

**IN THE MATTER OF A COMPLAINT PURSUANT TO THE CANADIAN  
INTERNET REGISTRATION AUTHORITY (“CIRA”) DOMAIN NAME  
DISPUTE RESOLUTION POLICY (“POLICY”)**

**Complainant:** Canada Safety Council  
**Complainant’s Counsel:** Paul W. Donovan  
 Perley-Robertson, Hill & McDougall LLP  
 Ottawa ON  
**Registrant:** 3032102 Nova Scotia Ltd. *dba* Momentum IT Group Inc.  
 Halifax NS  
**Disputed Domain Name:** nationalsafetycouncils.ca  
**Registrar:** DomainsAtCost Corp.  
**Panel:** Sharon Groom, Jay Josefo, Denis Magnusson (chair)  
**Service Provider:** Resolution Canada

**DECISION**

**Parties**

The Complainant is the Canada Safety Council, a non-profit corporation with its head office in Ottawa Ontario. The Registrant is 3032102 Nova Scotia Ltd., doing business as Momentum IT Group Inc. of Halifax Nova Scotia.

**Disputed Domain Name and Registrar**

The disputed domain name is [nationalsafetycouncils.ca](http://nationalsafetycouncils.ca), registered on October 24, 2005. The current Registrar is DomainsAtCost Corp.

**Procedural History**

The Complainant filed this Complaint with the Provider, Resolution Canada who found the Complaint in compliance with the CIRA *Domain Name Dispute Resolution Rules* (“Rules”) and transmitted it to the Registrant.

The Registrant filed a Response.

The Provider appointed the undersigned Sharon Groom, Jay Josefo and Denis N. Magnusson (chair) as the Panel to decide this matter.

**Relief Requested**

The Complainant requested that the Panel order that the ownership of the domain name be transferred from the Registrant to the Complainant.

The Response may be viewed as requesting that the Panel find, under Policy 4.6, that the Complaint was submitted unfairly and without colour of right in an attempt to secure a transfer of the disputed domain name. Under CIRA Domain Name Dispute Resolution Policy (“Policy”) 4.6, such a finding would entitle the Registrant to an award of costs. The Complainant disputes that the Response makes any such request.

### **The Complainant**

The Complainant is a non-profit charitable organization whose mission is to reduce preventable deaths, injuries and economic loss in Canada by providing safety information, education and awareness with regard to “farm safety, summer safety, road safety, school safety, community safety and crime prevention, seniors’ safety, home fire safety and safe driving”<sup>1</sup>. The Complainant has operated for more than 40 years. The Complainant’s head office is located in Ottawa. The Complaint describes the Complainant’s “main website” as located at **www.safety-council.org**.

On November 25, 1993 the Complainant, as a “public authority” recognized under *Trade-marks Act* s.9(1)(n), filed requests with the Canadian Intellectual Property Office (“CIPO”) under *Trade-marks Act*, s. 9(1)(n)(iii) that public notice be given of the Complainant’s adoption and use of the marks CANADA’S NATIONAL SAFETY COUNCIL and CANADA SAFETY COUNCIL. The CIPO gave such public notice on March 30, 1994. After the publication of such notice, and without further steps, the *Trade-marks Act*, s. 9(1) prohibited any person [other than the Complainant] from adopting “. . . in connection with a business, as a trade-mark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be mistaken for . . . “ the two marks of which public notice had been given.

### **The Registrant**

The Registrant is 3032102 Nova Scotia Ltd., doing business as Momentum IT Group Inc. of Halifax, Nova Scotia. The Registrant is an e-learning company that provides services to health and safety organizations in Canada. The Response notes that the Registrant’s only business is to operate online training on behalf of its NGO and not-for-profit clients. Those clients include St. John Ambulance in seven provinces and territories, Saint John Ambulance National Head Office, Safe Communities Canada<sup>2</sup>, Passport to Safety<sup>3</sup>, Safety Services Canada<sup>4</sup> and four provincial safety councils.

