



Case Summary: 2024-01

Appeal Sub-Committee Hearing Date: May 29, 2024

General Summary

File Opened: March 23, 2023

Adjudicating Sub-Committee Decision: March 6, 2024

Appeal Application: April 3, 2024

The AIC Criminal Record Review Panel referred this matter to the Complaint Resolution Process. The AIC opened a complaint file against the Member, **Vivian Clifford, AIC Candidate Member**, of Sudbury, Ontario, as an issue arising on March 23, 2023.

Complaint Allegations

The complaint contained the following concerns:

1. Failure to acknowledge Criminal record in Candidate Application
2. Failure to divulge a criminal conviction after the Member became aware of the requirements for membership.
3. Failure to acknowledge Criminal record in Candidate Application OR divulge such after being admitted to Candidacy when the Member ought to have been aware of CUSPAP requirements for membership.

Issues Arising from the Complaint Review

None

Appeal Decision dated September 26, 2024

The Appeal Sub-Committee affirmed the sanction of Expulsion imposed by the Adjudicating Sub-Committee in their decision dated March 6, 2024.

Based on a full and careful review of the record, the Appeal Sub-Committee Hearing Panel concluded:

- the Adjudicating Sub-Committee's decision of Expulsion to be reasonable in all circumstances and within its discretionary authority, and

- there is no basis upon which to interfere with the decision of the Adjudicating Sub-Committee.

Appeal Issues

Was the Adjudicating Sub-Committee's reasonable and were there any basis to interfere with that decision?

The Appeal Application included an objection to the severity of the sanction imposed by the Adjudicating Sub-Committee stating that *"I don't believe it fits the severity of the complaint."*

Rationale

The Appeal Sub-Committee Hearing Panel reviewed the entire record, no new evidence being entered on this appeal, and considered the parties' submissions. They concluded that there is no basis for altering the Adjudicating Sub-Committee decision.

The reasons for this conclusion are as follows:

The Member did not challenge the evidence, or the findings of fact made by the Adjudicating Sub-Committee and accepted that the effect of those findings is that she has breached the CUSPAP Ethics Standard. The one exception was that she submitted that the requirement to report a criminal conviction under Ethics Comments 5.15 and 5.16 related to new convictions – not past convictions.

The Panel disagreed with the Member's interpretation that Ethics Standard Comment 5.1 does not require disclosure of past criminal convictions or indictments. This is discussed below.

Per Regulation 5.29, the standard of review at an Appeal Sub-Committee Hearing is correctness subject to certain express exceptions.

The Member admitted to the infractions set out in Allegation 1. Regarding Allegation 1, the Appeal Sub-Committee reviewed the Member Application for Candidacy that was included in the Hearing Brief and signed by the Member on March 24, 2016. Also in the Brief was a record of the conviction by the Ontario Court of Justice, dated March 19, 2008, in which the Member pleaded guilty to five criminal offences.

The Application for Candidacy requires an applicant to represent to the AIC that they have not been convicted of a crime involving fraud, dishonesty, false statements, moral turpitude, etc. If the applicant cannot make this representation, they must indicate this in their application. The Member did not disclose that she could not make one of the representations, thus failed to disclose her conviction of a crime.

In relation to Allegation 2, the Member twice attempted to mislead the AIC when responding to questions about her criminal record. Concerning Allegation No. 2, the Appeal Sub-Committee notes that the requirement to disclose criminal convictions came into effect with 2022 CUSPAP.

The Member said she considered the requirement under 2022 CUSPAP to disclose criminal convictions or indictments to apply only to new convictions; the Panel found that is not a correct interpretation of Ethics Standard Comment 5.1.6. Because she had never made such disclosure before, under the ordinary meaning of “*A Member must immediately inform the AIC upon any criminal convictions...*” obliged the Member to disclose her criminal conviction immediately upon CUSPAP 2022 taking effect.

According to the record, the Member did not make such a disclosure, which the AIC identified in August of 2022 during a membership-wide criminal record check.

A central object of CUSPAP is to protect the public interest as expressed in the AIC Code of Conduct. Failure to disclose past convictions or indictments does not further that object. In any event, Ethics Standard Rule 4.2.3 is broad and addresses more than criminal convictions and indictments. It states: “*It is unethical for a Member to knowingly act in a misleading manner.*” The Member’s conduct during 2022 and 2023 supported the finding of the Adjudicating Sub-Committee that the Member knowingly acted in a manner that was misleading (Ethics Standard Rule 4.2.3).

Save for questions involving the exercise of discretion and findings of fact, under the AIC Consolidated Regulations, the Standard of review for the Appeal Sub-Committee is “correctness.” A “correct” decision is the only right answer in light of the law and the facts. Here, the Member has admitted to the infractions in Allegation 1. Under Allegation 2, the Member has failed in her obligations both to disclose the criminal conviction and to be honest and forthright with the AIC during its inquiries.

