

BY-LAW 13 AND 15 - PRINCIPLES

This document outlines the guiding principles that were used to create the draft wording of By-Law 13: Code of Ethics, and By-Law 15: Complaints and Discipline. The principles were created by first going through the current By-Laws and determining *what* they were trying to achieve at the highest level. Edits were then made by the By-Law Review Committee to determine what the By-Laws *should* be trying to achieve, which was guided in a large part by the feedback given by members at member engagement sessions. These principles were then used by legal counsel to determine the wording of the proposed By-Laws.

CODE OF ETHICS

- The Code of Ethics should be approved by membership through the by-laws
- The Code of Ethics should avoid code of conduct elements; prescriptive elements relating to conduct should be established through practice notes and guidelines
- Further interpretation of the Code of Ethics is within council's jurisdiction
- Council may publish documents that further define the Code of Ethics
 - o Members are responsible for being aware of and follow these documents

COMPLAINTS AND DISCIPLINE

- Anyone who has a conflict of interest should remove themselves from the investigations, disciplinary hearings, and appeals of the Investigations Committee (IC)
- The registrar acts as liaison between the IC, the Disciplinary Committee (DC), and the complainant or investigated person, but are removed from the decisions making process
- Council is responsible for the operations of the IC
- The registrar provides complaints to both the Staff Investigator and IC upon receipt
- Staff Investigator gathers information and creates information package for the IC as per Council defined process
- The Staff Investigator can hire experts as defined by Council process
- The IC may request that the Staff Investigator cease investigating or request that the Staff Investigator obtain additional information
- The IC is responsible for ensuring that the Staff Investigator followed the Council process and for the final decision
- The IC as a whole makes the decisions referred to in the Act
- The IC can investigate matters beyond the original complaint
- The IC can offer advice to practitioners or prepare practice notes on questions of proper professional conduct and shall prepare or cause to be prepared reports to council
- The IC will notify an investigated person when a decision to investigate is made (not when a complaint is made)
- The IC will communicate with the complainant about the investigation process
 - o The IC will notify a complainant if they choose to investigate, or dismiss, and the results of the investigation
- The IC may issue formal cautions
 - o Appear as a note on the file
 - o If the formal caution is not accepted by the investigated person then a charge is forwarded to the DC
 - o Formal cautions are confidential, but complainants are notified of a formal caution

- Where the IC accepts a voluntary withdrawal, they will ensure that if the practitioner re-applies, the matter is properly considered
- Charges, once laid, are public
- Any complaint, decision, or other information will be recorded and retained on file, but access to that file shall be limited to appropriate parties for specific circumstances.
- A practitioner can apply to have their record after 10 years, but the private record will remain in the file.
- Other Canadian regulators shall be notified of disciplinary actions taken by the Association (15.10)
- Penalty proposals
 - o If the IC wants to register a conviction and impose a penalty, they must be approved by the DC
 - o The IC can publish decisions if the investigated person agrees to a publication
 - o The investigated person can propose changes to the penalty proposal (the complainant cannot)
 - o If the penalty proposal is not agreed upon, a charge is forwarded to the DC
- After completing its review or investigation, the investigation committee shall direct the registrar to give to the investigated person and to the complainant a notice setting out the action taken by the investigation committee under sub-section 35 (1) of the Act together with the rights of appeal provided under the Act and the requirement for the complainant to provide reasons for appeal pursuant to section 15.4.1 of the by-law.
- Decisions of the IC will be communicated to Council, as long as no appeals are in process
- Appeals of dismissal by the IC
 - o Appeals must include the reason for the appeal
 - o Appeals are on the record BUT Council can receive new evidence
 - o The complainant and investigated person can make written submissions during an appeal
 - o Additionally, council may allow oral submissions
 - o Investigated person and complainant have the right to know the outcome of appeals
- The Disciplinary Committee (DC)
 - o Council is responsible for managing the members of the committee
 - o Hearings before the DC must start within 120 days and the investigated person and complainant must have 30 days' notice before the start of a hearing
 - o The IC acts as prosecutor
 - o The DC is not bound by the rules of law concerning evidence
 - o Hearings can be adjourned
 - o The DC reports its decisions to Council, the investigated person, and complainant
 - o Decisions are public
- Appeal of hearing decisions and orders
 - o An appeal may be made by the investigated person or the complainant (and not by the IC)
 - o Appeals require a cash deposit and reasons
 - o Council is responsible for reviewing appeals
 - o Appeals before the DC must start within 90 days, and the investigated person and complainant must have 30 days' notice before the start of an appeal
 - o Appeals are on the record BUT Council can hear new evidence
 - o Appeal hearings may be adjourned
 - o The complainant, investigated person, and the DC are notified of decision of Council