### **Background**

The Response states that the Registrant has used the disputed domain name [nationalsafetycouncils.ca](http://nationalsafetycouncils.ca) since 2006 “in search optimization strategies”. It states that the domain name in use has always resolved to the website at the “main URL”, [www.provincialcouncils.ca](http://www.provincialcouncils.ca).

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<sup>1</sup> <http://safety-council.org/about/>

<sup>2</sup> “A national charitable organization dedicated to helping communities . . . reduce the pain and cost of injury and promote a culture of safety for all their citizens. . . . Safe Communities Canada has also been accredited as an International Safe Community Certifying Centre by The World Health Organization’s Collaborating Center for Community Safety Promotion.”

<http://www.safecommunities.ca/aboutsafecommunities.php>

<sup>3</sup> “Not-for-profit, cross-Canada catalyst for change intended to help eliminate needless injuries and preventable deaths of Canadians . . . People challenge a Passport to Safety “test”, based on learning outcomes developed by health and safety curriculum experts from most provincial and territorial jurisdictions across Canada. Successful participants are awarded a “transcript” that can be attached to resumés to demonstrate their basic awareness of health and safety.”

<http://www.passporttosafety.com/newInfo/AboutUs.php>

<sup>4</sup> “Safety Services Canada is Canada’s not-for-profit safety service provider, offering seamless, nationwide training and education [to employers] that reduces injuries, manages risk and improves the overall health and wellness of workers and workplace environments.”

[http://www.safetyservicescanada.com/home\\_02484a9d624945a9aae1cbdb9e37bf4e.aspx](http://www.safetyservicescanada.com/home_02484a9d624945a9aae1cbdb9e37bf4e.aspx)

The Registrant operates the website at the latter URL for its client, the Canadian Association of Provincial Safety Councils (“CAPSC”), an organization comprised of 8 provincial safety councils that now also operates under the “brand” Safety Services Canada.

The Complaint states that the Complainant first became aware of the disputed domain name in January 2009. The Complainant contacted the Registrant asking that ownership of the disputed domain name be transferred to the Complainant. Some correspondence was exchanged with the Registrant and with CAPSC. This correspondence included an offer from the Complainant to exchange ownership of the disputed domain name for ownership of the domain name [provincialsafetycouncils.ca](http://provincialsafetycouncils.ca), a domain name that the Complainant had recently registered and which it saw as “a much more appropriate domain name given the members of your association [that is CAPSC]”. These exchanges did not result in the ownership of the domain name being transferred to the Complainant.

The Response states that the Registrant first became aware that its registration of the domain name was “contentious” in 2009, presumably from a demand letter dated February 26, 2009 sent by the Complainant to the Registrant. The Response stated that the disputed domain name has always been used by it so that persons accessing the domain name would be connected to website for the CAPSC at [www.provincialcouncils.ca](http://www.provincialcouncils.ca). The Response states that CAPSC “now operates under the brand ‘Safety Services Canada’, a national safety organization”. The Response states that the Registrant has used the disputed domain name “on and off in Search engine optimization strategies” and, further, that the Registrant is undecided as to whether it will renew its registration of the disputed domain name when its current registration expires in the fall of 2009. Its decision on renewal would turn on it being “satisfied that existing customers have not book marked the URL and that it is not indexed in any search engine”.

### **Onus on Complainant**

*Policy 4.1* requires that:

the Complainant must prove, on a balance of probabilities, that:

- (a) the Registrant’s dot-ca domain name is Confusingly Similar to a Mark in which the Complainant had Rights prior to the date of registration of the domain name and continues to have such Rights; and
  - (b) the Registrant has registered the domain name in bad faith as described in paragraph 3.7; and the Complainant must provide some evidence that:
  - (c) the Registrant has no legitimate interest in the domain name as described in paragraph 3.6.
- [Emphases added]

#### **(a) Confusingly Similar**

##### **Marks in Which Complainant Had and Has Rights**

*Policy 3.2(d)* defines “Mark” as to include

“the alphanumeric and punctuation elements of any badge, crest, emblem or mark in respect of which the Registrar of Trade-marks has given public notice of adoption and use pursuant to paragraph 9(1)(n) of the *Trade-marks Act* (Canada)”.

