



Memo

Date: September 6, 2019
To: Members of Council
From: Michael Salvatori, OCT
Chief Executive Officer and Registrar
Subject: **College Bylaw Amendment**

A Notice of Motion was read into the February 28-March 1, 2019 Council meeting minutes for consideration at the May 30-31, 2019 meeting of Council. As this business item was not dealt with at that meeting, Council will consider the following motion at the September 2019 meeting:

That Council approve that Section 18.03 of the College Bylaws be amended by deletion and renumbered as follows:

~~18.03(a) Notwithstanding subsection 18.02, any publication of a decision, finding or order of a panel of the Discipline Committee, whether pursuant to section 30(5), paragraph 3 or otherwise, shall be subject to the approval of the panel of the committee that heard and determined the matter.~~

~~18.03 (b) Where there is a dissenting opinion prepared by a member of the panel and the decision, finding or order of the committee is to be published, in detail or summary, any publication will include the dissenting opinion. , and the publication shall be subject to the approval of the member of the panel who prepared the dissenting opinion.~~

At its meeting on November 23, 2018, the Discipline Committee considered an amendment to the College bylaws regarding the publication of decision summaries in *Professionally Speaking/Pour parler profession*. The proposed bylaw amendment, as outlined in the attached briefing note, was subsequently recommended by the committee.

Michael Salvatori, OCT

Issue Sheet:

Issue:

Amending Section 18 of the College's Bylaws regarding College Publication.

Background:

Bylaw 18 applies to the College's official publication, *Professionally Speaking/Pour parler profession [PS/Ppp]*, which is published quarterly. Bylaw 18.03 requires a panel of the Discipline Committee [DC] to approve a summary of its decision before the summary is published in *PS/Ppp*. The current bylaw states:

18.03

- a. Notwithstanding subsection 18.02, any publication of a decision, finding or order of a panel of the Discipline Committee, whether pursuant to section 30(5), paragraph 3 or otherwise, shall be subject to the approval of the panel of the committee that heard and determined the matter.
- b. Where there is a dissenting opinion prepared by a member of the panel and the decision, finding or order of the committee is to be published, in detail or summary, any publication will include the dissenting opinion, and the publication shall be subject to the approval of the member of the panel who prepared the dissenting opinion.

Considerations:

As a result of recent amendments to the College's Act, publication of DC decisions on the College's website and publication of summaries of DC decisions and reasons in *PS/Ppp*, the College's official publication, is mandatory.

Summaries of DC decisions are prepared and published in accordance with the College's commitment to carrying out its regulatory activities transparently and accountably. The summaries also have educative value for both College members and members of the public.

Currently, Communications staff prepare decision summaries, which are then subject to an internal review process to ensure that they are accurate and prepared in a timely manner for inclusion in *PS/Ppp*, and the summaries are then reviewed by the panel of the DC that presided.

Given the increase in the number of decisions for which summaries must now be prepared, it is no longer efficient for the DC panel members to approve all summaries prior to their publication.

Further, because the panel has fulfilled its obligations under the Act by issuing its decision and is no longer constituted (i.e. the panel is *functus officio*) it is more appropriate to remove the Discipline Committee panel from the review process.

Another concern relates to the possibility that the panel could be seen as writing a second decision, which increases the risk of judicial review.

It is important to note that in addition to requiring DC panels to approve decision summaries, section 18.03(b) of the College's bylaws also requires that any dissenting reasons be published. While the reference to a "decision" in section 18.03(b) presumably refers to the entire decision, including any dissent, it may be preferable to preserve the portion of the bylaw requiring publication of a summary of the dissenting reasons, which could also be added to the summary text by College staff. However, there is no need to refer to the requirement to publish summaries of the DC decisions in *PS/Ppp* in section 18 of the Bylaws given that this is now required by the College's Act.

Recommendation:

That the Discipline Committee recommend:

That Council approve that Section 18.03 of the College Bylaws be amended by deletion and renumbered as follows:

~~**18.03(a) Notwithstanding subsection 18.02, any publication of a decision, finding or order of a panel of the Discipline Committee, whether pursuant to section 30(5), paragraph 3 or otherwise, shall be subject to the approval of the panel of the committee that heard and determined the matter.**~~

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