

Constitutional Resolution: Strike Article 6 – Charges, Trials and Appeals Sections 1-6, add **NEW** Article 6 – Charges, Trials and Appeals Sections 1-8

**Because:** All of our members should be afforded the following: The ability to press charges without conflict of interest, real or perceived; the right to a fair, timely, and professional trial without obstruction; and, protections against frivolous and vexatious charges.

**Because:** Article 6 currently is incredibly difficult to operate, particularly given issues around conflict of interest and having an adversarial disciplinary committee structure made up of members who may have difficulty finding time for the trial process, be unfamiliar with the trial process, and unfamiliar with the tenets of natural justice.

**Therefore:** Strike Article 6 Sections 1-6 and replace with **NEW** Article 6 Sections 1-8 (attached).

## ARTICLE 6 – CHARGES, TRIALS AND APPEALS

### Section 1 – Offences

(a) Members may be reprimanded, fined, suspended or expelled by the Union in the manner provided in this Constitution for any of the following acts:

- i. Willfully violating sections of the Union’s Constitution, By-laws or Policy not considered below;
- ii. Obtaining membership through fraudulent means or by misrepresentation;
- iii. Instituting any action, suit or proceeding in any court or before any administrative body against the Union or any Union Officer without first exhausting all remedies provided for in the Constitution;
- iv. Advocating or soliciting membership in another union or attempting to transfer the affiliation of any group within the bargaining unit from the jurisdiction of the Union;
- v. Fraudulently receiving or misappropriating money or property of the Union;
- vi. Using, without authority, the name of the Union for soliciting funds or advertising;
- vii. Providing personal information about any union members to any third party, without the consent of the President or Provincial Executive;
- viii. Wrongfully interfering with any Officer or any accredited Representative of the Union in the discharge of their duties;
- ix. Circulating reports designed or calculated to injure or weaken the Union;
- x. Disobeying or willfully failing to comply with any decision or order of the Union;
- xi. Refusing to participate in picket duty;
- xii. Violating the Code of Conduct while representing the Union and/or attending a Union function;
- xiii. Willfully violating the terms of the Collective Agreement as to wages, hours, benefits or working conditions or ordering or coercing any other member to work in violation of the terms of the Collective Agreement;

**Commented [j1]:** No offences have been added or taken away from this section. (see Section 1(b))

- xiv. Sitting in any elected or appointed position of the BCFMWU and simultaneously forming or causing to be formed a body intended to or capable of competing with the BCFMWU for the right to represent BCFMWU members. A breach of this provision shall constitute just cause for removing a member from all Union representative activity and any elected and/or appointed posts;
- xv. Sitting in any elected or appointed position of the BCFMWU and simultaneously sitting in an appointed or elected position on any body intended to or capable of competing with the BCFMWU for the right to represent BCFMWU members. A breach of this provision shall constitute just cause for removing a member from all Union representative activity and any elected and/or appointed posts;
- xvi. Refusing to pay to the Union any properly established dues or assessments, or any other valid financial obligations;
- xvii. Crossing or working behind a picket line or during a work stoppage when under no legal duty to do so, without proper Union authorization;
- xviii. Engaging in acts which tend to hinder the execution of a properly recognized and authorized labour dispute conducted by the Union;
- xix. Laying frivolous, vexatious or repeated unfounded charges against any Member of the Union; or
- xx. Maliciously, falsely or otherwise defaming an Officer or Member of the Union.

(b) Notwithstanding any of the above, no Union Official or member can be disciplined under this Article for complying with a legal obligation that is in conflict with this Constitution.

## Section 2 - Arbiters

(a) The Provincial Executive will keep current a roster of five Arbiters composed of labour lawyers and/or labour arbitrators.

(b) Arbiters will be appointed to the roster for a five year term, by way of a decision of the Provincial Executive.

(c) Arbiters may only be removed from the roster, prior to the expiry of their term, by way of a two-thirds vote of the Provincial Executive.

**Commented [j2]:** Sec. 1 (b) This clause has been removed from "Offences" because it is not grounds for a charge but a notice of the legal responsibility held by members.

**Commented [j3]:** 6 Sec. 2 was added to provide a way to appoint a neutral, qualified 3<sup>rd</sup> party ("arbiter") to resolve disputes arising from charges (section 1).