Such notice has been given with respect to the Complainant's marks CANADA'S NATIONAL SAFETY COUNCIL and CANADA SAFETY COUNCIL. Policy 3.3 states that a person (the Complainant) has "Rights" in such Marks as defined in "paragraph 3.2(d), [when such] public notice of adoption and use was given at the request of that person". Such notice was first given March 30, 1994 at which time the Complainant's Rights in these Marks arose. Nothing has transpired to alter those Rights in those Marks to the date of the Complaint.

The Response indicates an understandable misapprehension about the nature of the Complainant's Rights in its Marks. The misapprehension is understandable as the Complainant's Rights to its Marks accrue under s. 9(1)(n) of the *Trade-marks Act*. Section 9 fits awkwardly in the *Trade-marks Act* in many respects (the marks under s. 9 are not trademarks but a special category of "prohibited marks"). One such awkward respect is the incongruence of terminology which arises from the subsuming of requests by "public authorities" under s. 9(1)(n) to publish notices of marks that have been adopted and used by such authorities into the CIPO trademarks database system without that system being specially adapted for such s. 9 marks.

The Registrant clearly understands the processes for registration of trademarks (the Complainant's Marks *not* being trademarks but s. 9 prohibited marks) – an application to register a trademark is examined for being *prima facie* registrable and if found so is then "advertised"<sup>5</sup> to give persons interested an opportunity to oppose the registration. Only if the opposition process is successfully transacted will the applied-for trademark be registered.

The Complainant's Rights in its Marks stem not from such a trademark registration but rather from the special processes of a s. 9(1)(n) prohibited mark request. On receipt of such request the Registrar of Trade-marks is required to give "public notice" of the adoption and use of such mark by the public authority (the Complainant in this instance). As soon as such public notice is given, the legal Rights of the public authority to the Mark arise. There is no process of opposition and later registration for such prohibited marks.

The CIPO trademarks database is designed for the far more numerous trademarks and not for the much more infrequent s. 9 prohibited marks. Thus, the standard form trademarks database entry has a space for "advertised", this being a necessary step in the registration process for a trademark. To accommodate s. 9 prohibited marks within the CIPO trademarks database, the practise is to conflate the s. 9(1)(n) requirement of "public notice" with the CIPO database space for "advertised". Thus prohibited marks for which a s. 9(1)(n) request for public notice has been filed with the Registrar of Trade-marks appear in the CIPO trademarks database as "advertised" – that being seen as the equivalent of making "public notice". For a s. 9(1)(n) prohibited mark, unlike for an ordinary trademark application, no further steps are necessary to secure exclusive rights after such "advertisement" or notice.

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<sup>5</sup> *Trade-marks Act*, s. 37(1) provides that if the Registrar of Trade-marks concludes that an applied-for trademark is *prima facie* registrable and that the applicant is *prima facie* the person entitled to register, the Registrar "... shall cause the application to be advertised in the manner prescribed" [emphasis added]

### **Confusingly Similar**

Policy 3.4 defines “Confusingly Similar”:

A domain name is Confusingly Similar to a Mark if the domain name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark.

In assessing similarity, the “dot-ca” suffix of the domain name is ignored, Policy 1.2, thus the disputed domain name for the Confusingly Similar test is:

nationalsafetycouncils

The Complainant has pointed to two of its Marks, both prohibited marks protected under s. 9(1)(n):

Canada’s National Safety Council, and  
Canada Safety Council

Both of these Complainant’s Marks feature the word “Canada” which does not appear in the disputed domain name, but the first of the above Marks, CANADA’S NATIONAL SAFETY COUNCIL, alone includes the word “national” which does appear in the disputed domain name, along with the two other common words “safety” and “council”. Thus, the Panel concludes that the Complainant’s claim for Confusingly Similar is strongest with respect to its Mark CANADA’S NATIONAL SAFETY COUNCIL, and the Panel will focus on that Mark for the Confusingly Similar test.

