

# **BY-LAW NO. 7**

## **MEMBER RIGHTS AND RESPONSIBILITIES; DISCIPLINE PROCESS**

### **(7.1) MEMBER RIGHTS**

Members have the right to:

- i) **Participate equally in the union.** Members have the right to participate equally in the union. They have the right to attend and participate in union meetings; and to enjoy due process consistent with the principles of natural justice if disciplined. 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;.
- ii) **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 bylaws. They have the right to discuss union policies and issues. Members have the right to complain, protest, demand and advocate within the union.
- iii) **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 bylaws.
- iv) **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 Bylaws.

*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.

### ***Right of elected councils to ensure unity of purpose***

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

### **(7.2) MEMBER RESPONSIBILITIES**

With membership in ACTRA comes the responsibility to avoid acts prejudicial to ACTRA, and the responsibility to respect ACTRA's work rules.

### **(7.2.1) “Conduct prejudicial” defined**

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

- i) conduct prejudicial to the aims and objectives of ACTRA as defined in article 2 of the ACTRA Constitution;
- ii) violating article 4 (“*Rights and Obligations of Members*”), parts 403, 404 and 405 of the ACTRA constitution;
- iii) violating by-law 9 (“*Rules for the conduct of members during a strike*”) of ACTRA’s bylaws;
- iv) 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; and
- v) 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.

### **(7.2.2) “Work rules” defined:**

Members are to:

- i) *Work for signatories:* A member must work only for an engager or producer who is a signatory to a relevant ACTRA collective agreement.
- ii) *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.
- iii) *Work for applicable minimum fees:* A member must always work for fees that are at least equal to the minimum fees required by a relevant ACTRA collective agreement.
- iv) *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.
- v) *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.
- vi) *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.

- vii) *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.
- viii) *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.
- ix) *Not to work while suspended, when current fines are unpaid, or when on inactive membership status:* A member is not to fulfill an engagement while suspended, while current fines are unpaid, or when on inactive membership status.
- x) *Not to abuse or harass ACTRA staff:* A member is not to abuse or harass ACTRA staff.
- xi) *Not to engage in professional misconduct:* A member is not to engage in acts of professional misconduct. "Professional misconduct" includes prejudicing the ability of co-workers to fulfill their contracted engagements in a normal manner; harassing co-workers; or otherwise acting in a manner which brings the profession into disrepute.

### **7.2.3 Schedule of penalties**

#### **(a) Penalties for Conduct Prejudicial:**

- a) Suspension from membership for a defined period; and/or
- b) Suspension from the right to hold office within the union for a defined or indefinite period; and/or
- c) Expulsion from membership, with or without a right to re-apply after a specified period of time.

#### **(b) Penalties for**

- a) **Working for a non-signatory;**
- b) **Working for an unfair engager;**
- c) **Knowingly working with non-qualified non-members;**
- d) **Working while suspended, when current fines are unpaid, or when on inactive membership status;**
- e) **Engaging in professional misconduct;**
- f) **Violating a reciprocal agreement between ACTRA and another professional organization, guild or union; and**
- g) **Working for less than applicable minimum fees:**
- h) A fine for up to the amount earned on the engagement, or up to \$100,000 in the event the member refuses to credibly disclose the amount earned on the engagement; and/or
- i) Suspension from membership for a defined period; and/or
- j) Expulsion from membership, with or without a right to re-apply after a specified period of time.

**(c) Penalties for abuse or harassment of ACTRA staff:**

- k) A fine of up to \$500; and/or
- l) Limiting or barring access to ACTRA offices; and/or
- m) Suspension from membership for a defined period; and/or
- n) Suspension from the right to hold office within the union for a defined or indefinite period; and/or
- o) Expulsion from membership.

**(d) Penalties for**

- p) Failure to fulfill engagement without reasonable cause;**
- q) Being late for an engagement or an audition without reasonable cause; and**
- r) Working without a duly-executed contract:**

- s) A fine of up to \$500; and/or
- t) Requirement for the member to attend and pass professional training.

**(e) Restorative penalties:**

At the staff level or at the Discipline Committee stage, the adjudicator (i.e. staff or discipline committee) of the matter may propose alternative penalties to those prescribed above (in sections a through d, the “traditional penalties”). For example, a member found guilty of a charge could be requested to appear at a member meeting to explain why their conduct is not to be recommended. Such “restorative penalties” are permissible provided they are agreeable to both the disciplined member and the adjudicator(s). The adjudicator can impose a traditional penalty in combination with a restorative penalty or if the circumstances warrant it, a restorative penalty alone. A restorative penalty is considered a step toward reconciling with ACTRA’s membership but is entirely within the discretion of the adjudicator to decide if the circumstances of the charge warrant such consideration or not.

