



## COMPLAINTS AND DISCIPLINE PROCESS Q&A

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## About ICCRC

The Immigration Consultants of Canada Regulatory Council (ICCRC) was designated by the government of Canada to regulate the Canadian immigration consulting, the Canadian citizenship consulting, and international student advising professions.

Section 91(2) of the Immigration & Refugee Protection Act (IRPA) and Section 21.1 of the Citizenship Act requires that anyone who provides Canadian immigration or citizenship advice for a fee or other consideration, must be a member in good standing of a law society in Canada, the Chambre des notaires du Québec, or ICCRC.

## ICCRC's Purposes

- 1) To protect consumers of Canadian immigration and citizenship services through effective regulation of immigration/citizenship consultants, and
- 2) To promote the benefits of using only an authorized representative as a consultant in immigration/citizenship matters.

## The Complaints Process

ICCRC has the authority to regulate and discipline immigration/citizenship consultants who are registered with the Council as Member RCICs. ICCRC's *Code of Professional Ethics* requires all Members to adhere to the highest standards of professional conduct. The primary purpose of the *Code* is to protect the public from unprofessional, unethical or incompetent practice by ICCRC's Members. ICCRC has established a complaints process to deal with complaints of professional misconduct against its Members.

## What is an Acceptable Complaint?

An acceptable complaint is a written and signed expression of concern about the conduct of an RCIC, alleging professional misconduct, incompetence or incapacity. The written complaint should be supported by relevant evidence that shows that the complaint is valid.

## If I am unhappy with the services provided by an RCIC, can ICCRC order a refund of the money I paid the RCIC?

No. ICCRC's regulatory authority does not include the power to regulate fees or to order refunds. If you are seeking a refund of money you paid the Member you will have to seek the refund in your local courts, which usually have the authority to resolve commercial disputes.

## How can a complaint be filed with ICCRC?

ICCRC will accept complaints against RCICs in two forms:

- 1) A fully completed and signed [complaint form](#). The complaint form must be sent to ICCRC, along with copies of relevant documents that prove the complaint. The complaint can be sent by email to [cd-pd@iccrcc-crcic.ca](mailto:cd-pd@iccrcc-crcic.ca); by fax: 1877-315-9868 or by mail: 1002-5500 North Service Road, Burlington, Ontario, Canada L7L 6W6.
- 2) Reliable and complete information that: (a) comes from a federal or provincial government department or agency; (b) comes from another apparently reliable source and suggests that: (i) a Member may have committed an offence under the *Code of Professional Ethics*; or (ii) that a non-member or suspended Member may be practising unlawfully as an immigration consultant for a fee.

### **Can complaints be made anonymously?**

No. ICCRC cannot legally take complaints through a disciplinary process unless the RCIC complained about has been given a full and fair opportunity to respond to the complaint. The fairness of a discipline process would be severely undermined if the Member was not given the name of the person making the complaint.

### **Will the complaint information be shared with the Member or other authorities?**

Yes. When completing the complaint form, the Complainant will be asked to sign the Acknowledgement, Consent and Signature section of the form. This gives ICCRC permission to share some or all of the information received. This may include sharing some or all of the information in the complaint with the Member, the Royal Canadian Mounted Police (RCMP), the Canada Border Services Agency (CBSA) or a provincial Law Society (which regulates lawyers, and in some cases also paralegals) if ICCRC considers it necessary.

### **What happens to the complaint once ICCRC has received it?**

Every complaint that ICCRC receives is reviewed and assessed carefully. ICCRC will first determine whether the subject of the complaint is A) an ICCRC Member (an RCIC); B) licensed as a lawyer or paralegal, or a Member of the Chambre des notaires du Québec; C) a person unauthorized to practice immigration/citizenship consulting in Canada or D) a former ICCRC member.

A) An RCIC:

ICCRC will write to the Complainant acknowledging receipt of the complaint, providing the case file number, and the name of the ICCRC Investigator assigned to the complaint. The investigator will remain in contact with the Complainant throughout the investigation phase. ICCRC will set a deadline by which the Member must provide his or her written response and supporting documentation.

