

DISCIPLINE POLICY AND PROCEDURE

Approved April 13, 2017

PART 1. PREAMBLE

- 1.1 A Member shall be familiar with and comply with the Corporation's Articles, By-laws, Code of Conduct and Ethics, Membership Policy, and other policies established or adopted by the Board from time to time. In addition, when accessing and publishing on the IMMForum, a Member shall be familiar with and comply with the IMMForum Terms of Use.
- 1.2 A Member who fails to comply with the Corporation's Articles, By-laws, Code of Conduct and Ethics, Membership Policy, IMMForum Terms of Use, and other policies established or adopted by the Board from time to time will be subject to disciplinary proceedings and may have his or her membership in the Corporation terminated and/or other sanctions imposed.
- 1.3 The Corporation appreciates that it has a duty to ensure that a Member who is the subject of discipline proceedings is provided with adequate notice of the allegations, a full opportunity to respond, and a decision maker who is free of a Conflict of Interest, Actual bias or Apparent bias.

PART 2. INTERPRETATION

- 2.1 The interpretation of this Discipline Policy and Procedure shall be consistent with the By-laws in force at the time of the conduct at issue, unless the context otherwise requires.
- 2.2 If there are any inconsistencies between this Discipline Policy and Procedure and the By-laws, the By-laws govern.
- 2.3 The terms used in this Discipline Policy and Procedure have the same meaning as the terms used in the By-laws.
- 2.4 In this Discipline Policy and Procedure:
 - (a) "**Act**" means the *Canada Not-for-profit Corporations Act* S.C. 2009, c.23 including the regulations made pursuant to the Act, and any statute or regulations that may be substituted, as amended from time to time;

- (b) **“Actual bias”** means the existence of a state of mind on the part of a decision maker which results in the inability to decide the matter impartially and without prejudice to the substantial rights of the person challenged;
- (c) **“Apparent bias”** is present where a decision maker is not a party to a matter and does not have an interest in its outcome, but his or her conduct or behaviour gives rise to a suspicion that he or she is not impartial;
- (d) **“Authorized Regulator”** means:
 - (i) a body designated by the Minister pursuant to the relevant provision(s) of IRPA as the regulator of immigration consultants;
 - (ii) a body designated by the Minister pursuant to the relevant provision(s) of the *Citizenship Act* as the regulator of citizenship consultants;
 - (iii) a law society of a province or territory of Canada; or
 - (iv) the Chambre des notaires du Quebec;
- (e) **“Authorized Representative”** means Members in good standing of an Authorized Regulator;
- (f) **“Board”** means the board of directors of the Corporation;
- (g) **“By-Law”** means the By-Laws of the Corporation as amended and which are, from time to time, in force and effect;
- (h) **“Code of Conduct and Ethics”** means the Code of Conduct and Ethics established by the Board, as may be amended by the Board from time to time;
- (i) **“Conduct of Concern”** refers to concern that a Member has:
 - (i) violated any provision of the Corporation’s Articles, By-Laws, Code of Conduct and Ethics, IMMForum Terms of Use, or any policy established or adopted by the Board from time to time; or,
 - (ii) engaged in Conduct Unbecoming;
- (j) **“Conduct Unbecoming”** refers to conduct which may be detrimental to the Corporation and its Members, as determined by the Board at its total and absolute discretion;
- (k) **“Conflict of Interest”** arises when a person’s interests conflict or appear to conflict with his or her official responsibilities;
- (l) **“Corporation”** means CAPIC Canadian Association of Professional Immigration Consultants – ACCPI L’Association Canadienne des Conseillers Professionnels en Immigration;

