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## IMCNZ Complaints Procedure

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The IMCNZ Constitution stipulates the following in regard to complaints procedure:

### Discipline

- 29.
- a) Any person, whether a member of the Institute or not, or any person appointed by the Council for that purpose, may give notice to the Secretary of the Institute in a form approved by the Council, giving details of any complaint made against any member of the Institute.
  - b) The Secretary upon receipt of such written complaint shall forthwith refer the complaint to the Council and give notification of such complaint to the accused member and confirm to the complainant in writing that the complaint has been referred to the Council for consideration. The Council on receiving any complaint shall consider the same and having regard to the nature of the complaint appoint an Investigator to investigate the complaint and/or negotiate with the parties for settlement of the complaint. The investigator shall be assisted by an independent advisor and a Past President of the Institute (or should a Past President not be available such member of the Institute as the Council may consider appropriate). The investigator/negotiator shall have access to such legal and other advice as he or she may consider appropriate.
  - c) The investigator/negotiator upon completion of his or her investigation and after consulting with other members of the investigation team shall make a written report to the Council and where appropriate recommend to the Council that the accused member be charged with one or more of the following charges:
    - i) carrying on business in an unethical and/or unprofessional manner;
    - ii) a breach of any of the rules of the Institute;
    - iii) making a false declaration on his or her application for membership;
    - iv) conducting himself or herself in a manner which is dishonourable or derogatory to the Institute;or
    - v) that no charge be preferred against the accused;
    - vi) that the investigation of the complaint be deferred until final determination of any criminal, civil or other proceedings.
  - d) The Council shall consider the written report and if the Council is of the view that the investigation raises matters that require further consideration, shall convene a Special Meeting of the Council for the purposes of hearing and deliberating on the charges.
  - e) The Secretary shall give notice to the complainant and the accused member of the time, date and place of hearing and shall give to the accused member and complainant such documents and papers, including a copy of the investigator's report, not less than seven days prior to the hearing.
  - f) Any accused member shall be entitled to appear either personally or by legal counsel at the Disciplinary Hearing.
  - g) The Council may also, if it considers it advisable, appoint a legal adviser to assist the Council.
  - h) The Council upon hearing the evidence shall give consideration to the same and give a written decision, a copy of which decision shall be forthwith forwarded to the parties, their legal counsel and to the Secretary for the time being of the Institute. The Council may in its discretion provide a copy of the decision to such members of the news media as the Council shall deem fit but only after giving the complainant and the accused members the right to be heard.

- i) The Council may, upon consideration of the evidence, make one of the following decisions:
  - i) dismiss the complaint;
  - ii) uphold the complaint.

## Penalties

- j. If the complaint is upheld by the Council then the Council may impose one or more of the following penalties:
  - i) require the accused member to make an apology whether oral or in writing to the complainant;
  - ii) make an order that the name of the accused member be published in the Institute's magazine or newsletter to the effect that the accused member has been found guilty of the charge and giving such particulars of the charge as the Council shall consider appropriate;
  - iii) impose a fine upon the member in a sum as the Council considers appropriate having regard to the seriousness of the charge;
  - iv) require that the accused member pay to the Council all or part of costs of the hearing;
  - v) suspend the membership of the accused member, whether indefinitely or for such time as the Council thinks fit;
  - vi) expel the accused member from the Institute.

## Appeals

- k) Any person against whom any complaint is upheld by the Council, may petition the membership of the Institute for an appeal against the decision of the Council will be permitted and provided that not less than 10% of the Full, Associate, Provisional and Fellow membership signifies in writing that appeal rights ought to be granted, then an appeal against the decision of the Council shall be permitted to be made to the Appeal Tribunal which shall consist of a single adjudicator who shall hear and determine the appeal.
  - l) The Council shall from time to time appoint an independent legally qualified person of standing to act as the Appeal Tribunal.
  - m) Appeal Tribunal may from time to time either on the application of any party or without such application and on such terms as it thinks fit, direct the holding of a conference of the parties, or their counsel to settle the issues to be determined and to fix a time and place for hearing of the appeal and to give such other directions as may be necessary for the proper determination of the appeal.
  - n) Unless otherwise agreed between the parties, every appeal shall be by way of re-hearing. The Appeal Tribunal shall have full discretionary power to hear and receive further evidence on questions of fact, either by oral evidence or by affidavit.
  - o) Where the Appeal Tribunal allows any appeal, it may set aside or squash the decision appealed from or substitute any decision which would have been given by the Tribunal whose decision was appealed from or make such further or other orders as the case may require.
  - p) On determination of any appeal, the Appeal Tribunal shall forward to the National Council and to the parties a copy of its decision. The Appeal Tribunal shall otherwise have the same powers and authority as the Council to hear and determine the matter and to impose penalties.
30. Any member may be suspended by the National Council from the privileges of membership, or may be declared by the National Council to have forfeited his or her membership if, in the opinion of the National Council, the membership was obtained by improper means, or if the National Council considers after

investigation that the member is in breach of the Code of Professional Conduct, or guilty of dishonourable conduct or of conduct derogatory of the Institute, or which would bring the Institute or its members into disrepute.

31. Any such member whom the National Council may consider for suspension or forfeiture of membership shall be informed in writing of the matter to be laid to his or her charge, and shall be afforded the opportunity to be heard at the meeting of the National Council at which the case is to be investigated and of the calling of evidence in the member's defence. However if in the view of the National Council any charge of inappropriate conduct by a member as defined in clause 31 is so serious as to justify the suspension of membership before the convening of the meeting at which the case is to be investigated, the National Council may in its sole discretion declare any such member's membership to be immediately suspended.