

STAY OUT OF TROUBLE SOME DO'S AND DON'TS (IF YOU WANT TO AVOID A PROFESSIONAL PRACTICE COMPLAINT)

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Between us, we have 20 years of volunteer experience on the Investigating and Adjudicating Sub-Committees. While we cannot say that we have seen every mistake and misstep our Members have made, we have seen more than our share and can tell you that many of the complaints could be avoided with a bit of common sense, not to mention adherence to the *Regulations* and the *Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP)*.

This article is intended to provide a short list of some of the most common mistakes and unprofessional conduct that result in complaints to the Appraisal Institute of Canada (AIC). Forgive us if some of these seem obvious, but rest assured we have seen it. Like the commercial says “we cover it all because we’ve seen it all.”

1. CONFLICT OF INTEREST

You receive an email from an Appraisal Management Company (AMC) and the subject is a property in your neighborhood, close to your house. You know the homeowners are having some marital issues because the wife belongs to your book club. You are not close friends outside of your book club. You see no problem with doing the appraisal. You call your fellow reader to set up a time to inspect and she says that it is important that you inspect the home in the morning when her hubby is

not home. She needs the appraisal in order to finance the home to buy out her husband and does not want him to know that she is having the appraisal done or that you are doing it. By now, you should be wondering if you should be involved, but you do the appraisal in the most professional way possible and provide a supportable market value estimate. You do not feel it necessary to disclose to the AMC, and ultimately your lender client, that you live nearby or that one of the owners is an acquaintance because, after all, you are a professional, right?

The lender finds out that you live very close to the subject property and is told that you and the applicant are friends (even though you are not close friends). The lender looks at your appraisal and, concerned about conflict, files a complaint with the AIC.

You are notified by the AIC that an investigation has been launched. You do not understand why or what you did wrong? All you did was provide an appraisal for refinancing purposes.

The question is whether you should have accepted the assignment in the first place.

While you may prepare the most professional and well-researched appraisal, the potential for a complaint exists because the subject property is in your immediate neighborhood and,





more importantly, it may be construed that you provided a value estimate to favor your friend's interest. One could argue that there could be a benefit to you to providing a high number to help out a neighbor who is a friend. When you receive an appraisal request, if you have to stop and ask yourself whether or not there might be a conflict, then you should not take the assignment.

Be wise and avoid situations where there is any potential for a perception that your professional judgment will be unduly influenced. If there is any doubt in your mind, step away. Remember, the conflict or bias need only be possible or perceived as such by another party. Their perception of the issues may result in a complaint to the AIC despite your best efforts to produce a good appraisal report.

CUSPAP 2016 provides the following direction:

5.11.2 *It is unethical for a Member to accept an assignment if the Member has any direct or indirect, current or contemplated, personal interest in the subject matter or the outcome of the assignment, unless such personal interest:*

5.11.2.i. *is revealed to the client in writing and acknowledged by the client in writing prior to acceptance of the assignment, or as soon as the conflict is revealed or perceived (see 16.7.8); and*

5.11.2ii. *is fully and accurately revealed in the report. (see 16.7.8)*

If you decide to undertake the assignment, ensure that the Certification in your report is amended to fully disclose any personal relationship or interests with the parties or the subject matter. If the parties all consent to you completing the assignment, nothing prevents you from doing it, but, if your gut tells you otherwise, consider declining the assignment.



“WHEN YOU RECEIVE AN APPRAISAL REQUEST, IF YOU HAVE TO STOP AND ASK YOURSELF WHETHER OR NOT THERE MIGHT BE A CONFLICT, THEN YOU SHOULD NOT TAKE THE ASSIGNMENT.”

2. CLIENT RELATIONSHIPS

You provided an appraisal to your client who is not happy with the value. The client calls you to get an explanation as to how you arrived at your value estimate. Perhaps the client is not familiar with the terminology or the appraisal process or is not a seasoned market participant who requires additional information. Either way, you are busy and have no time for this. You are a professional, right? It is your opinion and no one is going to change your mind. After you hang up on your client, she files a complaint to the AIC and, also mentions that you were two weeks late delivering the report.

Perhaps the client was not even asking for you to change your opinion. Perhaps she only wanted an explanation. Are you actually listening to your client? In our haste to get reports out, we tend to overlook the fact that we are building relationships with everyone we meet, including those clients who may not fully understand what we do.

When your clients express concerns about your value estimates or the analysis in your reports, listen to them politely and try to explain in a professional manner. In our experience, there are many complaints that could have been avoided if Members did not hang up on the client or dig in their heels. Obviously, not every client or user of the report will agree with your analysis, but, if you treat his or her questions and concerns in a respectful and factual manner, you may well avoid a complaint.