- (m) **“De-Registered Member”** means an individual who was an Authorized Representative but who ceases to be registered with an Authorized Regulator;
- (n) **“Duty to Act Fairly”** means the Corporation’s duty to ensure that a Member who is facing potential discipline is provided with adequate notice of the allegations, a full opportunity to respond, and a decision maker(s) who is free from Actual bias or Apparent bias;
- (o) **“Full Hearing”** means a hearing at which the Responding Member attends before the Board, either in person, by phone, by videoconferencing or by other technological means to present a defence, to call witnesses and to cross-examine adverse witnesses;
- (p) **“IMMeForum”** means the Members’ discussion group bearing the name IMMeForum which is provided and administered by the Corporation as a place for Members to communicate, report information, ask questions, share ideas, and discuss practice and procedural issues in relation to immigration consulting;
- (q) **“IMMeForum Term of Use”** means the IMMeForum Terms and Conditions of Use which is published on the IMMeForum, and which is agreed to by any person accessing, browsing, or using the IMMeForum;
- (r) **“Investigator”** means one of more employee, officer or director of the Corporation, or existing or newly formed committee, or an independent third party, who is appointed by the Board to conduct an investigation into whether a Member has engaged in Conduct of Concern;
- (s) **“Member”** means a Member of the Corporation of any class defined in the By-laws;
- (t) **“Member in Good Standing”** means a Member who has paid all applicable membership fees, dues and levies owing to the Corporation, is not under disciplinary action, suspension or expulsion, and who is in compliance with the Articles, the By-Laws and all policies of the Corporation, as determined by the Board;
- (u) **“Membership Policy”** means the Membership Services Committee Policy and Procedures established by the Board, as may be amended from time to time;
- (v) **“Other Communication Platforms”** means the Corporation’s communication platforms, electronic and otherwise, including but not limited to newsletters, information bulletins, notices to members, email groups, publications appearing on the CAPIC webpage, and words spoken or otherwise published at meetings of the Corporation, and excludes Social Media Platforms and the IMMeForum;
- (w) **“President”** means the president of the Corporation, as elected by the Board from time to time;

- (x) **“Regulated International Student Immigration Advisor”** or **“RISIA”** means a person employed in the Education Sector whose job includes providing advice to students, and who is registered by the Immigration Consultants of Canada Regulatory Counsel as a **“RISIA”**;
- (y) **“Responding Member”** means a Member who may have engaged in Conduct of Concern;
- (z) **“Returning Member”** is a person whose membership has expired and who has submitted a written request to again become a Member;
- (aa) **“Social Media Platforms”** means those social media platforms of the Corporation, and includes the Corporation’s Facebook Page, LinkedIn Page, and Twitter account and following.

PART 3. DISCIPLINE PROCEDURE

- 3.1 The Board has the authority to appoint an Investigator to investigate any Conduct of Concern that comes to the Board’s attention by any means, including but not limited to by way of a Written Complaint pursuant to section 3.2.
- 3.2 A Member who has reason to believe that another Member has engaged in Conduct of Concern may submit a Written Complaint which shall:
 - (a) indicate the full name of the Member who is making the complaint;
 - (b) specify the Conduct of Concern that the Responding Member is alleged to have engaged in;
 - (c) enclose any documents or evidence in his or her possession regarding the Conduct of Concern; and,
 - (d) be addressed to the President of CAPIC and emailed to President@capic.ca and, unless informed otherwise by the President, mailed or otherwise delivered in an envelope marked confidential and addressed to the President’s attention at 245 Fairview Mall Drive, Suite 407, Toronto, ON M2J 4T1(the **“Written Complaint”**).
- 3.3 Where a Written Complaint has been received in accordance with section 3.2 herein, but the complainant is not a necessary witness or party to the complaint, the Board is at liberty to investigate or appoint an Investigator to investigate the Conduct of Concern without the involvement or naming of the Member who submitted the Written Complaint.
- 3.4 The Board may appoint one or more employee, officer or director of the Corporation, or an existing or newly formed committee, or may engage an independent third party, to conduct an investigation in to whether the Responding Member engaged in the Conduct of Concern.

