

## EXCERPTED FROM HSA CONSTITUTION

### Article 15 – Complaints & Dispute Resolution

#### Section 1. Complaints

A member who has reasonable grounds to believe that another member has violated any Obligation or Responsibility provided for in this Constitution may file a complaint against the member in accordance with the procedure set out in this article.

#### Section 2. Form of Complaint

All complaints must be set out in writing and delivered to the Secretary-Treasurer of the Union. Complaints must contain the following information:

- (a) Name, address, telephone number and signature of person making the complaint (the “Complainant”);
- (b) Member named in complaint;
- (c) Facts which form the basis of the complaint;
- (d) The portion of constitution which is alleged to have been violated;
- (e) Whether the Complainant has personal knowledge of the facts and, if not, from where the information is derived.

#### Section 3. Time for Bringing Complaint

A complaint shall be delivered to the Secretary-Treasurer not later than six months after the date on which the Complainant knew or ought to have known of the action or circumstances giving rise to the complaint.

#### Section 4. Notice of the Complaint

- (a) The Secretary-Treasurer shall, as soon as practicable, after receiving a complaint, notify the person who is the subject of the complaint (the “Respondent”) by mail, ensuring proof of delivery and provide that person with a copy of the complaint received.
- (b) The Secretary-Treasurer shall in the same notice require the Respondent to provide a written response to the complaint which response may be limited to admitting or denying the complaint. Such response shall be provided within fifteen working days of the complaint being mailed to the Respondent.

... /2

## Section 5. Investigator

- (a) When a complaint has been received, the Secretary-Treasurer shall ask the Board of Directors to appoint an Investigator.
- (b) If the Secretary-Treasurer determines that the complaint relates to an alleged violation of the Personal Information Protection Act, the matter shall also be referred to the Privacy Officer.
- (c) That Investigator shall make a preliminary investigation of the complaint and for this purpose may consider such evidence and facts which are considered relevant.
- (d) If the Investigator sees an opportunity for alternative dispute resolution, then the Investigator shall recommend this action to the Secretary-Treasurer.
- (e) If the Investigator deems that the complaint is without merit, the complaint is dismissed by the Secretary Treasurer and a report is provided to the Board of Directors on the Investigator's findings.
- (f) Where the Investigator has determined that the complaint has sufficient merit to proceed to trial in whole or in part, the Investigator will provide a report through the Secretary-Treasurer to the Board of Directors. The Board of Directors will then direct the Chair of the Trial Committee to convene a Hearing Panel.

## Section 6. Hearing Panel

- (a) The Chair of the Trial Committee shall convene a Hearing Panel consisting of at least three members of the Trial Committee to hear the complaint.
- (b) The hearing panel, so convened, shall have authority to fulfill its responsibilities up to and including publishing its written decision, notwithstanding the Trial Committee's end of term date.
- (c) The Respondent has the right to know the complaint against them and to be provided with the particulars.
- (d) The Respondent must be given reasonable notice of the complaint prior to any hearing and must be given reasonable notice of the hearing date.
- (e) The Hearing Panel shall determine its own procedures, and shall hear and receive evidence in accordance with the following principles:
  - (i) The hearing must be conducted in compliance with the intent and purpose of this Constitution and within the framework of the Terms of Reference of the Trial Committee;
  - (ii) The Hearing Panel shall call evidence; examine witnesses; receive evidence from the Respondent, Complainant, and other witnesses, and the representative(s) of the Board of Directors; and receive documents and submissions;
  - (iii) The trial shall be conducted in good faith and without bias;

... /3

- (iv) The Hearing Panel is not bound by the strict rules of evidence. However, any decision reached must be based on the actual evidence adduced and not influenced by any matters outside the scope of the evidence.
- (v) If the Hearing Panel cannot reach consensus on the charge, the decision of the majority of the Hearing Panel will be the decision of the Hearing Panel.
- (f) The Respondent and the Complainant have the right to have a representative accompany them to the hearing.
- (g) The Hearing Panel shall be provided with access to legal counsel.
- (h) The Board of Directors shall be a party with the same rights of participation as the other parties to any trial where the Board of Directors determines that the matter before the Trial Committee is of significant interest to the Union or for other good reason. The decision to be a party is in the sole discretion of the Board of Directors. The Board of Directors may appoint a representative(s), including legal counsel, to appear before the Trial Committee.

## **Section 7. Decision**

- (a) Upon conclusion of the trial the Hearing Panel shall, as soon as practicable, publish a written decision and forward it to the Board of Directors, the Investigator, the Complainant, and the Respondent.
- (b) Where the member has been found guilty of a breach of any Obligation or Responsibility in the Constitution, the Hearing Panel shall decide the appropriate level of discipline considering all of the circumstances. If appropriate, the Hearing Panel may seek further submissions from the parties before imposing any discipline. If the Hearing Panel cannot reach consensus on the discipline, the decision of the majority of the Hearing Panel will be the decision of the Hearing Panel. Discipline may include the following:
  - (i) A written warning;
  - (ii) Removal from office or position in the Union;
  - (iii) Prohibition and/or restriction on holding elected positions in the Union;
  - (iv) Prohibition and/or restriction on attending Union events including Convention;
  - (v) A fine not in excess of \$25,000;
  - (vi) Suspension or expulsion from Union membership;
  - (vii) Any other discipline deemed appropriate.

## **Section 8. Expenses**

- (a) The Union shall reimburse members and witnesses for their reasonable transportation expenses and lost wages resulting from their necessary attendance at the hearing.
- (b) Should expenses be incurred as a result of processing a complaint and the process is not completed due to the Complainant(s) not participating in the process, the Union may bill the Complainant(s) to recoup the costs.

... /4

## Section 9. Appeal

- (a) Any member found in breach of the Constitution may seek leave to appeal such decision to the next Convention. Any appeal must be submitted in writing to the President within one month of mailing of the decision of the Hearing Panel to the member's address on file with the Hearing Panel. The appeal must contain the facts which form the basis for the appeal.
  - (i) If leave to appeal is granted, Convention as a whole will hear the appeal.
- (b) A disciplined member may seek leave to appeal the imposed discipline to the next Convention. Any appeal must be submitted in writing to the President within one month of mailing of the decision of the Hearing Panel to the member's address on file with the Hearing Panel. The appeal must contain the facts which form the basis of the appeal.
  - (i) If leave to appeal is granted, five (5) members at the Convention shall be selected by lot to hear the appeal of the sentence (the Discipline Appeal Committee). No witness or party to the hearing or member of the Trial Committee shall be permitted to be on the Discipline Appeal Committee.
  - (ii) The decision of the Discipline Appeal Committee is final and there is no right to appeal its decision. Any party to the original decision may participate in the hearing before the Discipline Appeal Committee. Any appeal is an appeal on the record and not a hearing de novo. The Discipline Appeal Committee may also consider any direction given by Convention at the time of granting leave.
  - (iii) The Union shall reimburse members for their reasonable transportation expenses and lost wages resulting from necessary attendance at any leave to appeal application or attendance before the Discipline Appeal Committee.
  - (iv) The Discipline Appeal Committee shall be provided access to legal counsel.
  - (v) The Discipline Appeal Committee shall publish their written decision as soon as practicable after the conclusion of the Appeal.
- (c) In the case of a suspension or expulsion from Union membership, the penalty will not be implemented in such a manner that it affects a member's employment pending resolution of an appeal. The President shall determine a fair and appropriate procedure.