

# AMENDMENTS: BYE-LAW 3: DISCIPLINARY PROCEEDINGS

This document highlights the main changes made to the Disciplinary Proceedings Bye-Law effective from 24 May 2021.



## General Note

The current Statute has been approved by Members during the Institute's Extraordinary General Meeting held on 24 May 2021. A significant change in this revision was that all governance-related matters, hence most of the Bye-Laws, have been incorporated in the Statute, which requires a 2/3 vote of the members present during a General Meeting for it to be amended.

By virtue of this, Council has approved a revision of the Bye-Laws which remained in place.

Chapter referencing number was amended accordingly. The Disciplinary Proceedings Bye-Law, previously known as Bye-Law 6 is now Bye-Law 3.

In the previous version of the Bye-Law, Article numbers were preceded by the Bye-Law number. In this revision, such prefix has been removed.

## Article 1 - Definitions

- (a) Introduced a one-liner that terms defined in the Statute have this same meaning in this Bye-Law.
- (b) Introduced, revised and removed definitions as applicable.

## Disciplinary Proceedings Setup

Articles relating to the setup of the Disciplinary Proceedings were incorporated in the Statute. These include Articles pertaining to the nominations, appointment, eligibility criteria, term of appointment etc of the Disciplinary Committee Chair and Deputy Chair, the Disciplinary Pool, the Disciplinary Committee, the Appeals Pool and the Appeals Board.

## Article 1: Liability for Disciplinary Action

- (a) Title was revised from "Liability of Members to Disciplinary Action" to "Liability to Disciplinary Action", as liability grounds apply to both members and students.
- (b) Widened the grounds for disciplinary action.
- (c) The ground related to "money claims" and any subsequent reference to it were removed. Money claims refers to unpaid dues which are now covered under the Members Bye-Law.
- (d) A clarification was introduced that one would be liable to disciplinary action in accordance with the Bye-Laws and regulations in force at the time the matters complained of took place. All disciplinary proceedings will be conducted in accordance with the Bye-Laws and Regulations in force at the time of such proceedings.

## Article 2: Complaints

- (a) Specified that complaints are to be submitted in writing. A complaints form has been introduced to this effect.
- (b) Specified that the Institute will not consider complaints submitted in stages.

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- (c) Specified that if the complainant opts to withdraw the complaint, the Institute may opt to proceed with an investigation.
- (d) Removed the Article stating that the CEO shall retain a register of complaints. Such detail has been incorporated in the Institute's internal procedures.

### **Article 3: Screening and Complaint and Investigations**

- (a) Removed the Article stating that a file is opened by the CEO. Such detail has been incorporated in the Institute's internal procedures.
- (b) Removed the Article specifying the way forward should a complaint is not received in writing (as complaints will only be made in writing).
- (c) Revised the Article to ensure that any complaint is assessed by more than one person. Thus the clause in the previous Bye-Law specifying that "the CEO may investigate directly in case of urgent matters" was removed.
- (d) Revised the Article to cater for instances where conflict of interest arises at screening stage and when appointing the Investigating Committee.
- (e) Introduced a clause defining the role of the Investigating Committee.
- (f) Introduced a clause specifying that members of the Investigating Committee shall appoint a Chairperson among themselves.
- (g) Introduced a clause specifying that the Investigating Committee may appoint experts to assist it in carrying out its function.

### **Article 4: Cases where no further investigation is required**

- (a) Introduced this Article to specify that in cases where the member/student has been convicted of an indictable offence or has been disciplined/sanctioned by another professional body or regulatory body, the Investigating Committee can proceed with the issue of the charge.

### **Article 5: Investigation of claims by the Investigating Committee**

- (a) Clause revised to allow the Investigating Committee to conduct ad-hoc sittings to further discuss the complaint and collect evidence.
- (b) Specified that decision making of the Investigating Committee shall be on a majority basis and that the Chairperson shall have the casting vote in case of equality of votes.
- (c) Specified that following investigations the Investigating Committee can (a) close the complaint, or (b) resolve the complaint, or (c) issue a charge.
- (d) Specified that after concluding its investigations, the Investigating Committee shall draw a detailed report. This fell under the remit of the CEO in the previous Bye-Law.

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### Article 6.1: Close the Complaint

- (a) Specified that the CEO, representing the Investigating Committee, communicate the decision and reason to member/student, complainant and Council. Previous Bye-Law stated that such decision is to be communicated to Council only.

### Article 6.2: Resolution of the Complaint

- (a) Revised the terminology, “resolve the complaint by mediation or similar non-litigious dispute resolution” with “find an acceptable solution”.
- (b) Specified that the CEO, representing the Investigating Committee, communicate the decision and reason to member/student, complainant and Council. Previous Bye-Law stated that such decision is to be communicated to Council only.

### Article 6.3: Issue a charge

- (a) Specified that the charge issued by the Investigating Committee is endorsed by the Chairperson of the Investigations Committee. Previous Bye-Law stated that the charge is issued by the CEO.
- (b) Arrangements pertaining to the issue of the charge were revised. Charge is first presented to Council. The Chairperson of the Disciplinary Committee is informed. Once he/she declares that there is no conflict of interest, the charge is served on the Chairperson of the Disciplinary Committee to set up the Disciplinary Committee as specified in the Statute.