- 3.5 The Board will ensure that any Investigator assigned to investigate the Conduct of Concern:
- (a) is a neutral party;
 - (b) has no personal or business connection to the Responding Member or to the Conduct of Concern;
 - (c) is free from any Actual bias or Apparent bias; and,
 - (d) is free from any Conflict of Interest.
- 3.6 If the Board concludes, either upon the information before it or on information received from the Investigator, that the Conduct of Concern:
- (a) does not in fact constitute conduct which, if proven, would be in violation of Corporation's Articles, By-laws, Code of Conduct and Ethics, Membership Policy, IMMeForum Terms of Use, or other policies established or adopted by the Board from time to time;
 - (b) is obviously trivial, frivolous, vexatious, or made in bad faith;
 - (c) does not identify the Responding Member who is alleged to have engaged in the Conduct of Concern; or,
 - (d) is anonymously submitted without any evidence to support the allegation,
- the Board may decide that no further action is warranted.
- 3.7 If the Board concludes, either upon its own investigation or on information received from the Investigator, that it would be prudent to refer the matter to the Dispute Resolution process set out in Part 7 herein, the Board may defer the matter to the Dispute Resolution process and may either delay or suspend the investigation of the Conduct of Concern, or concurrently proceed with the investigation of the Conduct of Concern.
- 3.8 Upon becoming aware of the Conduct of Concern, the Board or Board delegate may, where deemed appropriate, take the following immediate or interim measures without notice to the Responding Member:
- (a) remove or edit any publications made by the Responding Member which may be in violation of the Corporation's Articles, By-laws, Code of Conduct and Ethics, Membership Policy, IMMeForum Terms of Use, and any other policies established or adopted by the Board from time to time;
 - (b) suspend the Member's access to or ability to publish on the IMMeForum; and/or,
 - (c) suspend the Member's access to or ability to publish on the Social Media Platforms.

- 3.9 If the Board proceeds with an investigation, then the Investigator shall provide the Responding Member with a letter setting out:
- (a) the details of the Conduct of Concern, including:
 - (i) the specifics of the Respondent Member's alleged conduct, actions, or inactions that are at issue; and,
 - (ii) the specific provisions of the Corporation's Articles, By-laws, Code of Conduct and Ethics, Membership Policy, IMMeForum Terms of Use, or other policy established by the Board which the Responding Member is alleged to have violated; and/or,
 - (iii) where the Responding Member is alleged to have engaged in Conduct Unbecoming, then a description of how the alleged conduct is considered by the Board to be detrimental to the Corporation and its members.
 - (b) a copy of any Written Complaint received, unless the Board or Investigator proceeds in accordance with section 3.3 herein;
 - (c) all documents and evidence obtained by the Board or the Investigator to date that is relevant to the Conduct of Concern;
 - (d) the reasonable period of time in which the Responding Member has to respond in writing to the allegations; and,
 - (e) a request that the Responding Member provide in his or her written response the names and contact details of any witness who may have relevant evidence, and a description of what that relevant evidence may be.
- 3.10 If the Responding Member provides a written response in accordance with section 3.9 (d) and (e) herein, the Investigator shall consider the same and shall make any further inquiries that may be appropriate.
- 3.11 The Investigator may conduct interviews of the Responding Member and/or any relevant witnesses, in person, by phone, in writing, by videoconferencing or by other technological means.
- 3.12 To protect the interest of the Responding Member, confidentiality will be maintained throughout the investigation process to the full extent possible and appropriate. Only those with a need to know will be made aware that an investigation is ongoing.
- 3.13 A Responding Member or any other Member shall not obstruct an investigation performed pursuant to this Discipline Policy and Procedure, and shall not conceal, alter or destroy any document or file, electronic or otherwise, or thing which may be relevant to an investigation. In addition, proactive steps must be taken by a Responding Member to ensure that any document, electronic or otherwise, or thing which may be relevant to the investigation is preserved.

