

REGULATION NO. 1

DISCIPLINE PROCEDURE

PURPOSE:

Establish a process to deal with complaints, which have not been dealt with by a Regional Association or which have been referred to the Institute by a Regional Association.

1 DEFINITIONS AND INTERPRETATIONS

- 1.1 "Advisory Letter" means a letter sent by the Conduct Review Panel or the Hearing Committee outlining how a member could correct a practice deficiency or alleviate a concern relative to a Complaint.
- 1.2 "Board" means the Board of Directors of the ADR Institute of Canada, Inc.
- 1.3 "Complaint(s)" means an allegation in writing of misconduct or of a breach of the Institute's Code of Ethics, By-Laws or Regulations.
- 1.4 "Conduct Review Panel" means the members of the Institute appointed to investigate Complaints. The Conduct Review Panel Chair shall be a person appointed by the President of the ADR Institute of Canada, Inc. (ADRI).
- 1.5 "Costs" shall mean the pro rata portion of the travel and accommodation expenses of the members of a Conduct Review Panel, Hearing committee or Board members sitting to hear an Appeal and staff of the Institute arising from the relevant complaint and the fees and disbursements of any legal counsel, advisers or stenographers.
- 1.6 "Hearing Committee" means a committee appointed by the President to conduct formal hearings on behalf of the Institute. The Hearing Committee shall consist of the Chair and two members and all shall hold the designation(s) Chartered Arbitrator (C.Arb.) or Chartered Mediator (C. Med.).
- 1.7 "Institute" means the ADR Institute of Canada, Inc.

- 1.8 "Member" means any person as defined as a member by the general bylaw of the Institute.
- 1.9 "President" means the president of the Institute.
- 1.10 "Regional Association" means one of the regional associations of the Institute authorized by the Board.

2 **HANDLING OF COMPLAINTS**

2.1 **Informal Resolution of Complaints**

Unless a complaint is determined to be clearly frivolous by the person designated by the President, the matter shall be referred to the Chair of the Conduct Review Panel as set out below.

2.2 **Resolution of Complaints**

2.2.1 A Complaint to the Institute must be made in writing and signed by the Complainant. The Institute shall forward a copy of the complaint to the member who shall be asked to respond in writing within 21 days of the date of mailing by the Institute. The Institute may require a Complainant to provide an affidavit, duly sworn or affirmed, setting out the grounds of the Complaint.

2.2.2 The Administrative staff, or a person designated by the President, may review the Complaint and conduct sufficient preliminary investigation to determine the basis of the Complaint. The Institute shall then forward all information in a report to the Chair of the Conduct Review Panel.

2.2.3 The Chair of the conduct Review Panel shall appoint a conduct Review Panel to review the Complaint. The panel is composed, at the discretion of the Chair, of

2.2.3.1 the Chair, or

2.2.3.2 the Chair and two other members, or

2.2.3.3 three members other than the Chair.

- 2.2.4 The Conduct Review Panel shall review the information contained in the report prepared by the Institute, must interview the member and may direct the Institute to investigate further. The investigation shall include information from all sources involved in the Complaint and shall include an opportunity for the member to respond to the Complaint.
- 2.2.5 The Board authorizes the Conduct Review Panel to exercise the powers of inquiry and examination with respect to any Complaint or investigation failing under these guidelines.
- 2.2.6 After completing its review of the information provided and conducting or directing such other investigation as it feels necessary, the Conduct Review Panel must decide whether the Complaint is founded or unfounded.

2.3 **Disposition by Conduct Review Panel**

- 2.3.1 If the Conduct Review Panel finds that the Complaint is unfounded; or that, in the circumstances, disciplinary action is not warranted, it may dismiss the Complaint or conclude the matter with an Advisory Letter to the member. In either case, the Conduct Review Panel will inform the complainant, the member and the Board of the disposition of the matter and outline its reasons in writing.
- 2.3.2 If the Conduct Review Panel finds that the Complaint is founded and that further action is warranted, it shall make a recommendation to the Board that a Hearing Committee be appointed and the Conduct Review Panel will provide a copy of its investigation report to the Hearing Committee so appointed.
- 2.3.3 The Conduct Review Panel is to prepare a formal complaint in writing and send it by registered mail to the member with a copy of the investigation report of the Conduct Review Panel.

3. **ADVISORY LETTERS**

- 3.1 Copies of any Advisory Letter shall be sent to the member involved

in the Complaint and the Board.

- 3.2 An Advisory Letter sent by the Conduct Review Panel does not constitute formal disciplinary action and shall not be published by the Board. Accordingly, the member may not request a hearing or appeal on such matter.

4. **HEARING COMMITTEE**

- 4.1 On the request of the Conduct Review Panel, the President shall appoint a Hearing Committee of three members to conduct formal hearings on behalf of the Institute. Where appropriate, in the opinion of the Hearing Committee, and with agreement of the member, a hearing may consist of a written submission from the member and a review of the findings and recommendation of the Conduct Review Panel.
- 4.2 After giving the member an opportunity to be heard, either orally or in writing as set out in section 5.1, the Hearing Committee shall report, in writing, its decision or recommendation to the Board. Its decision shall be from those listed in "Disciplinary Authority of Hearing Committee".
- 4.3 The Board shall review the recommendation of the Hearing Committee and render its decision.
- 4.4. A copy of any decision of the Hearing Committee or the Board shall be sent to the member within 10 days of the date the decision was made. A copy of the decision will be sent to the complainant after expiry of the appeal period.