The Response notes that the Complainant does not appear to have used the Mark Canada’s National Safety Council to any discoverable extent. If the Complainant had been relying on a Mark which was a common law trademark, rights to which stem from actual use of the trademark, this lack of use would be highly relevant to determining what Rights the Complainant has in such Mark. If the Complainant had been relying on a Mark which was a trademark registered under the *Trade-marks Act*, such non-use could affect the Complainant’s legal right to such trademark<sup>6</sup>, though the scope for considering the legal effect of such non-use of a registered trademark under the Policy is uncertain. However, the Complainant’s Mark is a *Trade-marks Act* s. 9(1) “prohibited mark”. There is no provision in the trademarks law or in the Policy for terminating or otherwise restricting the rights in such mark on the basis of non-use. Thus, the Complainant’s non-use of such Mark is irrelevant to assessing the scope of its Rights in such Mark under the Policy.

The disputed domain name duplicates exactly the last 75% of the Complainant’s Mark except for the spaces and pluralisation of the final word. Earlier CIRA domain name dispute resolution decisions have ruled that differences in spacing, pluralisation and capitalization between a Complainant’s Mark and a Registrant’s domain name will usually be of little weight in assessing “Confusingly Similar”. The Panel agrees.

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<sup>6</sup> Non-use can contribute to a registered trademark becoming not distinctive or abandoned, which could make the trademark registration invalid under Trade-marks Act, s. 18(1). However, the trademark remains on the Trade-marks Register unless and until a Federal Court process to expunge the registration is commenced and concluded under Trade-marks Act, s. 57(1). Under s. 45 of the Trade-marks Act the Registrar or any person interested can challenge the validity of a registration on the basis of non-use of the trademark. However, the trademark remains on the Register unless and until a s. 45 procedure is commenced and completed.

The Complainant's Mark includes the word "Canada's" which does not appear in the disputed domain name. Is this sufficient for it to be not likely that the domain name would be mistaken for the Mark? The Policy requires us to consider Confusingly Similar apart from the dot ca suffix of the domain name in use. This does not preclude the Panel from considering that issues of Confusingly Similar necessarily occur within the context of a top level domain in which domain name registrations are limited to persons with a Canadian presence<sup>7</sup>. Thus, the national context in which the disputed domain name nationalsafetycouncils appears is a Canadian national context. One dictionary definition of the word "national" is "of or pertaining to a nation or country . . .". Thus, when the word "national" is encountered, a natural question is, which country is referred to by the particular use of "national". When "national" is used in a domain name in the top level dot-ca domain the expected answer is "Canada". Policy 3.4, in defining Confusingly Similar, directs Panels to consider "ideas suggested" by the Mark and the disputed domain name. The disputed domain name nationalsafetycouncils, used in the dot-ca top level domain, suggests the same idea as the Complainant's Mark Canada's National Safety Council.

The Panel concludes that the disputed domain name is Confusingly Similar to the Mark Canada's National Safety Council in which the Complainant had and has Rights.

#### **b) Bad Faith**

Policy 3.7 has a restrictive definition of what can constitute the Registrant's necessary Bad Faith in registering the domain name. That definition states that there will be Bad Faith, "*if, and only if*" one or more of three specific circumstances obtain. The Complainant submitted that the Registrant had registered the domain name in Bad Faith in the sense of Policy 3.7(c):

"the Registrant registered the domain name . . . primarily for the purpose of disrupting the business of the Complainant, . . . who is a competitor of the Registrant".

#### **Competitor**

Are the Registrant and Complainant competitors?

For this purpose we must conflate the Registrant Momentum IT Group Inc. and the institutions, members of CAPSC (Canadian Association of Provincial Safety Councils) and the Association itself, featured at the website with which the Registrant uses the disputed domain name. Both the Complaint and the Response proceeded on this basis.