- 3.14 The Investigator shall prepare a written report to the Board which shall include a report of the relevant evidence and information obtained during the investigation and which shall exhibit all relevant documents.
- 3.15 The Investigator shall not finalize and deliver the report to the Board until the Responding Member has:
- (a) received the written notice and has had the opportunity to provide a written response in accordance with section 3.9(d) herein; and,
 - (b) been provided with the opportunity to consider and respond to any further evidence, including statements or documents obtained by the Investigator in accordance with section 3.11 herein, which are potentially adverse to the Responding Member and which may be included in the Investigator's report.
- 3.16 Once in receipt of the Investigator's report, the Board shall at a duly convened meeting:
- (a) first ensure that the following Board members recuse themselves from any discussion or decision concerning the Responding Member:
 - (i) any Board member who has been appointed or acted as an Investigator regarding the Responding Member's Conduct of Concern;
 - (ii) any Board member who has a personal or business connection to the Responding Member or the Conduct of Concern;
 - (iii) any Board member who has a Conflict of Interest;
 - (iv) any Board member who has an Actual Bias or an Apparent bias;
 - (b) consider whether the matter should be referred back to the Investigator with instructions that the Investigator obtain further evidence or information;
 - (c) consider whether the Conduct of Concern is severe enough to warrant the Board inviting the Responding Member to attend a Full Hearing. The Board shall invite a Responding Member to attend a Full Hearing where, if proven, the Conduct of Concern:
 - (i) may lead to the suspension or termination of the Responding Member;
 - (ii) is severe enough to warrant the Responding Member being order to pay a monetary penalty that exceeds \$300; or,
 - (iii) is otherwise of a serious nature and requires the Board to assess the credibility of the Responding Member and other witnesses.
- 3.17 If the Board decides in accordance with section 3.16 that the Responding Member should be invited to attend a Full Hearing, then the Board shall provide the Responding Member with at least 21 days notice of the date scheduled for the Full Hearing and

shall, together with the notice, provide the Responding Member with a copy of the Investigator's report

- 3.18 A Responding Member, even if he or she declines an invitation to attend the Full Hearing, may submit to the Board further written submissions in response to the Investigator's report, and that Board shall consider the same provided that the further submissions are received by the Board at least 14 days before the date scheduled for the Full Hearing.
- 3.19 A Responding Member invited to attend a Full Hearing shall provide the President with at least 14 days notice before the date scheduled for the Full hearing of his or her intention to attend the Full Hearing. If a Responding Member fails to provide such notice, the Board shall proceed to decide the matter at a duly convened Board meeting upon considering the Investigator's report, and any and all written submissions made by the Responding Member.
- 3.20 The Board and the Responding Member may request that other Members who have relevant evidence attend the Full Hearing in person, by phone, by videoconferencing, or by other technological means.
- 3.21 If the Board or Responding Member intends to call any witness at the Full Hearing:
 - (a) at least 10 days notice must be provided to the Board or Responding Member of the names of the witnesses to be called, and a brief description of the issues on which the witness will be providing evidence;
 - (b) where the Responding Member names a Member as a witness to be called in accordance with section 3.21(a) herein, and provides sufficient detail to satisfy the Board that the Member has relevant evidence, the Board or its delegate shall place the Member on notice that he or she is required to attend the Full Hearing;
 - (c) if the Board provides notice to a Member in accordance with section 3.21(b) herein that the Member is required to attend the Full Hearing, such notice must be received by the Member at least 7 days prior to the Full Hearing.
- 3.22 It is a violation of this Discipline Policy and Procedure for a Member to fail to attend, without an excuse deemed to be reasonable by the Board, a Full Hearing when compelled to do so in accordance with section 3.21(b) and (c) herein.
- 3.23 Relevant witnesses and the Responding Member may attend the Full Hearing in person, by phone, by videoconferencing or by other technological means.
- 3.24 The Responding Member may attend the Full Hearing with legal counsel attending in person, by phone, by videoconferencing or by other technological means.
- 3.25 The Board may employ or retain legal counsel or other assistance with respect to any discipline proceeding, investigation, Full Hearing, or other step undertaken pursuant to this Discipline Policy and Procedure.

- 3.26 The Board shall ensure that the Full Hearing is recorded.
- 3.27 If the Board determines that a Full Hearing is not necessary or appropriate, then the Board shall proceed to decide the matter based on the Investigator's report and any and all written submissions received by the Responding Member.
- 3.28 If the Board, after a Full Hearing or at a Board meeting duly convened in accordance with section 3.19 or section 3.27, determines that the Responding Member has engaged in Conduct of Concern, the Board may:
- (a) request that the Responding Member make submissions on the appropriate sanctions, or alternatively proceed to decide on the appropriate sanctions;
 - (b) issue a warning letter to the Responding Member;
 - (c) require that the Responding Member take any specified rehabilitative measures, including requiring the Responding Member to successfully complete specified professional development courses or to seek specified counselling or treatment;
 - (d) require the Responding Member to pay a monetary penalty, or the Corporation's reasonable costs of investigating and legal fees for any hearing, and specify the timing and manner of payment;
 - (e) direct that the failure to comply with the sanction shall result in the revocation of membership;
 - (f) order that the Responding Member's membership be suspended indefinitely or for a period stipulated by the Board or its delegate;
 - (g) delay the imposition of a measure under this subsection for a specified period or on specified terms, including the successful completion of specific courses of studies;
 - (h) recall the Responding Member's Membership Certificate, and terminate the Responding Member; and/or;
 - (i) make any other order that the Board considers necessary in the circumstances.
- 3.29 In the event a Member is suspended in accordance with this Discipline Policy and Procedure, the Member shall not be entitled to exercise any of the rights of being a Member of the Corporation under the By-Laws and the Act, including, but not limited to, the following:
- (a) the right to receive notice of any Members' meetings;
 - (b) the right to access the IMMForum;
 - (c) the right to participate in, either by receiving or publishing on, any Social Media Platforms or Other Communication Platforms; and,

