



ALEXANDER
HOLBURN BEAUDIN
& LANG LLP

Barristers & Solicitors • Trade-mark Agents



Prevention for Professionals

Our Purpose

- Review the Authority of the Institute
- Review the Rules of Professional Conduct most frequently of concern
- Achieve an understanding of how the Discipline Process works
- Address how to best resolve a Complaint

The Act

- The *Accountants (Chartered) Act* Establishes
 - The Objects of the Institute (s. 3)
 - The ability of Council to govern through the Bylaws (s.8); and
 - Provides for the ability of the Institute to Self Regulate (s. 20 – 24.2)

Section 3 Objects of the Institute

- To promote and maintain the knowledge, skill and proficiency
- to regulate all matters relating to the practice of accounting and to enforce standards
- to represent the interests of its members and students

Common Law Objects of the Institute

- Unlike other Professions governed by legislation, the *Act* makes no specific mention of the *Protection of the Public*
- Our Courts have imposed *Protection of the Public* as the paramount objective of the Institute

The Bylaws

- 202 : Council shall make Bylaws providing for standards of professional conduct for members, students and licensed firms, which shall be designated as the *Rules of Professional Conduct*.
- *Rules of Professional Conduct* are (largely) harmonized throughout Canada

The Bylaws

- Other Bylaws Relevant to Professional Conduct include:
 - Part 6 – Practice Review And Licensing
 - Part 7 – Professional Conduct Enquiry
 - Part 8 – Discipline Tribunal
 - Part 9 - Rulings

Rules of Professional Conduct

- Seven Parts:
 - The Foreword
 - 100 – General
 - 200 – Standards Of Conduct Affecting the Public Interest
 - 300 – Relations with Fellow Members

Rules of Professional Conduct

- 400 – Organization And Conduct Of A Professional Practice
- 500– Rules Of Professional Conduct Applicable Only To Licensed Firms
- Council Interpretations

Foreword

- Rules are to be interpreted in light of the Foreword
- Rules are of application to:
 - All Members unless specific to only those in public practice
 - “Professional Services” includes services provided in private industry where people rely upon the “CA” designation

Foreword

- The Principles governing the Rules:
 - maintain the good reputation of the profession and its ability to serve the public interest
 - perform professional services with integrity and care
 - an assurance or specified auditing procedure engagement shall be and remain free of any influence

Foreword

- a duty of confidence in respect of the affairs of any client
- a member's practice shall be founded upon a reputation for professional excellence
- act in relation to any other member with the courtesy and consideration due between professional colleagues

100 - General

- 101 – Compliance with the Act, Bylaws, Rules
- 102 – Self Reporting for Certain Unlawful Conduct
- 104 – Duty to Reply in Writing to the Institute
- 105 – Duty to Cooperate

200 – Standards of Conduct

- The Overriding Rule: 201 – Act at all times in a manner which will maintain the reputation of the profession and its ability to serve the public interest
- The Balance of the 200 Rules divide between:
 - Competency
 - Integrity
 - Independence

203 Competency

- The “Negligence” rule
- A member shall sustain professional competency by keeping informed and complying with developments in professional standards in areas of practice or calling

206 Competency

- 206.1: Performance of professional services in accordance with generally accepted standards of practice
- 206.2: All financial statement presentations must be in accordance with GAAP or other requisite principles
- 206.3: As an audit committee or board member, must act with due diligence expected of a CA in the review of the financial statements

202 Integrity

- “A member, student or licensed firm shall perform professional services with integrity and due care”
- An Overriding rule: A breach of many more specific rules is also a breach of this rule

205 Integrity

- A member cannot associate with any statement, oral or written, which the member knows, **or should know**, is false or misleading
- A breach of this rule is almost universally regarded as also a breach of Rules 201 and 202

208 – Integrity: Confidentiality

- Two aspects of this Rule:
 - Inappropriate Disclosure to Third Persons
 - Inappropriate Use by the Member

208.1 Exceptions to Confidentiality

- When properly doing your duties as a CA
- When Complying with Rules 211 or 302.1 to 302.3
- When required by lawful authority
- When necessary to defend yourself
- With the consent of the client

208.2 Abuse of Confidence

- A member cannot make use of any information obtained in confidence:
 - for the advantage of the member
 - for the advantage of a third party; or
 - to the disadvantage of such client or employer
- without the knowledge and consent of the client, former client, employer or former employer

210 Integrity: Conflict of Interest

- Not to be confused with “Independence”
- The “*reasonable observer*” test
- 210.1 – A duty to determine at the outset if a conflict might exist
- 210.2 – Cannot continue where conflict of either interests or duties exists
- 210.3 – Conflicts can sometimes be managed