ICCRC will send the Complainant a copy of the Member's written response and will ask the Complainant to provide any additional information to accept or deny the Member's response.

B) A Lawyer, paralegal or a Member of the Chambre des notaires du Québec:

ICCRC has no authority to regulate lawyers or paralegals. ICCRC will send the Complainant a letter acknowledging receipt of the complaint and advising that the complaint has been forwarded to the appropriate provincial regulatory body.

C) An unauthorized person:

ICCRC will send the Complainant a letter acknowledging receipt of the complaint and advising that the person subject to the complaint is not a Member. ICCRC's legal authority is limited to dealing with complaints about its Members. We have no authority to deal with complaints about non-members. ICCRC, however, is concerned about any unauthorized persons illegally practicing immigration consulting for a fee without being licensed by ICCRC. Such illegal activities damage the public's image of our Members, who strive to provide a high standard of service with integrity. For these reasons, ICCRC will forward the complaint to the Criminal Investigations Department of CBSA, an agency of the Government of Canada, for review. ICCRC will give the Complainant a case file number and the contact information for CBSA.

D) Former ICCRC Member:

ICCRC cannot discipline former RCICs once they are no longer our Members. If ICCRC receives a complaint about a former RCIC who is continuing to practice after their ICCRC membership has ended, the complaint will be referred to the CBSA.

If the complaint alleges violations of the *Code of Professional Ethics* that occurred while the RCIC was still an ICCRC Member, but the complaint is filed after membership has ended, the complaint will be filed in the former Member's permanent registration file. If the former Member ever applies to become an RCIC again the complaint will be reopened for investigation. Before membership would be restored, the complaint would have to be resolved.

### **Can ICCRC decline to investigate a complaint?**

Yes. ICCRC will decline to investigate a complaint if: (a) the Complainant does not provide some evidence demonstrating an offence under the *Code of Professional Ethics*; or (b) the complaint is (i) frivolous, (ii) vexatious, (iii) an abuse of process, (iv) manifestly without substance and does not warrant further consideration; or (c) the complaint was made for an improper purpose; or (d) it is not in the public interest to investigate further.

### **How long does the complaints process take before a final decision?**

The process can take several months or longer because of the numerous steps. These include investigation, Complaints Committee review, and, if the Complaints Committee refers the complaint to the Discipline Committee, the Discipline Committee process.

When filing a complaint with any professional regulatory body, it is important to be aware that a decision may not be received for months or even longer. The reason for the length of time until a final decision is made, is because the following steps are involved:

- 1) ICCRC will assign an investigator to investigate a complaint. The investigator will review the complaint file and write to the RCIC to describe the complaint and ask for a written response to be made within 15 days. If the RCIC has a valid reason why 15 days is insufficient time to reply, ICCRC's Registrar may grant an extension of time.
- 2) Once the RCIC and the Complainant have provided the investigator with their evidence, the investigator will prepare a report outlining the evidence collected. This report is forwarded with the complete file to the Complaints Committee for review. This Committee is comprised of appointed RCICs and Public Representatives who take part in monthly case review meetings.

If the Committee determines that there is no evidence to suggest that the RCIC may have breached the *Code of Professional Ethics* then the Committee will decide not to refer the complaint to the Discipline Committee and the complaint will conclude at this stage. If the Committee determines that there is evidence to suggest that the RCIC may have breached the *Code of Professional Ethics* then the complaint will be referred to the Discipline Committee. Whichever decision the Committee makes will be forwarded to the Complainant and RCIC.

- 3) If the Complaints Committee refers the complaint to the Discipline Committee, the file is first sent to Discipline Counsel, a lawyer, for legal review and action. Discipline Counsel will instruct ICCRC staff to issue a Notice of Referral to the RCIC that the complaint will be proceeding through the discipline process. The public will be notified of the referral to discipline when the Notice of Hearing information is posted on the ICCRC website.
- 4) The Notice of Referral may be followed by a Prehearing Conference conducted by a single Member of the Discipline Committee. The purpose of such a Conference is to arrange for ICCRC and the RCIC to provide each other with disclosure of the evidence they will intend to rely on if the complaint goes to a hearing. Most complaints however, are resolved after mutual disclosure and before any hearing, by agreement of the parties. Depending upon the complexity of the facts and the availability of the parties or their lawyers, the process of negotiating an agreement to resolve the complaint can take weeks, or even months.