- (d) the right to use any designation, title, term, initials or description implying that the suspended Member is a Member of the Corporation during the term of suspension.

3.30 A Member suspended for an indefinite period of time shall automatically cease to be a Member one year from the date of such Member's suspension unless a decision is made by the Board to restore the Member to good standing.

3.31 A Member suspended for a period stipulated by the Board or its delegates shall automatically resume his or her membership upon completion of the term of suspension and has complied with any other disciplinary sanction imposed.

PART 4. EFFECT OF RESIGNATION AND DE-REGISTRATION ON DISCIPLINE PROCEEDINGS

4.1 The fact that a Responding Member has either resigned from his or her membership in the Corporation or has become a De-Registered Member shall not terminate or prevent any disciplinary procedures underway or that may be commenced against the Responding Member or De-Registered Member unless the Responding Member or De-Registered Member agrees that he or she will not reapply in the future to become a Member of the Corporation.

4.2 A Member who has resigned or who has become a De-Registered Member shall remain liable for payment of any fees, assessments or other sum levied or which became payable by the Member or De-Registered Member to the Corporation prior to the effective date of his or her resignation.

PART 5. REINSTATEMENT OF SUSPENDED AND TERMINATED MEMBERS

5.1 A Member suspended for an indefinite period of time may be reinstated as a Member by a resolution of the Board passed by a 2/3 majority if the suspended Member:

- (a) submits a written request to the Board seeking reinstatement no more than twelve (12) months after the suspension took effect;
- (b) has served a duration of the suspension that is reasonably reflective of the reasons for suspension, as determined by the Board in its sole and absolute discretion;
- (c) provides a statutory declaration stating that the suspended Member agrees to abide by the Corporation's Articles, By-laws, Code of Conduct and Ethics, Membership Policy, IMMForum Terms of Use, and other policies established or adopted by the Board from time to time, and stating that he or she acknowledges and understands that any violation of same will be grounds for expulsion from the membership of the Corporation with no right to apply for reinstatement;

- (d) provides letters of support from two (2) Members in Good Standing attesting to the good character of the suspended Member and how the suspended Member will contribute to the best interests of the Corporation if reinstated;
- (e) meets the Corporation's membership criteria when applying for reinstatement; and
- (f) pays a reinstatement fee in such amount as may be set by resolution of the Board and pays any applicable membership fees.

5.2 A terminated Member may be reinstated by a resolution of the Board passed by a 2/3 majority if the terminated Member:

- (a) has not been previously reinstated after termination or a suspension that was for an indefinite period of time;
- (b) submits a written request seeking reinstatement to the Board not less than twelve (12) months after the expulsion took effect;
- (c) provides a statutory declaration stating that the terminated Member agrees to abide by the Corporation's Articles, By-laws, Code of Conduct and Ethics, Membership Policy, IMMForum Terms of Use, and other policies established or adopted by the Board or its Members from time to time and stating that he or she acknowledges and understands that any violation of same shall be grounds for permanent expulsion from the membership of the Corporation with no right to apply for reinstatement;
- (d) provides letters of support from four (4) Members in Good Standing attesting to the good character of the terminated Member and how the terminated Member will contribute to the best interests of the Corporation if reinstated;
- (e) meets the Corporation's membership criteria when applying for reinstatement; and,
- (f) pays a reinstatement fee in such amount as may be set from time to time by resolution of the Board and pays any applicable membership fees.