210.3 Managing Conflict

- (b) the affected clients have knowledge of the conflict and their consent for the member or licensed firm to accept or continue the engagement is implied by their conduct, in keeping with common commercial practice

210.3 Managing Conflict

- May be able to continue an engagement if:
 - Rely upon generally accepted conflict management techniques that will not breach the terms of an engagement with or duty to another client
 - Informed consent of all affected parties

Integrity – Other Rules

- 212 – Handling of Property or Trust Funds
- 213 – Unlawful Activity
- 215 – Contingency Fees
- 216 – Receipt of Commissions
- 218 – Retention of Documents and Working Papers

Integrity – Reporting Misconduct

- Self Reporting obligations under:
 - 102.1 for convictions for fraud, theft, forgery, tax evasion or where persons relied on CA designation
 - 102.2 for discipline by another Provincial Institute
 - Bylaw 360 for all other convictions
- 211 – A positive duty to report an **apparent** breach of the Rules

Benefits of Discipline Process

- Permits self regulation of CA's by CA's
- Maintains higher standards within the profession
- Maintains the "CA" Brand
- Significantly reduces the amount of litigation against CA's

The Process

- Two Committees appointed by Council and established by the Bylaws
- Professional Conduct Enquiry Committee (PCEC)
- Discipline Tribunal Committee

PCEC

- Appointed by Counsel
- 12 members: 9 CA's and 3 Public Reps
- 2 of 3 Public Representatives must agree to any determination that favours the member

PCEC

- The Mandate of the PCEC is to investigate matters involving any alleged:
 - incompetence, lack of fitness to practise;
 - professional misconduct or conduct unbecoming; or
 - contravention of the *Act*, Bylaws or Rules of Professional Conduct

PCEC

- Investigations are not limited to complaints from the public or other members
- Any matter that comes to the attention of the Institute
- Investigation can be of a member or a firm

Investigation Process

- Initial Review by Director of Ethics and Chair or Vice Chair of the PCEC
- Authorization of Investigation
- Appointment of Investigator and PCEC Member liaison
- Investigation must be held in strictest of confidence

Investigation Process

- Duty of Member/Firm to fully respond and cooperate per Bylaws 104 and 105 and Section 20 of the *Act*
- The Institute can apply to the Supreme Court of B.C. to compel Member, Firm or Third Party cooperation

Investigation Process

- Investigator interviews Member/Firm and other persons who may have knowledge
- Investigator drafts Investigation Report
- Investigation Report provided in draft to the Member/Firm for comment, possible correction
- Investigation Report submitted to the PCEC

PCEC Meeting

- Member/Firm may attend to address his/her matter, but not required
- PCEC has 3 options:
 - Dismissal
 - Determination & Recommendation
 - Deliver a Statement of Complaint to the Discipline Tribunal

Determination & Recommendation

- Unique to the B.C. Institute
- Promotes:
 - Resolution of all but the most serious breaches
 - Rehabilitation instead of punishment
- Discipline remains entirely confidential, with limited “anonymous” publication

Determination & Recommendation

- Penalty offered and agreed to by Member can include any combination of:
 - Anonymous reprimand
 - Cost of the Investigation
 - Fine of up to \$25,000 for Member, \$100,000 for a Firm
 - Remedial Courses or other action

Statement of Complaint

- Delivered by PCEC to Discipline Tribunal Committee when:
 - “D&R” rejected by Member/Firm or not complied with
 - Matter so serious, PCEC believes penalty warranted includes suspension or cancellation of membership

Discipline Tribunal

- Confidentiality is “lost” – Open to the public
- Process is divided into two parts:
 - Determination of whether allegations of misconduct are proven
 - Determination of Penalty permitted under the *Act* and Bylaw 860

Standard of Proof

- *Jory v. The Association of Physicians and Surgeons of B.C.*
 - Standard of proof in between “balance of probability” and “beyond a reasonable doubt”
 - Fair and reasonable preponderance of credible evidence
 - Sufficiently cogent to uphold the findings given the consequences

Penalties

- Purpose of imposing penalties in professional discipline is to:
 - Protect the public
 - Deter the member and others who might be like minded
 - Rehabilitate the member where warranted
- Always reflecting the gravity of the wrong

Penalties

- Identical to those available in the D & R Process; plus
- Suspension; or
- Cancellation of membership; plus
- Costs per a Tariff to the Bylaws
- Publication of Findings and Orders

How to Best Respond to an Investigation

- Process itself is so tried and true, prospect of challenging jurisdiction of Institute to proceed with Investigation or Discipline is very limited
- Obligation to cooperate reveals most of the documents and facts
- Remembering, failure to document is in itself often grounds for discipline