If the parties are able to come to an agreement on the facts and the penalty (if any), that proposed agreement will be reviewed by a panel of three Members of the Discipline Committee. If the parties are unable to come to an agreement the complaint will proceed to a hearing. The Discipline Committee has the authority to approve or deny any proposed agreement or recommended penalty.

## **How does ICCRC communicate with the Complainant or Member?**

Correspondence is sent to the Complainant and Member by email, unless otherwise requested. Please provide ICCRC with current contact information and update it if anything changes. In any correspondence you send to ICCRC, please refer to the case file number ICCRC gave to your complaint.

## Who screens complaints received?

ICCRC's Complaints Committee has the authority to review, and decide whether complaints alleging professional misconduct are sufficiently supported by relevant evidence to justify referral to ICCRC's Discipline Committee.

A three person panel of the Complaints Committee will review the investigator's report, which will include information from the Complainant, the Member, and the investigator.

## Are Complaints Committee meetings open?

No. Neither the Complainant nor the Member may attend these meetings, which are also closed to the public. That is because the Complaints Committee is merely a screening committee and makes no decisions about the merits of any complaint, and cannot impose any penalties.

## What decisions can be made by the Complaints Committee?

The Complaints Committee has the authority to make one of three decisions:

- Refer the complaint, in whole or in part, to the Discipline Committee;
- Not to refer the complaint to the Discipline Committee;
- Return the complaint to the investigator for further investigation.

## How will the Complaints Committee's decision be communicated?

Unless the complaint file is returned to the investigator for further investigation, ICCRC will provide the Complainant and the Member with a copy of the decision.

## Can a decision of the Complaints Committee be appealed?

No. Decisions of the Complaints Committee are final and not subject to appeal.

## Should ICCRC Members obtain legal representation in the Discipline Process?

Yes. It is risky to go through the discipline process without first having obtained legal advice. The ICCRC strongly encourages Members to retain a lawyer. The RCIC should advise ICCRC in writing that a lawyer is representing him/her. This will allow ICCRC to communicate with the RCIC lawyer directly in dealing with the discipline matter.

## What does the Discipline Committee do?

The Discipline Committee reviews and decides every complaint referred to it by the Complaints Committee. It does this in accordance with the [Discipline Committee Rules of Procedure](#).

## What happens when a complaint is referred to the Discipline Committee?

When a complaint is referred by the Complaints Committee to the Discipline Committee it is first reviewed by Discipline Counsel, a lawyer acting on behalf of ICCRC. The Member will be sent a Notice of Referral which sets out the allegations against the Member.

One or more telephone calls will be scheduled between the Member and their legal counsel with Discipline Counsel, to discuss mutual disclosure of documents that each party would rely on at a hearing, and the potential for settlement of the complaint before it reaches a discipline hearing.

At a Discipline Committee hearing a three-member panel of the Committee either (i) reviews a joint recommendation for settlement without a hearing, or (ii) reviews the evidence and legal arguments of the parties and determines whether the Member has committed a breach of the *Code of Professional Ethics*. If there has been a breach, the panel also determines the penalty.

Once a complaint has been handed over to Discipline Counsel it becomes a complaint of ICCRC against the RCIC – not the Complainant. Therefore, the complaint may proceed to a hearing even if the Complainant withdraws the complaint. The determination of whether the Member engaged in professional misconduct is important for the protection of the public, regardless of whether the Complainant has changed his or her mind about complaining. The Complainant may, if needed, be called as a witness to give evidence at a hearing, but will not have a role in the deciding either the merits of the complaint or any resulting penalty.

## How is a Discipline Hearing conducted?

Hearings are conducted by written submissions, via telephone or video conference call or, if necessary, orally in-person.