The Response submits that the Complainant and the CAPSC institutions are not competitors. The Response theory is that the website associated with the disputed domain name is used as a portal for selling only on-line training programs in the field of workplace safety. The Response further notes that the Complainant sells no training courses in this field and so concludes that there is no competition. However, the Complainant does feature free-to-access information on some workplace safety issues at its website under the heading "Workplace Safety".

Further, the Complainant and the CAPSC members are competitors in the broad sense that they are both non-profit institutions promoting safety among the Canadian public. Both the

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<sup>7</sup> CIRA POLICIES, RULES, AND PROCEDURES Canadian Presence Requirements For Registrants Version 1.3. <http://www.cira.ca/assets/Documents/Legal/Registrants/CPR.pdf>

Complainant and the members of CAPSC support their work financially by selling memberships and some training courses, including courses made available online. At the website associated with the disputed domain name there are links to each of the provincial member councils of the CAPSC. All of those websites invite the purchase of memberships and some expressly invite donations. The main website of the Complainant also offers memberships for sale and invites donations.

The Response states that in *selling* safety training courses there is some tendency for the members of CAPSC and the Complainant not to overlap. In particular, a number of the members of CAPSC are active in workplace safety education for sale, a field to which the website associated with the disputed domain name is devoted. The Complainant appears not to offer workplace safety courses for sale, though it does offer free-to-access workplace safety information on its website.

However, some members of CAPSC are active in driver education including the direct or indirect sale of driver education courses. This is an area of focus of the Complainant and the Complainant's website has links to the sale of a driver education course.

In summary, based on the evidence before us, we conclude that the Complainant and the members of CAPSC are competitors. They compete in the sale of memberships and donations to support their safety education work in Canada.<sup>8</sup> While the Complainant does not offer workplace safety courses for sale in direct competition with those offered by the members of CAPSC at the website at issue, the Complainant does offer workplace safety education and includes workplace safety as one of the areas of its general activity. Particularly in attracting members and donations there is a form of competition in serving the workplace safety "market" as the public faces a possible choice between CAPSC's courses-for-sale method and the Complainant's free-to-access information method supported by donations.

### **Disrupting the Business of the Complainant**

The Respondent's use of the domain name Confusingly Similar to the Complainant's Mark can have an effect of disrupting the business of the Complainant. If a member of the public were searching for the on-line presence of a Canadian national safety council which that member of the public was prepared to support financially, the Registrant's use of the disputed domain name could likely result in that person finding the CAPSC site. From there the member of the public might connect to a provincial council and choose to support the national effort through a membership and/or donation to that provincial council. The Response makes the point that the provincial council members, through CAPSC, are participating in a "national" effort. Such member of the public might do so without ever learning of the existence of the Complainant.

The Response indicates that during three years of use of the domain name the Registrant has not been made aware of any member of the public finding the Registrant's website when that member of the public was looking for a website of the Complainant. This overlooks the

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<sup>8</sup> Of course, members of the public might see good reason to be a member of both the Complainant national agency and of their local provincial agency and for those persons there may be no competition. However, some other members of the public may be motivated to offer just *some* support to safety education and may face a choice between supporting the Complainant or one of the members of the CAPSC.

disruption to the Complainant's business by persons who have no specific knowledge of the Complainant but who are looking on the web for *a* Canadian national safety organization and are taken by the Registrant's use of the domain name to the CAPSC website. As that would happen through the Registrant's use of a domain name which the Panel has concluded is Confusingly Similar to a Mark of the Complainant, such domain registration disrupts the business of the Complainant.

#### **Primarily for the Purpose . . .**

Policy 3.7 requires the Panel to find Registrant registered the disputed domain name primarily for the purpose of disrupting the business of the Complainant competitor.

