

Document prepared by E. Tremblay following the July 13 2017 SNEC

July 13, 2017 SNEC

Motion 20170713 – 01 Proposed Bylaw Amendments

Moved by Jessica Squires, seconded by Neil Burron

Be it resolved that the following amendment to bylaw 7 be adopted and immediately effective, pending formal confirmation by the membership in the context of the November 2017 AGM votes.

Bylaw regarding Collective Bargaining Committee and Collective Bargaining Team

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

- i. The NEC will call for candidates from the general membership of the appropriate bargaining unit no later than three (3) months prior to the earliest date for notice to bargain.
- ii. Members of the NEC may be nominated to be on the CBC.
- iii. Candidates will submit their reasons for wanting to serve on the CBC.
- iv. If more nominations than the maximum number of committee members according to clause v are received, the National office will arrange for a membership vote for the CBC of the bargaining unit.
- v. 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.
- vi. 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.
- vii. In the case of a vacancy arising that results in the CBC of a bargaining unit falling in numbers to the effect that the CBT is the majority of the CBC, the vacancy shall be filled by way of a call for volunteers as set out above in clauses i-v.
- viii. The Association will ensure that the CBC is trained.

NEW CLAUSE

7.2.6 The full CBC, including the CBT, shall meet at least monthly; and immediately prior to every meeting of the CBT with the employer's negotiators; and it shall report to the NEC at its regular meetings.

In favour (4): Neil Burron, Sean Maguire, Simone Powell, Jessica Squires

Against (5): Nick Giannakoulis, André Picotte, Alexander Butler, Ann Kurikshuk-Nemec, Greg Phillips

3 abstentions

This motion was defeated

Motion 20170713 – 02 CAPE By-laws 5

Moved by Jessica Squires and seconded by Neil Burron

Be it resolved that the current bylaw 5 be replaced by the following text.

CAPE By-law 5

Complaints and discipline

Purpose

1. This Bylaw sets out the manner in which CAPE will investigate complaints so as to ensure that members' actions are not detrimental to the collective interests of the organization, while ensuring that the process employed is fair, open, and as objective as possible.
2. CAPE encourages open discussions and debates on all issues that affect our members as the type of internal debate and democracy essential to building a strong and healthy trade CAPE. Discipline under this clause is not to be used to quash or silence discussion or debate, or to investigate and discipline members as a way to marginalize internal political opponents.
3. Complaints are not for use to resolve political disagreements.
4. Complaints regarding the results of a process under this Bylaw 5 (decision to investigate or not to investigate, choice of investigator, results of investigation, report of investigator, and/or decision of NEC to take disciplinary measures) are not accepted.

Authority

5. Pursuant to clause 6.6 of the Constitution, the NEC has the authority, by resolution passed by a 2/3 majority, to expel, suspend or remove from office any Regular or Pending member on one or more of the grounds listed below.
6. The NEC does not have the authority to take action in complaints by staff. Such complaints are dealt with under the ESU collective agreement.
7. Complaints by CAPE members against staff are considered as possible employer grievances and are dealt with by CAPE management including the full-time elected officer(s) of CAPE.

Grounds

8. A complaint may be filed by or against any member or members, local, officer, committee, NEC member or members, or the CAPE President for any of the alleged actions listed below.
 - a. Other than through proper channels, advocating or attempting to bring about the withdrawal from CAPE of any member or group of members.
 - b. Actions taken to deliberately prevent members and CAPE officials from advancing perspectives and promoting initiatives.
 - c. Instituting, urging or advocating that a member institute action in court against CAPE or any of its officers without first exhausting all remedies through appeal within CAPE.
 - d. Publishing or circulating among the members information known to be false and/or willful misrepresentations of the intentions of others.
 - e. Slandering, libeling or willfully wronging any member of CAPE.
 - f. Sexually or personally harassing any other member.
 - g. Fraudulently receiving money due to CAPE or any of its locals or misappropriating the monies of CAPE or any of its locals.

- h. Using the name of CAPE or any of its locals for soliciting funds, advertising and the like, without the consent of NEC or the executive of the local concerned.
- i. Furnishing a complete or partial list or any information on the membership of CAPE or of any of its locals to any person or persons other than those whose official position entitles them to have such information.
- j. Being a scab; defined as a worker in a legal strike position, who either: crosses the picket line or is paid by the employer not to participate in strike action, or performs work for the employer, unless required to do so by law; or who voluntarily performs struck work.
- k. Being a CAPE officer who incites, or who willfully does not initiate disciplinary action against, scabs as defined above.
- l. Filing repeated frivolous and/or vexatious complaints.