(d) When an Arbiter is required to make a decision under this Constitution, the Union shall appoint the next Arbiter from the roster under subparagraph (a), following the most recently retained individual, subject to their reasonable availability.

**Commented [j4]:** Sec 2(a-d) Who qualifies as an arbiter, in a single instance or for the list of arbiters, was discussed at length. The decision to go with a professional designation helps mitigate any concerns around undue influence, and also serves to make appointments less contentious

### Section 3 – General Provisions

(a) When charges are laid against an elected official, the Provincial Executive may suspend the respondent from office and appoint a substitute until their case is resolved. Such suspension does not imply pre-judgement of the case.

(b) Any person who is a party to a proceeding under this Article, and is responsible for any part of the administration of this Article, must recuse themselves from any and all administrative responsibilities with respect to the proceeding in question.

**Commented [j5]:** Sec. 3(b) Historically, charges seem to predominately involve officers of the Union, leading to concerns of conflict of interest. This serves to draw a bright line for those who may be in conflict.

(c) In addition to any penalty resulting from a trial of the matter, a member who is caught working behind a picket line by an Officer of the Union shall be summarily fined \$1000 per offense. These fines may be disputed by written appeal to the Provincial Executive per Article 7 (b) through (d).

**Commented [j6]:** Sec. 3(c) This clause provides direct summary action that can be used against a member found scabbing. The right to natural justice for the member is provided through the appeal process provided therein.

### Section 4 - Procedure for Laying a Charge

(a) Any charge shall:

- i. Be in writing.
- ii. Be duly signed by complainant.
- iii. State in a specific and clear manner the facts giving rise to the charge so as to allow the respondent to enter a full and complete defence.
- iv. Identify the specific articles of the Constitution, By-laws or Policy allegedly being violated.

(b) A charge must be filed with the President within sixty (60) days of knowledge of the event giving rise to the charge. If the President is named in the charges, the charges may be filed with another Provincial Executive Officer. If all Provincial Executive Officers are named in the charges, the matter will be referred directly to an Arbiter.

**Commented [j7]:** Sec. 4(b) This clause provides a mechanism to avoid any real or perceived conflict of interest in determining if a charge should proceed.

(c) A party who fails to provide the required information may be permitted to re-file the charges in their proper form. Where such allowance is made, the timeline under paragraph (b) continues to apply.

**Commented [j8]:** Sec. 4(c) The process of member charges should not be expected to be perfect. Consequently, charges shouldn't be refused on a technicality.

(d) If an individual believes charges have been laid against them for frivolous and/or vexatious reasons, they must provide notice of their intention to bring countercharges, pursuant to Article 6(1)(a)(xix), at least ten business days prior to the trial of the charges brought against them.

**Commented [j9]:** Sec 4(d) Currently, charges are often followed by counter charges, leading to a laborious and resource draining process. Capturing both charges and counter charges is more efficient and provides significant cost savings vs. the current process.

## Section 5 – Processing of Charges

### *Prima Facie Case* (or First Sight Case)

(a) Upon receipt of filed charges, the three senior Provincial Executive Officers shall determine whether the charges disclose a first sight breach of the Union’s Constitution & Bylaws. A first sight case is established where the allegations, if proven, would constitute a violation of the Constitution, By-Laws, or Policy. If the panel finds there is no first sight breach, the charges will be dismissed without a hearing. The panel may consider whether the charges were laid for frivolous or vexatious reasons, and may provide its opinion in its decision. Such opinion is not a final determination and will not constitute cause for discipline without a hearing into the matter. Should there be no successful appeal, this decision shall be reported to the Provincial Executive.

**Commented [j10]:** Sec 5(a) This clause provides a Complainant with significant latitude to present their case, where the only consideration on whether to proceed to hearing is, if the allegation is borne out it would constitute a valid charge. The option for this panel to provide an opinion for whether charges are vexatious or frivolous is to dissuade members from submitting such charges, particularly where a charge may, on its face, appear to be valid. Any decision in this clause may be appealed to the arbiter.

(b) If any of the Officers listed in (a) are in a position of conflict with respect to the determination under paragraph (a), their position will be filled by the next most senior Provincial Executive Officer not named in the charges.