5. **DISCIPLINARY AUTHORITY OF HEARING COMMITTEE**

The following decisions of disciplinary action may be implemented by the Hearing Committee:

- 5.1 Dismiss a Complaint;
- 5.2 Send an Advisory Letter to the member;
- 5.3 Send a letter of warning or reprimand to the member;

- 5.4 Suspend a member up to one year and impose conditions to be met by the member before reinstatement, or;
- 5.5 Expel a member from membership;
- 5.6 Revoke the status of the member as a Chartered Arbitrator or Chartered Mediator, and
- 5.7 Assess costs.

6. **HEARING PROCEDURES**

- 6.1 A Hearing Committee shall:
 - 6.1.1. Set dates and times for hearings or reviews of evidence;
 - 6.1.2 Make all physical arrangement for hearings;
 - 6.1.3 Conduct hearings and examine evidence under the procedures outline in this Discipline Procedure; and
 - 6.1.4 Make those decisions or recommendations on disciplinary action as set out under “Disciplinary Authority of Hearing Committee”.
- 6.2 The notice of hearing shall advise as to the date, place and time of the hearing and the particulars of the alleged misconduct to be dealt with at the hearing. Postponements will be granted at the discretion of the Hearing Committee.
- 6.3 **Legal Counsel**
 - 6.3.1 The member may be represented by legal counsel and is individually responsible for all expenses incurred on his or her behalf. The presence of other parties or representative shall be at the discretion of the Hearing Committee.
 - 6.3.2 Where a member or the Institute is to be represented by legal counsel, notification is to be provided in writing to the Chair of the Hearing Committee and the other party ten (10) days prior to the hearing date.

6.3.3 The Hearing Committee may utilize Institute staff in the presentation of the case and may also retain legal counsel to act on its behalf at the hearing.

7. **ATTENDANCE OF WITNESS**

- 7.1 A Hearing Committee may require the production of documents from the member.
- 7.2 Members are responsible for ensuring the attendance of witnesses they or their counsel intend to call to give evidence at the hearing.
- 7.3 All witnesses giving evidence may be cross-examined on issues relevant to the matter.
- 7.4 Witnesses other than the member shall be excluded from the hearing until they have testified, unless the Hearing Committee otherwise orders.

8. **STRUCTURE OF HEARINGS**

Hearings will generally follow the structure outlined below, although the Hearing Committee may vary the order of proceedings at its discretion.

- 8.1 The Chair will call the hearing to order, outline the jurisdiction of the Hearing Committee, and read the matters to be determined at the hearing;
- 8.2 All persons present are introduced;
- 8.3 The Chair or counsel representing the Hearing Committee may outline the issues and make an opening statement;
- 8.4 The member or the member's counsel may make an opening statement;
- 8.5 Documentary evidence is then introduced, although it may be entered in conjunction with the testimony of the witness;
- 8.6 Witnesses called at a hearing shall testify under oath or

affirmation, and may be cross-examined by counsel for the member, or by the member, and can also be asked questions by members of the Hearing Committee or its counsel;

8.7 The Hearing Committee shall adjourn to reach a decision on the matter. The Committee can adjourn a hearing at any time and recommend a decision that shall include a finding on factual matters and a disciplinary decision or recommendation to the Board.

8.8 A Secretary appointed by the chairman shall make a written record of the proceedings of the hearing.

9. **SUITABILITY OF COMMITTEE MEMBERS**

9.1 The President may appoint members to a Conduct Review Panel or to a Hearing Committee. Members appointed shall complete and swear or affirm a "Declaration of Independence". Such Declaration shall indicate that they have no interest, directly or indirectly, in the outcome of the dispute and that they are not aware of any circumstances which could reasonably give rise to justifiable doubts as to their independence or impartiality or which could raise a likelihood of perceived bias in the matter under review.

10. **CONFIDENTIALITY**

10.1 All investigations by the Conduct Review Panel and all proceedings by a Hearing Committee and all deliberations on the Complaint by the Board shall, as far as the efficiency of the process permits, be kept private and confidential. If the Complaint is not dismissed, after any appeal period has elapsed, only the Board may publish to its members, or to others, details of the Complaint and the action taken by the Institute, without identifying the member except where the member has been expelled, suspended or had revoked their status as a Chartered Arbitrator or Chartered Mediator.

11. **FAILURE TO CO-OPERATE**

If made without justifiable reason or unless the law otherwise requires, the failure of any member to comply with any request from a Conduct

Review Panel or Hearing Committee in connection with a Complaint, referral, review, or investigation under this regulation shall be an act of misconduct, and may result in disciplinary proceedings. A Hearing Committee may, in its discretion, impose penalties for failing to cooperate under this Discipline Procedure.

12. **APPEALS**

12.1 Appeals shall be in writing and sent by registered mail, or fax transmission followed by written confirmation, to the Institute. Appeals must specify the grounds for the appeal.

12.2 A decision of the Hearing Committee may be appealed to the Board. Appeals to the Board must be delivered by the member within 21 days of receipt of the Hearing Committee's decision.

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