged with enforcing ACTRA's discipline rules in the relevant Branch/Local Union.
  - ii) The re-application is to be evaluated on the basis of two considerations:
    - 1) the applicant is a bona fide professional performer who continues to earn their livelihood principally as a professional performer (demonstrated by earning appropriate credits, or by appropriate professional reputation); and
    - 2) the applicant has clearly demonstrated that they understand their conduct leading to their expulsion; have now genuinely accepted the Constitution and Bylaws; and is not likely to reoffend.

In the event the application for re-admission is rejected, the applicant may appeal to the Branch/Local Union Discipline Committee. The matter will be considered under rules of procedure similar to the discipline hearing. The decision of the Branch/Local Union Discipline Committee is final, binding on all parties, and is not subject to appeal for any reason.

*Cross Ref. Con. 314, 401, 402, 404, 405 & 406*

# **BY-LAW NO. 8**

## **BREACH OF AGREEMENT - NON-SIGNATORY ENGAGERS - UNFAIR ENGAGERS - WITHDRAWAL OF SERVICES**

### **1. Breach of Existing Agreement**

Where a person, firm or corporation breaches a written agreement to respect a Code, Agreement or Schedule of ACTRA, or has been declared "unfair" under the appropriate Code, Agreement or Schedule, the ACTRA National Council may issue an order or orders making it unprofessional conduct for a member to work for, deal with, or have any business or professional relationship with any such person, firm or corporation. In cases of urgency, such an order may be made by the ACTRA President after consultation with the ACTRA National Executive.

### **2. Non-Signatory Engager**

- a) Where an engager has refused to sign an agreement or letter of adherence with ACTRA, ACTRA may publish the name and other relevant information and may order all members of ACTRA to refrain from working for, dealing with or having any business or professional relationship with any such engager until such time as an agreement or letter of adherence has been signed.
- b) It is the responsibility of the member to check with the appropriate ACTRA office regarding the legitimacy of the company. Failure to publish such corporate names may not be used by a member as a defence of a breach of these By-Laws.