**7.3 Charges and appeals**

**(7.3.1) Charges**

a) Charges arising from breaches of discipline are to be laid in writing by the following individuals or their designates:

- a. In UBCP, by a senior staff member designated by the UBCP Board;
- b. In Alberta, Saskatchewan and Manitoba, by the Regional Director;
- c. In ACTRA Toronto, by the Executive Director of ACTRA Toronto;
- d. In Ottawa, Quebec, the Maritimes and Newfoundland & Labrador, by the Regional Director; or
- e. In any jurisdiction, by the National Executive Director.

b) Charges must be filed in a timely fashion once the facts leading to the charges are known.

c) The written charge will detail:

- a) The date or dates (if known) when the alleged violation occurred;
- b) The name of the Engager/Producer (if any);
- c) The specific clause(s) of the Constitution or By-laws alleged to have been violated;
- d) The penalty assessed for the breach of discipline;
- e) A copy of all relevant documents and any other evidence which the official intends to introduce during any appeal; and
- f) The member's right of reconsideration and appeal, including deadlines and how to appeal.

### **7.3.2) The Right of a Member to seek reconsideration**

- a) Members have the right to demand that the official laying the charge reconsider it, on the basis of their explanation of their conduct.
- b) The member must request the reconsideration in writing within ten (10) working days of receiving the charge. The member's request must include, in writing, the member's explanation for their conduct and the reasons why, in their view, a reconsideration is warranted.
- c) The official laying the charge must then reconsider the charge fairly, taking full account of the arguments brought forward by the member. The official must notify the member of their decision within ten (10) working days of receiving the request for reconsideration.

### **7.3.3) The Right of a Member to appeal**

- a) Members subject to charges have the right to appeal charges to their branch/local union discipline committee.
- b) The member must appeal in writing to the chair of the branch discipline committee within thirty (30) calendar days after the date the member has been notified of them (the thirty day appeal period is in addition to any time spent seeking reconsideration as described in part 2 above).
- c) A member who fails to appeal within the time limit for appeal will be deemed conclusively to have accepted the charge and is therefore considered to be guilty.

### **7.3.4) Branch/local union and national discipline committees**

- a) The purpose of a discipline committee is to provide members with a strictly impartial panel, empowered to consider appeals and to make a final determination about discipline charges.
- b) 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 discipline appeals. A panel must be composed of at least three members in good standing. If the chair of the discipline committee does not participate in the panel for any reason, the chair (or, if the chair is in a

conflict, the relevant council) will appoint an acting chair to oversee all issues related to the hearing and the hearing itself.

- c) Discipline committee members will remove themselves from any case in which they have a conflict of interest.

### **7.3.5) Procedures governing appeals**

#### *Hearing date*

- a) Within fifteen (15) working days of receipt by the chair of the branch/local union discipline committee of an appeal by the member, written notice will be mailed by the discipline committee chair to the member giving them notice of the date, time and place of the hearing.
- b) The hearing must be held within six (6) calendar months following the notice set out in part 5 a) above. In the event a hearing is not held within that time, the charges lapse and cannot be re-filed.
- c) It is the responsibility of both the ACTRA official filing the charge and the member who has been charged to attend the appeal. A discipline committee can consider personal or professional circumstances in scheduling or re-scheduling its hearings, but is not required to do so. In the event either the ACTRA official filing the charge or the member fails to attend a hearing, the committee has the right to proceed to hear and decide the issue.

#### *Witnesses and evidence*

- d) The ACTRA official who filed the charges will present all of the known facts pertaining to the charge to the discipline committee during the appeal hearing. The member will then present their answer to the charges. Each party is entitled to call evidence and to make representations at hearing, but these must be strictly relevant to the charges.
- e) The parties will inform each other and the chair of the discipline committee of any witnesses they intend to call and provide each other with relevant documents that they intend to use no later than five (5) business days before the hearing.
- f) The chair of the discipline committee, at its sole discretion, may exclude witnesses and documents judged to be not pertaining to the specific charge.
- g) Similar or relevant prior convictions under ACTRA's Constitution and By-laws are relevant as evidence.

#### *Procedures at the hearing*

- h) Subject to the terms of this bylaw, a discipline committee determines its own procedure; may accept such oral or written representations or evidence as it considers proper; and may in whole or in part base its decision on any such representations or evidence. The practice, procedure and verdict of a discipline committee must be consistent with the principles of natural justice; must respect the

right of the accused to a fair hearing; and must not conflict with ACTRA's Constitution and By-laws.

