



Theme Number 3*
October 2004

Code of Ethics and Discipline

1. Code of Ethics

- With respect to the Code of Ethics of the College when it is formed, it is recommended that this Code of Ethics be very similar to the current Code of Ethics of IPIC. It should be borne in mind that the current Code of Ethics of IPIC is a fairly recent code adopted by the Institute in 2001. Also, this Code of Ethics was adopted by members on the understanding that a very similar code would also be suitable for use by the new College when it is formed.
- Differences with IPIC's current code of ethics include:
 - Minor changes in wording in view of the fact that members would now be members of the College rather than members of IPIC.
 - Removal from the Code of Ethics of the requirement that a member must have mandatory errors and omissions insurance. This should be covered in separate By-laws. The Code of Ethics will apply to all agents on the registers including foreign agents. Proof of errors and omissions insurance will not be required of foreign agents.
- The proposed Code of Ethics is available on the IPIC web site as an appendix to this thematic sheet.

2. Discipline

- With respect to the Disciplinary By-laws of the College, it is recommended that a fairly extensive and detailed set of Disciplinary By-laws be adopted so that the disciplinary process will be clear and fair to all parties concerned with the process.

* The purpose of these thematic sheets is to outline the operations of the College as proposed by IPIC and to seek feedback on these proposals.

- It is proposed that the set of discipline by-laws adopted at the IPIC AGM in 2003 as a proposal for the College (similar to the by-laws of the Canadian Institute of Actuaries) be adopted by the College, with some minor modifications based on discussions with experts[†].
- Some of the key aspects of these proposed new Disciplinary By-laws are as follows:
 - The Board of Governors of the College would appoint a Professional Conduct Committee which would include a member of the public;
 - The Board of Governors would also appoint a Disciplinary Tribunal Panel consisting of at least 15 members of the College;
 - The Professional Conduct Committee would handle all disciplinary matters concerning the members of the College and, in particular, would deal with every complaint alleging an Offence by a Member;
 - The deliberations of the Professional Conduct Committee and any of the Investigation Teams would generally be confidential;
 - If it appears to the Professional Conduct Committee that the member may also be governed by a bi-lateral organization, i.e. a provincial law society, the Executive Director would initiate discussions with that organization to determine who should assume jurisdiction and forward the complaint to that organization for handling, if that organization agrees to assume jurisdiction;
 - Before making a decision regarding a possible Offence, the Professional Conduct Committee would deliver a copy of the complaint to the Member and any additional information that has been obtained and provide the Member with a set period of time in which to provide a written response or explanation;
 - If the Committee decides that an offence has not been committed, the complaint would then be dismissed and the Member and complainant notified in writing;
 - If the Committee decides that an Offence has been committed, it shall refer the matter to an Investigation Team to carry out an investigation within a specified period of time and report back to the Professional Conduct Committee;
 - After considering the report of the Investigation Team, the Professional Conduct Committee would have a number of options open to it including dismissing the complaint, sanctioning the member, and referring the complaint to the Disciplinary Tribunal (where the complaint is considered to be of a severe nature);

[†] In particular, that an appeal be referred to an Appeal Tribunal instead of the Federal Court.

- In the case of a complaint that is considered to be sufficiently grave, the Professional Conduct Committee can file a charge and make a recommendation regarding a sanction to be imposed and this charge and recommendation must be delivered to the Respondent Member;
 - If the Respondent Member fails to comply with the recommendation of sanction or declines to accept same, the Committee must then refer the charge to the Disciplinary Tribunal for a hearing which normally would be a public hearing;
 - After the hearing, the Disciplinary Tribunal would be required to render a decision within 90 days and if the Member is found to be guilty of an Offence, a penalty can be imposed by the Tribunal which could take the form of a reprimand, a suspension, or an expulsion from the College;
 - A party before a Disciplinary Tribunal may file a notice of appeal from a decision rendered by the Disciplinary Tribunal. In the event that a notice of appeal is filed, an Appeal Tribunal shall be appointed by the Board of Governors.
- It is also proposed that the following be included in the statutes creating the College:
 - Provide the Professional Conduct Committee and the Disciplinary Tribunal with the power to subpoena witnesses.
 - Provide that the evidence given by such witnesses is privileged and cannot be used against that individual before any court of justice.
 - The proposed Discipline By-laws are available on the IPIC web site as an appendix to this thematic sheet.

3. Summary

This proposal includes the following changes from the current practice for registered patent and trade-mark agents:

- IPIC members must now follow a Code of Ethics but because IPIC is a voluntary association, it cannot prevent someone from practicing as an agent. By managing the registers, the College would have the power to enforce the Code of Ethics.
- The proposed discipline process does not currently exist for these professions. CIPO can remove an agent from the register for gross misconduct but the process leading to that decision is not stated in regulations and there is no provision for alternative disciplinary measures.

Please send your comments to college@ipic.ca by October 29, 2004.