The Registrant was founded in 1999. By the time it registered the disputed domain name in 2005, it appears to have had a well-established business working with provincial safety councils in Canada. The Panel finds it reasonable to infer that the Registrant was well-informed about the Canadian landscape of not-for-profit safety organizations at the time it registered the disputed domain name. We infer that the Registrant was then aware of the existence of the Complainant. The Response does not suggest otherwise.

The Response indicates that beginning in 2006 the domain name was adopted and used as part of "search engine optimization strategies". By this we infer that the Registrant sought to maximize the chances that persons searching the Internet for safety agencies in Canada operating on a national scope would first or early come upon the Registrant's CAPSC website. It appears that this was part of a strategy of making the combination of provincial safety councils, CAPSC, a national safety presence. The adoption of the "brand" for CAPSC, Safety Services Canada, which appears prominently at the top of the website associated with the disputed domain name, and which the Response expressly states denominates "a national safety organization" appears to have been part of such a strategy. This puts the Registrant in the same space as, and obvious possible conflict with, the Complainant's business model.

The Registrant sought to occupy, through the disputed domain name and web search engines, the chief space on the web for a *national* Canadian safety council, knowing this space was at least notionally occupied by the Complainant. Under the Policy test of Bad Faith it does not matter if the Registrant was successful in its objective, but only that this was its objective.

Policy 4.1 provides that the onus of proof in a Complaint is on the Complainant to the standard of a balance of probabilities. On that balance, the Panel concludes that the Registrant should be seen as registering primarily for the purpose of disrupting the Complainant's business.

#### **c) Legitimate Interest**

Under Policy 4.1(c) the Complainant has the burden of providing some evidence that "the Registrant has no legitimate interest in the domain name as described in paragraph 3.6". Policy 4.1 further provides that if the Complainant has proved Confusingly Similar and Bad Faith, and provided some evidence that the Registrant does not have a Legitimate Interest, the Registrant can still prevail, "if the Registrant proves, on a balance of probabilities, that the Registrant has a legitimate interest in the domain name as described in paragraph 3.6". Paragraph 3.6 stipulates

that the Registrant has a Legitimate Interest in a domain name “if, and only if” the Registrant has one or more of the six specific interests set out in Policy 3.6.

Below we set out our consideration of each of the interests set out in Policy 3.6.

**3.6 Legitimate Interests.** The Registrant has a legitimate interest in a domain name if, and only if, before the receipt by the Registrant of notice from or on behalf of the Complainant that a Complaint was submitted:

(a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;

Even if the Registrant’s use of the disputed domain name can be regarded as a Mark (e.g. as a common law trademark used by the Registrant), if we are right that the disputed domain name is likely to be mistaken for the Complainant’s s. 9(1)(n) prohibited mark, the Registrant could acquire no Rights in such Mark as the Complainant’s *Trade-marks Act*, s. 9 rights would trump any trademark rights later otherwise acquired through use of the domain name as a common law trademark.

(b) the Registrant used the domain name in Canada in good faith in association with any wares, services or business and the domain name was clearly descriptive in Canada in the English or French language of: (i) the character or quality of the wares, services or business; (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or (iii) the place of origin of the wares, services or business;

The domain name is national safety councils and it is used<sup>9</sup> in association with a website for “Canadian Association of Provincial Safety Councils Online Training Portal”. The Response submits that the Registrant’s use is clearly descriptive of the character of the services or businesses offered at the website.

The Response notes that in the domain name “councils” is plural, reflecting that the website features more than one safety council. The Response further notes that the website is for the Canadian Association of Provincial Safety Councils (CAPSC) which is a “national” association of provincial safety councils. The Response notes that CAPSC does amalgamate some services and does create some national consistency in services among the provincial safety councils.

However, in the disputed domain name national safety councils “national” is used as an adjective modifying “councils” (plural). The plain and literal reading of the domain name is as a name pointing to more than one “national” council. A dictionary definition of “national” is: “*adj.* Of or pertaining to a nation or country, esp. as a whole; affecting or shared by the whole nation”. The “councils” (plural) at the web site do not meet the test of each being “national”<sup>10</sup>. The Response notes that “national” can be used as a noun. Had the domain name been in the form: safety councils national it could have been argued that “national” was being used as a noun. But that was not the form of the disputed domain name.