Process

- 9. A complaint in writing must be received by the President and/or Vice-Presidents within ninety (90) calendar days of the alleged offence having occurred or within ninety (90) calendar days of it having come to the attention of the complainant.
- 10. Except in the case of a harassment complaint, before any further steps are taken, including any investigation, other means to resolve the dispute must be made available to the parties, including mediation.
- 11. A complaint can be withdrawn at any time by the complainant.
- 12. The NEC has the authority to decide, at its next regular scheduled meeting, whether the complaint (based on available statements and supporting documents) warrants an investigation, and/or whether the complaint is frivolous, vexatious or in bad faith. This decision cannot be appealed.
- 13. An investigation shall not be undertaken when, based on the available evidence, the NEC determines that the complaint is aimed at quashing or silencing discussion or debate.
- 14. If the decision is that the complaint is not frivolous, vexatious or in bad faith, the NEC may decide to investigate or may rule based on the information available.
- 15. If deemed necessary, the NEC shall establish an internal or external impartial review committee consisting of three (3) people to investigate and assess the complaint, including the receipt of oral and/or written evidence.
- 16. If such a committee is struck, the members shall not be from the same local as the complainant(s) or the respondent(s).
- 17. The member(s) against whom the complaint is filed (the “respondent”) shall be provided a copy of the documentation and both the member(s) making the complaint (complainant) and the respondent will be afforded the right to make statements to the committee, or to the NEC if no committee is formed and if the NEC has not ruled that the complaint is frivolous, vexatious and/or in bad faith.

Report of Committee

- 18. The report of the Committee, tabled at the next possible meeting of the NEC, is not open to appeal except as set out in the section on appeals, below. The report shall include:

- a. A finding of fact, and
 - b. A recommendation of the specific disciplinary action, if any, to be imposed.
19. The Committee may also recommend other remedial actions including but not limited to, mediation, training, and/or bylaw or constitutional amendments.

Decision

20. The NEC may decide upon the recommendation, but may not alter the finding of fact.
21. If the Committee has determined and reports that no action as listed under the Grounds has occurred, no further action will be taken.
22. If the NEC decides to accept a recommendation to undertake disciplinary action, it will follow the process outlined below.

Disciplinary action

23. The NEC will take all possible measures to avoid disciplinary action. Discipline is to be used only as a last resort.
24. The NEC may decide to accept a recommended disciplinary action, or may decide to apply a different disciplinary action to the one recommended, or may decide not to impose recommended disciplinary action.
25. Disciplinary action may include one, but not both, of the following:
- a. An officer or member may be suspended from membership and/or removed from an office held for a period not exceeding two (2) years.
 - b. An officer or member may be expelled from membership and/or removed from an office held for a period up to life, subject to a review process every five (5) years.
26. Any person or persons expelled or suspended shall turn over to the CAPE all records, documents, funds or property that are held in trust for the CAPE and a CAPE local.

Appeal

27. Any decision by the NEC to impose disciplinary action may be appealed to a tribunal empowered to hear appeals which shall make final and binding decisions thereon. A written notification of the individual's intent to appeal must be submitted to the NEC within sixty (60) calendar days of receipt of the disciplinary notification.
28. The establishment of the tribunal shall be undertaken by the CAPE president or his/her delegate. The Tribunal shall normally be established within a two-month period from the date of the receipt of the notice of appeal.
29. The tribunal shall include a representative of the appellant, a representative of the NEC, and a third independent person agreed to by both parties or appointed by an appropriate labour organization, as determined by the NEC.
30. The appellant shall not be a member of the Appeal Tribunal.
31. The representative of the NEC must not have a conflict of interest in the outcome.
32. The decision of the Tribunal shall be final and binding on all parties to the appeal.

Situations deemed covered

33. The procedure for dealing with any disciplinary situation which may arise which is not specifically covered under this Regulation shall be deemed to be covered and processed within the spirit and intent of this Regulation.

Complaint against President

34. If the complaint is against the President of CAPE, he/she shall delegate his/her authority related to the complaint process to a member of the NEC who will be chosen by the NEC.

Discussion focused on repeated concerns around bylaw 5 in the context of the numerous complaints currently in the pipeline. The 3-person NEC sub-committee were told on several occasions that counsel had not been consulted on successive bylaw changes that led to inconsistencies and contradictions in the current bylaw 5 process.

Recognizing that the NEC would not be able to discuss the substance of all the proposed changes effectively, it was proposed to introduce a motion to refer the suggested new Bylaw 5 for a review by CAPE lawyers.

Motion 20170713 – 02 (to refer new Bylaw 5)

Moved by Jessica Squires and seconded by Neil Burron

Be it resolved that legal advice be sought on this draft new bylaw 5;

Be it further resolved that we seek to receive suggestions from Goldblatt partners as to what would make the bylaw better, including with the possibility of introducing criteria for applying discipline measures;

Be it further resolved that the draft bylaw and comments from the lawyers would be shared both with the NEC and in the context of the upcoming President's council to seek view from a broader constituency of informed CAPE members before going ahead with recommending for a membership vote.

In favour (10): Nick Giannakoulis, André Picotte, Neil Burron, Alexander Butler, Maureen Collins, Chantal Desrochers, Sean Maguire, Simone Powell, Jessica Squires

Opposed (2): Ann Kurikshuk-Nemec, Greg Phillips

1 abstention

Motion carried

NB: Sean Maguire left the meeting at 8 pm after this vote, and Nathalie Pothier joined the meeting at about the time when Mr. Maguire left.