The Article “Conflict of Interest” in the previous Bye-Law has been revised and incorporated in the Statute.

### Article 7: Setting up of the Disciplinary Committee and Communication with the Member/Student

- (a) Such arrangements were revised in line with the practice of other similar professional bodies, meaning that the date and time of the hearing are set. Previous Bye-Law did not make any reference to hearings.
- (b) The administrative role of the Disciplinary Affairs Coordinator was introduced. Such person will act as an intermediary between the member/student and the Institute.
- (c) Specified that by not later than 45 calendar days before the hearing date, the Disciplinary Affairs Coordinator communicates the following to the member/student: date, time and place of the hearing, the charge and the hearing procedures.
- (d) Specified that the member/student is required to reply within 15 calendar days of service.
- (e) Specified that the member/student will need to advise whether he/she will be attending or appointing another person/s to attend on his/her behalf. The previous Bye-Law implied that the person needs to be present during the hearing.
- (f) Specified that the member/student will need to advise if he/she will be assisted by a lawyer or another professional.

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- (g) Specified that the member/student will need to advise if he/she is calling any witnesses. The previous Bye-Law did not make any reference to witnesses.
- (h) Specified that the member/student will need to highlight whether he/she accepts all or part of the allegations.
- (i) Specified that if the member/student does not attend the hearing or does not appoint someone else to attend on his/her behalf, the Disciplinary Committee can proceed and decide on the case.

### **Article 8: The Hearing and Decision of the Disciplinary Committee**

- (a) The Article in the previous Bye-Law entitled "Procedure" covered the hearing of both the Disciplinary Committee and Appeals Board. Such procedures have now been segregated.
- (b) Specified that hearing shall be audio recorded.
- (c) Specified that the Disciplinary Committee shall follow the procedures issued by the Institute. The previous Bye-Law stated that the Disciplinary Committee can regulate its own procedures.
- (e) The section in the previous Bye-Law specifying that, if the member fails to appear within 30 minutes, the Disciplinary Committee may decide the charge in his/her absence. This has been incorporated in the Institute's internal procedures.
- (d) Specified that the hearing can take more than one sitting.
- (e) Specified that if a lawyer is assisting the Disciplinary Committee, he/she can accompany the Disciplinary Committee to deliberate. He/she does not have voting rights.
- (f) Specified that the decisions of the Disciplinary Committee shall always be in writing. Previous Bye-Law stated that this applies when the charge has been proven in whole or in part.
- (g) Specified the arrangements of how the decision is communicated. The Disciplinary Affairs Coordinator communicate the decision to the member/student and the Investigating Committee.
- (h) Specified that any decision to reprimand, suspend or expel a member/student shall take effect upon the day on which it is made.
- (i) Specified that the Disciplinary Committee shall prepare a full detailed report.

### **Article 9: Sanctions**

- (a) Reprimand - Removed the term "and admonition" from "reprimand and admonition" since they essentially mean the same thing.
- (b) Suspension - Removed wording specifying that suspension is for a definite or indefinite period.
- (c) Re fine, penalties and administration charge. Specified that such fee must be settled within 15 days. Failure to pay such pecuniary amount within the stipulated timeframe will result in automatic expulsion.

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- (d) Introduced a clarification re suspension of students as the previous Bye-Law catered only for members.

### **Article 10: Grounds for Appealing the DC's Decision**

- (a) Introduced grounds for appeal as they were not catered for in the previous Bye-Law.

### **Article 11: Application for an Appeal**

- (a) Specified that the request to appeal is to be submitted to the Disciplinary Affairs Coordinator by not later than 20 working days from the date of service. The previous Bye-Law stated that such request was to be made to the CEO.
- (b) Specified that the Disciplinary Affairs Coordinator presents the appeal to (a) the Chairperson of the Appeals Board, once the latter declares that he/she does not have a conflict of interest in accordance with the Statute and (b) the other party. Previous Bye-Law stated that the CEO presented/served the appeal.

### **Article 12: Setting up of the Appeals Board and Communication with the Member/Student**

- (a) Specified the arrangements to set up the Appeals Board. Such arrangements are aligned with those specified under Article 7 - *Setting up of the Disciplinary Committee and Communication with the Member/Student*. The member/student is notified about the date, time and place of hearing. The member/student need to advise if he will be attending or else appointing someone to attend on his/her behalf.

### **Article 13: The Appeals Hearing and Decision**

- (a) Same arrangements as Article 8 - *The Hearing and Decision of the Disciplinary Committee*.
- (b) Specified that the decision of the Appeals Board shall be to affirm, vary or revoke the decision of the Disciplinary Committee.
- (c) Specified that the Appeals Board shall prepare a full detailed report.

### **Article 14: Disclosure of information by the Institute**

- (a) The following was introduced. Once all proceedings have been concluded, the name of any member/student who has been sanctioned and the sanction/s imposed will be published by the Institute on its website and any other publications of the Institute.
- (b) Specified that the Institute reserves the right to inform other professional bodies and regulatory bodies.

### **Article 15: Records**

- (a) Specified that all records will be kept for the period stipulated in the Institute's retention policy.