A three-member panel of the Discipline Committee has two RCICs (practicing Members of the profession) and a Public Representative. Independent Legal Counsel attends the hearing to provide legal advice to the panel itself. Also usually present are: ICCRC Discipline Counsel; the RCIC and/or their legal counsel; any witnesses to be called by the parties, a clerk and a recording secretary for simple hearings or a court reporter for full hearings. An interpreter may also be present if needed. Sometimes an oral hearing may be open to the public.

## Who pays for the cost of the hearing?

Discipline hearings require a lot of lawyer and staff time just to prepare for the hearing, and more time to participate in it. Although written or electronic hearings are much less costly than oral, in-person hearings, any kind of hearing is still costly. The parties are expected to do everything possible to avoid unnecessary hearings. If a hearing is required, the parties should resolve some issues by agreement, to avoid a hearing being needlessly lengthy and costly. As in the courts, the parties are expected to agree to whatever should reasonably be agreed to, and to disagree only when it would be unfair or unreasonable to agree.

The [Discipline Committee Rules of Procedure](#) require each party to disclose to the other, well before any hearing is to be scheduled, all of the evidence that the party would rely on if the complaint proceeded to a hearing, and to disclose a list of the witnesses that each party would call at the hearing. Thus, if a hearing is held, no one will be ambushed. This disclosure makes it possible, in most cases, to predict the outcome of a hearing, and to agree to a settlement of any issues where the likely outcome is reasonably foreseeable.

If there is a failure to reach a settlement only because one party acted unreasonably, thereby requiring a costly but unnecessary hearing, the panel hearing the complaint has the authority to order either party to pay some or all of the costs of the other party. This costs award authority helps to explain why the vast majority of complaints are resolved by settlements rather than hearings. That also happens in courts of law and in discipline hearings of regulators of other professions, for the same reason.

### **What type of dispositions may be made by the Discipline Committee?**

If the panel finds that the RCIC or firm has committed an offence, they may by order:

- Issue a reprimand and direct that the reprimand be recorded in the register and/or published on the Council's website.
- Require the Member to take a specified rehabilitative measure, including to complete specified education and professional development courses or to seek specified counselling or treatment.
- Suspend the Member's membership or the firm's registration for a period determined by the panel, including prohibiting the RCIC from holding him/herself out as a Regulated Canadian Immigration Consultant, or using any designation, term, title, initials or description during the period of suspension;
- Impose restrictions or conditions on the right of the Member or firm's Members to practise immigration/citizenship consulting;
- Permit the RCIC to resign and determine the timing and manner of the return of the membership Certificate (licence) to the Council by a Member whose membership is revoked. The order will also stipulate when, if ever, the RCIC could seek to be reinstated.
- Revoke the Member's membership or the firm's registration and stipulate when, if ever, the RCIC or firm could seek to be reinstated;
- Require the RCIC or firm to pay ICCRC's reasonable costs of investigation and legal fees for any hearing, and specify the time and the manner of payment;

In some cases, the hearing panel may delay the imposition of a penalty for a specified period or on specified terms, including the successful completion of specified education and professional development courses.

A failure to comply with the order will result in the revocation of the Member's membership or the firm's registration.

The hearing panel can also make any other order that it considers necessary in the circumstances.

### **How will the Discipline Committee's decision be communicated?**

The panel will issue a decision and, if the Member or firm is required to do anything or face any penalty, an order setting out these requirements. In contested matters, the panel's decision will also be followed



by written reasons for its decision and order. ICCRC will send this information to both the Complainant and the Member and/or the Member's legal counsel.

### **Can a decision or order of the Discipline Committee be appealed?**

Yes. Either party may appeal the decision to the Appeal Committee, but only if there are valid grounds for an appeal. The permitted grounds are a) a serious error of law, fact or mixed law and fact, or a denial of procedural fairness; or b) the discovery of material new evidence that could not with due diligence have been available at the initial hearing.

### **Are decisions of the Discipline Committee published?**

Yes. ICCRC will normally publish decisions, with the written reasons for the decision, and the order, on ICCRC's website.

The panel may also order that its decision and order be published in the local daily newspaper of the community where the Member lives and/or carries on business.

The panel will not order publication if it decides that the disclosure of the name of the Member is not required in the public interest and would be unfair to the Member.