Motion 20170713 – 03 To replace Bylaw 8

Moved by Maureen Collins and seconded by Ann Kurikshuk-Nemec

Be it resolved that the current bylaw 8 be replaced by the following text.

B 8.1 All travel expenses shall be reimbursed pursuant to rates and terms established in the National Joint Council Travel Directive. All travel requests over 100\$ will be preapproved and

requests will be accompanied by a rationale clearly connecting the expense to ACEP-CAPE business.

B8.2 In respect to all travel expenses of all members of ACEP-CAPE, except the President, authority to travel and an estimate of expenses must receive prior approval from the President no less than five (5) days prior to the travel. The President will respond in writing no less than two (2) working days after receiving the fully documented request in writing.

B8.3 The President will present a yearly travel expenses plan to the Finance Committee by the end of the first month of the calendar year, for recommendation to the NEC for approval no later than the end of the first quarter of the Association's calendar year. The President's travel expenses must be recommended by the Finance Committee and approved no less frequently than quarterly by a majority of the NEC. The President's annual travel plan, once approved by the NEC, may be amended on a monthly basis; however, amendments must be resubmitted to the NEC via the Finance Committee for approval. Emergency situations may be approved ad hoc by the Finance Committee to an amount of no more than \$500.00, and must subsequently be presented to the NEC at the next regular meeting of the NEC.

B8.4 Where members from outside the National Capital Region wish to attend General Meetings, Committee meetings and Local Leadership meetings, the number of people for whom expenses will be reimbursed shall be pre-determined by the NEC no later than 5 days prior to the event, unless extraordinary circumstances prevail. A written rationale will be provided for all such requests and the subsequent decisions.

The text above is slightly changed from the original submission to contain friendly amendments.

A first vote was conducted suggesting to refer that bylaw discussion to the Constitution and Bylaw Committee and Finance Committee concurrently to get their views on the matter.

Here is the result of the vote on the motion to refer:

In favour (2): Simone Powell and Jessica Squires

Opposed (10): Nick Giannakoulis, André Picotte, Neil Burrton, Maureen Collins, Miranda Dyck, Ann Kurikshuk-Nemec, Greg Phillips, Jacob Porter, Nathalie Pothier
2 abstentions

The motion to refer was defeated.

After some discussion where some members felt there was need for more work on the content to reflect the CAPE institutional reality, another vote was held on the adopting the motion without referring it.

By the time of the vote, Chantal Desrochers had left the call.

In favour (6): Nick Giannakoulis, Neil Burrton, Alexander Butler, Maureen Collins, Miranda Dyck, Ann Kurikshuk-Nemec

Opposed (6): Emmanuelle Tremblay, André Picotte, Johanna Hove, Jacob Porter, Nathalie Pothier, Simone Powell.

The motion on the substance to adopt the amended bylaw 8 was defeated.

The President wanted noted for the record that her preponderant vote that led to the motion being rejected should not be interpreted as a lack of willingness to establish controls on travel expenses, but rather an acknowledgement that to do things right required more focused work adapted to the CAPE context.

A new motion was put forward, but this time requesting the Finance Committee to propose parameters for financial controls around travel expenses.

Motion 20170713 – 03

Moved by Maureen Collins and seconded by Ann Kurikshuk Nemec

Be it resolved that the Finance Committee immediately and expediently look at developing a bylaw amendment regarding financial controls around travel expenses.

In favour (9): Nick Giannakoulis, Neil Burron, Maureen Collins, Miranda Dyck, Sean Maguire, Nathalie Pothier, Simone Powell, Jessica Squires

Against (1): Johanna Hove

3 abstentions

Motion carried

The President informed the NEC that she had received the costing for the temporary services of Deloitte accounting firm to assist in preparing the CAPE audit and the ongoing book-keeping for the Association during the Finance officer's absence. The cost for the 2-month assignment by Deloitte would be in the neighbourhood of 75,000\$. The alternative that would still be available to CAPE would be to hire an experienced book-keeper at 3-4 days/ week and a registered CPA for about 10 days over 2 months at a significantly lower cost (closer to 25,000\$). The President wanted to ascertain that the NEC indeed wanted to go with Deloitte as previously recommended, or if they would rather take the more affordable and fiscally prudent route which she would recommend.

By a show of hands, a majority of those present in the room preferred to hire Firm Z for the services.

Motion to adjourn:

It was moved by André Picotte and seconded by Greg Phillips to adjourn the meeting

In favour (9) André Picotte, Neil Burron, Alexander Butler, Maureen Collins, Miranda Dyck, Ann Kurikshuk-Nemec, Greg Phillips, Nathalie Pothier, Simone Powell,

Opposed (1): Nick Giannakoulis

1 abstention

Motion carried at 10:30 p.m.

The SNEC meeting adjourned at 10:30 p.m. EDT