3. DISCLOSURE OF RESULTS

A mortgage broker orders an appraisal. The property owner says, “I think my house is worth \$X and I need a value of at least \$Y to get the financing. Let me know when you are ready to send the appraisal.” When the appraisal is finished, you tell the owner that you are ready to send the report to the AMC who acts on behalf of the mortgage broker. He asks for the value. Since you are a nice person



and he is a friendly guy, you tell him “you’ll get your financing.” The report is emailed to the AMC, but the loan does not get approved for some other reason. The mortgage broker finds out that you disclosed the value estimate to the homeowner and files a complaint with the AIC.

The results of your appraisal or consulting assignment are confidential to you, your client and the authorized user of the reports. Broad hints at the number to others (the property owner, a realtor involved or others) can get you into trouble. Do not tell the owner, “you will get your financing” without permission from your client, if your client is not the owner.

5.10 Disclosure (see 4.3.10, 16.6)

- 5.10.1 Members pledge to uphold the confidential nature of the Member/client relationship.
- 5.10.2 A Member must not disclose the analyses, opinions or conclusions in an assignment to anyone other than:
 - 5.10.2.i. the client and those parties specifically authorized by the Member and client to receive such information;
 - 5.10.2.ii. third parties, when the Member is legally required to do so by due process of law (e.g., the Courts); or
 - 5.10.2.iii. an authorized Committee of the Institute.

4. MALICE

You have had a bright young Candidate working with you for several years. Almost as soon as he gets his designation, he leaves your firm to set up a competing shop. Some of your clients followed. You believe that the ex-Candidate took sales data and is plagiarizing your template. You tell several of your clients as much. After a few weeks of bad mouthing each other by email and twitter, your ex-Candidate complains to the AIC, so you lodge a complaint against him.

“NOT EVERY CLIENT OR USER OF THE REPORT WILL AGREE WITH YOUR ANALYSIS, BUT, IF YOU TREAT HIS OR HER QUESTIONS AND CONCERNS IN A RESPECTFUL AND FACTUAL MANNER, YOU MAY WELL AVOID A COMPLAINT.”

Do not get involved in a public war of words with another Member. AIC Members are required to be respectful of each other. If another Member is behaving in an unprofessional manner, contact her or him privately, or utilize the AIC’s Professional Practice professionals. Public disputes between Members tend to result in complaints against one or both.

4 ETHICS STANDARD – RULES

4.1 Preamble

- 4.1.1 Members of the Institute pledge to conduct themselves in a manner that is not detrimental to the public, the Institute, or the real property appraisal profession. Members’ relationships with other Members and the Institute shall portray courtesy and good faith and show respect for the Institute and its procedures. (see 4.3.2, 5.2)

5. MEMBER ON MEMBER COMPLAINTS

As a result of the war of words and complaints between you and your ex-Candidate, the AIC’s Professional Practice process moves along and you are both found to be in violation of our ethical obligations and are subject to sanctions such as reprimand, costs, education, and/or fines.

The Consolidated Regulations provide the following direction:

5.9 Member on Member Complaints

- 5.9.1 In the case of a Complaint initiated by a Member against another Member that is dismissed pursuant to subsection 5.65, if upon review of all materials and information gathered in the Complaint Investigation, the

Counsellor, Professional Practice, or a Professional Practice Sub-Committee considers that the Member Complainant was not acting in good faith, the Counsellor, Professional Practice, or the Professional Practice Sub-Committee can decide that the Member Complainant may warrant a Conduct Sanction as outlined in sub-section 5.66.2 and sub-section 5.68, and if the Counsellor, Professional Practice, or the Sub-Committee so decides, then it must remit the matter to the Professional Practice Advocate for review and such further action as is within the jurisdiction of the Professional Practice Advocate.

This is not to suggest that you should not initiate a complaint against a fellow Member who has behaved unethically or produced work that is misleading or deemed to not comply to CUSPAP. Rather, examine your motivations for the complaint. If protection of the public is the reason you believe another Member should be investigated and possibly sanctioned, then the complaint process is available. Do not complain about another Member to preclude competition or to take the upper hand in a personal vendetta.

CONCLUSION

These brief mock ‘case studies’ are intended to illustrate a few of the more common situations we have encountered when volunteering on Professional Practice Sub-Committees. If there is anything in this article that helps a Member avoid a complaint, then our job is done (until the next time we receive a new and novel complaint file). 