- i) The committee will first hear evidence from the ACTRA official who laid the charge; then from the member. The committee then may ask such questions as it deems appropriate. The committee will then meet *in camera*, with no non-committee members or staff present, to consider its decision.
- j) ACTRA staff may present their advice regarding charges and penalties through the presentation and arguments of the ACTRA official laying the charge. Staff are otherwise not to seek to influence or direct the committee's verdict in any manner.
- k) ACTRA (acting through the official presenting the charge) and the member may both retain legal advisors at their own expense. The discipline committee may also retain a legal advisor, at the relevant council's expense. Unless otherwise required by law, these legal advisors will neither be permitted to present evidence nor will they be permitted to participate actively in the hearing.

#### *Decision of the committee*

- l) After hearing evidence and considering its verdict, the discipline committee will render a decision not later than ten (10) working days after the hearing has ended. The committee has the power to:
  - m) confirm the charge and/or penalty being appealed;
  - n) confirm the charge and change the penalty; and/or
  - o) uphold the member's appeal of the charge in whole or in part.

The written decision must be dated and signed by a majority of the discipline committee, and must contain findings of fact and reasons for the decision. A dissenting member of the committee may file a dissenting opinion, which will be appended to the committee's decision. A copy of the written decision (and any dissents) will be mailed to the member, the ACTRA official who laid the charge, and to the National Executive Director.

- p) The committee does not have the power to amend, add to or delete any of the provisions of the Constitution or the Bylaws.
- q) In a case where the committee believes that a member has been the victim of a completely unfounded and deliberately malicious charge, it may require the branch/local union to assist the member with his/her direct and verifiable costs to appeal the charges, to a maximum of \$2,500.

#### *General provisions*

- r) Proper mailing of any document will be by prepaid registered mail or, with the member's written permission, by email.
- s) Where reference is made to an officer or official of ACTRA, that reference includes the designate or that officer or official.

- t) The ruling of a branch/local union discipline committee is final and binding upon all parties, subject to part 6 of this Bylaw.

### **7.3.6) Further appeal to the national discipline committee**

- a) A member has the right to appeal a decision by a branch/local union discipline committee to the national discipline committee in the following circumstances:
  - b) When the local discipline committee has chosen to impose a heavier penalty than was contained in the original charge; or
  - c) When the member can prove to the satisfaction of the chair of the national discipline committee, at the chair's sole discretion, that a member of the local discipline committee had a conflict of interest and nevertheless participated in the hearing; or that the timelines or rules of procedure were seriously violated during the course of the discipline. In coming to a determination of these matters the chair will hear and carefully weigh representations from the member, the chair of the local discipline committee, and the ACTRA official who laid the original charge.
- d) A local discipline committee may refer a discipline to the national discipline committee either for an initial hearing or to consider an additional appeal, for any reason.
- e) All of the rules and provisions of this By-law, including the procedures and timelines set out in part 5) of this By-law, apply to the national discipline committee in its consideration of a valid appeal.
- f) The ruling of the national discipline committee is final and binding on all parties.

### **7.3.7) Implementation of penalties; readmission to ACTRA**

#### *Penalties stayed until appeals exhausted*

- a) The imposition of any penalty upon a member is stayed until all of the member's rights of appeal have been exhausted.

#### *Implementation*

- b) Penalties come into immediate effect once all appeals are concluded.
  - 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 ACTRA official who filed the original charge. In the event that a fine is not paid in full and on time, the member is suspended from membership without appeal until the fine is settled in full;
  - d) Any non-monetary "restorative" penalty (such as the mandatory participation in meetings or trainings, writing letters, etc.) must be completed to the satisfaction and within the timeline specified by the ACTRA official who filed the original charge or the Discipline Committee. In the event that the penalty



is not satisfactorily completed on time, the member is suspended from membership without appeal until the penalty is completed.

#### *Readmission to ACTRA*

- e) In the case where a member is expelled from ACTRA, but the final verdict contemplates a right to re-apply for membership at some point in the future, the following rules apply:
- f) 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 lapsed, in the first instance to the individual charged with enforcing ACTRA's discipline rules in the relevant local union or branch as specified in part 7, section 3, sub (a) above, excluding the national executive director.
- g) The re-application is to be evaluated on the basis of two considerations: (a) that 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 (b) that 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 re-offend.
- h) In the event the application for re-admission is rejected, the applicant may appeal that decision to the local union/branch discipline committee, which shall consider the matter under rules of procedure similar to a discipline hearing. The decision of the committee is final, binding on all parties, and is not subject to any further appeal for any reason.

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