PART 6. RIGHT TO APPEAL A DISCIPLINE FINDING

6.1 A Responding Member who has been found by the Board to have violated any provisions of the Corporation's Articles, By-laws, Code of Conduct and Ethics, IMMForum Terms of Use, or any policy established or adopted by the Board from time to time, or to have engaged in Conduct Unbecoming may appeal the finding and/or the remedy imposed within 30 days of the written reasons being provided to the Responding Member.

6.2 An appeal brought in accordance with section 6.1 must:

- (a) be submitted in writing within 30 days of the written reasons being provided to the Responding Member;
 - (b) be addressed to the President of CAPIC and emailed to President@capic.ca and, unless informed otherwise by the President, mailed or otherwise delivered in an envelope marked confidential and addressed to the President's attention at 245 Fairview Mall Drive, Suite 407, Toronto, ON M2J 4T1
 - (c) set out the Responding Member's position with respect to how he or she says that the Board erred when reaching the adverse finding against the Responding Member; and,
 - (d) submits payment of \$300.00 for the costs incidental to the appeal.
- 6.3 Upon an appeal being provided in accordance with sections 6.1 and 6.2, the Board shall appoint an Appeal Panel which shall consist of:
- (a) a Past President who shall act as the Chair of the Appeal Panel;
 - (b) either two or four Registered Member(s) and/or Honorary Member(s) so that the total number of individuals on the Appeal Panel is either three or five members.
- 6.4 A Responding Member at the time of commencing an appeal in accordance with section 6.1 and 6.2 herein may request that the Board make available to him or her the recording of the Full Hearing. If such a request is made, the Board shall provide copies of the recording to the Responding Member provided that the Responding Member pay the reasonable costs of making the recording available. The Member shall have 21 days from the date of receiving the recording of the Full Hearing to make further submissions to the Appeal Panel.
- 6.5 The Appeal Panel shall consider all of the information before the Board, including the investigators report, all submissions by the Responding Member including further submissions made in accordance with section 6.4 herein, and if a Full Hearing was held, the Appeal Panel may listen to the recordings of the Full Hearing.
- 6.6 An appeal brought in accordance with sections 6.1 and 6.2 herein will not stay the imposition of any sanction imposed by the Board in accordance with section 3.28 herein.
- 6.7 If the appeal is denied by the Appeal Panel, then the Responding Member shall have no further right of appeal.
- 6.8 If the appeal is allowed, the Appeal Panel may decide to order that the \$300.00 payment made in accordance with section 6.2(d) herein be returned to the Responding Member.

PART 7. DISPUTE RESOLUTION

- 7.1 Unless the Board otherwise determines, the following dispute resolution process shall not be followed where there is an investigation in accordance with Part 3 of the Discipline Policy and Procedures herein regarding whether the Member engaged in Conduct of Concern.
- 7.2 Disputes or controversies among Members, Directors or Officers of the Corporation, to the extent possible, shall be resolved by discussion and negotiation amongst the parties involved, who shall make good faith efforts to resolve such disputes or controversies privately amongst themselves.
- 7.3 In the event that a disputes or controversy among Members, Directors or Officers of the Corporation is not resolved between the parties, and the dispute or controversy is determined by the Board or its delegates to be appropriate for mediation, then without prejudice to or in any other way derogating from the rights of the Members, Directors, or Officers, the parties to the dispute shall make every effort to resolve the dispute or controversy through the following mandatory dispute resolution process:
- (a) the dispute or controversy shall first be submitted to a panel of mediators whereby one party appoints one mediator, the other party (or if applicable, the Board) appoints one mediator, and the two mediators so appointed jointly appoint a third mediator;
 - (b) the number of mediators may be reduced to one or two upon agreement of the parties;
 - (c) the appointed mediator or mediators shall meet with the parties in question and attempt to mediate a resolution between the parties;
 - (d) all proceedings relating to mediation hereunder shall be kept confidential by the parties and there shall be no disclosure of any kind by any party except as may be required by law; and,
 - (e) any costs of the mediators appointed in accordance with this section shall be borne equally by the parties to the dispute or controversy.