Policy 3.6(b) requires that the domain name be “*clearly* descriptive” of the services or business at the website. The “clearly descriptive” terminology would seem to have been copied from the

<sup>9</sup> The Policy provides that “In paragraphs 3.6 (b), (c), and (d) “use” by the Registrants includes, but is not limited to, use to identify a web site”.

<sup>10</sup> *Canadian Oxford Dictionary*, 2<sup>nd</sup> Ed.

*Trade-marks Act*, s. 12(1)(b). In that context the courts have ruled that “clearly descriptive” does not mean necessarily accurately descriptive of the goods or services, but readily understood as descriptive of such goods or services by ordinary consumers. This interpretation of “clearly descriptive” cannot be applied to Policy 3.6(b) as it makes no good policy sense in the very different context of an exception to the right of an owner of a Mark to prevent the Respondent’s use of a domain name which has already been found Confusingly Similar with that Mark. This is confirmed by the requirement in Policy 3.6(b) that the Registrant’s use be “bona fide”. Policy 3.6(b) must be read as requiring the Respondents use to be clearly (readily understood as) *and actually* (bona fide use) descriptive of the character of the services or businesses at the Registrant’s website. The disputed domain name national safety councils is not actually descriptive of the several provincial councils composing the Canadian Association of Provincial Safety Councils nor of the association itself.

(c) the Registrant used the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language; Consideration of this exception in this case largely duplicates the consideration above of clearly descriptive.

(d) the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting; The Registrant uses the domain name in association with a website that features not-for-profit agencies. It seems that the Registrant itself [Momentum IT Group Inc.], which develops courses for those not-for-profit agencies is a for-profit enterprise (and would appear to make its services available on a for-profit basis to other for-profit enterprises). That may be enough to take the Registrant’s use outside “non-commercial” category. In any case, for the reasons set out in considering Policy 3.6(b), above, the Registrant’s use cannot be considered “bona fide”.

(e) the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or Does not apply. There is no evidence that the Registrant (or CAPSC) was commonly identified as “national safety councils”.

(f) the domain name was the geographical name of the location of the Registrant’s non-commercial activity or place of business. The disputed domain name is not a geographical name.

### **Claim for Bad Faith Complaint**

The Provider anticipated that the Panel might interpret the Response as making a claim for an award of its costs against the Complainant under Policy 4.6 in that

the Complaint was commenced by the Complainant for the purpose of attempting, unfairly and without colour of right, to cancel or obtain a transfer of any Registration which is the subject of the Proceeding

While the Response does not expressly address a claim under Policy 4.6, the Panel agrees that it was wise for the Provider to anticipate that a Panel might so interpret the Response. That was important as such claim triggers the right of the Complainant under Rules 11.1 to file a reply to such a claim. The Provider served notice on the Complainant of its right to file such a reply and the Complainant did file such reply.

The Complainant's reply first disputed that the Response actually did make a claim for costs and then offered responses to such a claim should the Panel conclude that such claim had been made.

Such claim could apply only if the Registrant had been successful in defending the Complaint. The Panel has not ruled in favour of the Registrant and so this claim cannot apply.

Nevertheless, the Panel offers these comments on the claim. Such claim can succeed only if the Registrant can show that the Complaint was launched without colour of right. As the Complainant had Rights in the Mark Canada's National Safety Council it was reasonable for the Complainant to think that it might have a good claim against the Registrant's registration of the domain name national safety councils. This establishes a colour of right. Thus the claim under Policy 4.6 would have to have been denied even if the Registrant had prevailed in the Complaint.

### **DECISION AND ORDER**

The Complaint succeeds. The Panel orders the ownership of the disputed domain nationalsafetycouncils.ca to be transferred to the Complainant.

October 8, 2009

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Sharon Groom

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Jay Josefo

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Denis Magnusson (Chair)