**Commented [j11]:** Sec. 5(b) this clause provides direction in case of potential conflict for procedural decisions in (a).

(c) Should the charges name three or more Provincial Executive Officers, the first sight determination will be referred directly to an Arbiter, whose decision shall be final. The costs of such referral, not inclusive of any appeals, shall be borne by the Union.

**Commented [j12]:** Sec. 5(c) Same as above, respecting that the cost of procedural fairness should not be borne by members pursuing a charge.

(d) Decisions under paragraphs (a) and (b) must be communicated to the complainant and respondent within 30 days of being made.

(e) A decision under paragraphs (a) and (b) may be appealed to the next Arbiter from the roster in subparagraph 2 of this Article. A party seeking to appeal a decision under paragraphs (a) and (b) must give notice of its intention to the President, in writing, within 15 days of the decision being appealed. The President will refer the matter to the Arbiter.

**Commented [j13]:** Sec. 5(e) Considerations of procedural fairness and natural justice make a robust appeals process necessary.

(f) If the Arbiter dismisses the appeal, this decision and the costs of the appeal shall be reported to the Provincial Executive who may charge back any portion of those costs to the appellant.

**Commented [j14]:** Sec. 5(f) The cost of unwarranted appeals should not be borne by the membership.

## Section 6 – Trial Process

(a) The Arbiter will have the power and discretion to determine all procedures for the hearing, provided such discretion is exercised in a way that respects the parties’ rights to natural justice, pursuant to s. 10 of the *Labour Relations Code*.

**Commented [j15]:** Sec. 6(a) Matters of varying levels of complexity and severity should be met accordingly. Because any arbiter will be professionally familiar with natural justice, leaving these determinations to the arbiter is appropriate.

(b) The Arbiter shall consider and rule on any counter charges laid per 6(a)xix for the hearing.

**Commented [j16]:** Sec. 6(b) Counter charges will only be heard if the matter goes to hearing. A member may still press separate charges if they are subject to repeat charges under Art. 6 Sec. 1(xix).

## Section 7 – Penalty

(a) Should the Arbiter uphold the charges, they may:

- i. recoup any or all costs of the hearing on behalf of the Union;

**Commented [j17]:** Sec. 7(i) Any proven charge under the Constitution should not impose a financial penalty on the membership where that penalty is more appropriately shouldered by the offender.

- ii. impose a fine;
- iii. suspend the respondent's Union membership;
- iv. remove the respondent from elected office;
- v. expel the respondent from the Union; and/or
- vi. impose any disciplinary measure they deem just and equitable in view of all circumstances.

(b) Should the Arbiter dismiss the charges and find they were laid for frivolous and/or vexatious reasons, contrary to Article 6(1)(a)(xix), the Complainant shall be charged back all costs associated with the hearing including, but not limited to, the Arbiter's reasonable costs and disbursements, and any rentals of equipment and/or space for the conduct of the hearing. This shall be in addition to any penalty imposed on them for breaching this Constitution.

### Section 8 - Appeals

(a) The respondent or complainant may appeal a decision of the Arbiter to the Provincial Executive.

(b) The appeal shall be initiated through a written notice to the President, filed within thirty (30) days of the decision rendered.

(c) The notice of appeal shall include:

- i. A copy of the decision which is the object of the appeal;
- ii. A short summary of the reasons for the appeal;
- iii. The remedy sought.

(d) A successful appeal under this section requires a two-thirds vote of the Provincial Executive, whereby the matter shall be referred to an arbiter per section 2 and proceed per sections 6 and 7. Their decision shall be considered final.

**Commented [j18]:** Sec. 7(a)vi An important aspect of natural justice is ensuring the punishment reflects the offense, and this clause provides that latitude.

**Commented [j19]:** Sec. 7(b) Charges that are deemed frivolous and vexatious are by definition needless draining on the resources of the Union. Those who press such charges should, at a minimum, bear the arbitral costs of the hearing.

**Commented [j20]:** Sec. 8(a-d) The ability of the parties to access appeals is important for the integrity of the process and to ensure fair treatment. That said, an Executive body of the Union should not be granted the right to overturn the decision of a recognized arbitral body, but does provide an appropriate and efficient mechanism for determining an appeal should be granted.