The Appeal Sub-Committee found that the Adjudicating Sub-Committee's decisions were correct. Given this conclusion, the Appeal Sub-Committee Hearing Panel considered the sanction imposed by the Adjudicating Sub-Committee.

Sanctions are the result of an exercise of discretion and as such the standard of review is “patently unreasonable”. The Appeal Sub-Committee may only set aside a discretionary decision if it is patently unreasonable (Reg. 5.29.2). Reg. 5.29.3 states that a discretionary decision is patently unreasonable if the discretion a) is exercised arbitrarily or in bad faith, b) is exercised for an improper purpose, or c) is based entirely or predominantly on irrelevant factors.

There was no evidence presented, nor any suggestion made, by the parties in this appeal that the sanction decision of the Adjudicating Sub-Committee was arbitrary or made in bad faith. Likewise, there was no suggestion that the sanction decision was made for an improper purpose.

The Appeal Sub-Committee Hearing Panel found that the sanction decision of the Adjudicating Sub-Committee was not based on irrelevant factors.

In determining the appropriateness of a sanction imposed on a Member, regard must be given to the AIC Code of Professional Conduct: *“Members pledge to ... conduct themselves in a manner that is not detrimental to the public, the AIC or other Members or to the real property appraisal profession. Members’ professional interactions with other Members, the AIC and the public shall be governed by, ... good faith.”*

Self-regulating professions are keenly aware of the need to keep at the forefront the public interest. The AIC’s objectives for sanctions in professional practice matters involve at a minimum a) protecting the public and b) where warranted, providing a sanction that acts as a deterrent for conduct that cannot be condoned.

The information presented to this Appeal Sub-Committee Hearing Panel on discipline included the testimony of the Professional Practice Advocate and redacted Expulsion decisions. The Sanctions the AIC applies to Members vary depending on various factors such as the nature of the offence, how the Member responds to an investigation, whether there is a history of offences, and so forth. The “scale” of infractions ranges from minor errors, for example, in arithmetic, to profound misbehaviour such as deliberately misleading the public, the AIC, its Members or the real property appraisal profession.

Section 5.35 of the Regulations sets out a range of consequences, commencing with written reprimands, educational requirements, peer review obligations, and fines. More severe infractions can lead to the suspension of co-signing privileges. Public Censure, membership Suspension, and Expulsion are reserved for the most severe ethical infractions.

The Member did not disclose the criminal conviction when applying for candidacy, even though the application form was plain in the requirement for such disclosure.

The Member did not disclose the infraction until caught by an AIC-wide criminal record check and was evasive on more than one occasion.

AIC Ethics Standard Rules stress the obligation to not mislead as a touchstone of ethical conduct, an obligation the Member attempted to evade on several occasions. The Appeal Sub-Committee found the repeated and deliberately misleading nature of these infractions to be at the high end of the scale, warranting a discipline at the limit of what the AIC can impose.

Costs

The Appeal Sub-Committee did not impose costs.

Adjudicating Decision dated March 6, 2024

Breaches of CUSPAP 2014 and CUSPAP 2022:

The Adjudicating Sub-Committee found proven breaches to:

- (Allegation 1) CUSPAP 2014 Ethics Standard Rules 4.2.1, 4.2.2, and 4.2.3 and
- (Allegation 2) CUSPAP 2022 Ethics Standard Rule 4.2.3 and Ethics Standard Comment 5.1 – 5.1.5 and 5.1.6

Rationale

The Member's Application for Candidacy was included in the Hearing Brief and was signed by the Member on March 24, 2016. The form requires the applicant to represent to AIC that he/she has not been convicted of a crime involving fraud, dishonesty, false statements, or moral turpitude etc.

The Member did not disclose that she was unable to make one or more of the preceding statements, thus failing to disclose to AIC that in fact, she had been convicted of a crime by the Ontario Court of Justice, March 19, 2008. The Member had pleaded guilty to five criminal counts.

The Complaint on this matter came from the CRC Panel as a result of a Criminal Record Check, which provided evidence of a conviction dated October 2009. When contacted by representatives of the AIC's Complaint Resolution Process, the Member answered their questions dishonestly by letters dated October 12, 2022, and November 9, 2022.

In response to questions from the Hearing Panel, the Member admitted to lying, expressed regret, and undertook to not repeat the offenses. She did not put forward new evidence.

Discipline

1. **Section 5.36.4 Expulsion.** Expulsion of a Member means the removal of a Member from membership in the AIC.

Costs

Costs were waived in view of the Member's situation and the sanction of Expulsion.