

MEMORANDUM

To: CIA members and stakeholders
From: Dave Pelletier, Chair
Task Force to Review the CIA *Bylaws*
Date: June 29, 2022
Subject: **Bylaw Amendment – Second consultation – Phase 2 – Membership and Discipline**
Document 222075

Executive summary

In the fall of 2020, the CIA Board established the Task Force to Review the CIA *Bylaws* (BRTF) to undertake a full review of the *Bylaws*, in an effort to simplify and modernize them. The BRTF members are:

Jim Christie – Past President of the CIA
Angelita Graham – former Board member
Mason Lin – recent ACIA
Dave Pelletier (Chair) – Past President of the CIA
Marc Tardif – Past President of the CIA

The BRTF completed phase 1 of the project and a [newly restructured version of the *Bylaws*](#) was approved by the Board in March 2022 and confirmed by members at the Annual General Meeting on June 21, 2022.

Part of the BRTF's mandate, however, also includes making some substantive changes to the *Bylaws* related to membership and discipline that have been identified, in recent years, by the Board or other entities within the CIA, and that were put on hold pending the rewrite of the *Bylaws*. The topics of those substantive changes were presented to members as part of the first [phase 2 Bylaw consultation](#) last winter.

The BRTF considered the comments received and concluded that a second consultation on the phase 2 topics, with specific bylaw wording and key policy changes, would be valuable. Therefore, the approval and confirmation of the phase 2 amendments were postponed to the fall to allow time for this second consultation.

Consultations have been conducted along the way with the Board, the Governance and Nominations Committee, the Professional Conduct Board (PCB), the Education and Qualification Council (EQC), the Professionalism and Credential Monitoring Board (PCMB), and the Actuarial Profession Oversight Board (APOB). The CIA's legal counsel was consulted on key issues and has reviewed the proposed phase 2 amendments.

Information related to both the membership and discipline topics, which the Board has approved for release to members and stakeholders for consultation, is provided below.

A draft of the proposed amendments is also being circulated with this notice.

The project timeline leading to adoption of the revised *Bylaws* this fall is also included.

Members and stakeholders are invited to give consideration to this material and to provide the BRTF with feedback. **The deadline for comment is August 26, 2022.**

Proposed amendments

Membership

This section of the notice covers:

- The relevant phase 2 proposed amendments to the *Bylaws* related to membership matters; and
- The revisions to the [Policy on the Administration of Member Rights and Privileges](#).

Although members were consulted on four membership topics last winter, only two topics are included in this phase 2 consultation:

1. Suspension and subsequent termination of membership as the consequence of non-compliance with the CPD Qualification Standard; and
2. Suspension of membership if a member is found to suffer incapacity.

The amendments related to the following two topics from the first consultation have been postponed:

- Elimination of the Correspondent membership category; and
- The division of the Affiliate membership category into two non-designated membership categories – Candidate and Student.

Several commenters questioned the need for the latter two changes proposed. As well, the changes related to these topics have implications for the *Rules of Professional Conduct*, which are currently under review with a target date of June 2023 for approval. It was determined that for efficiency and coordination, any amendments to these membership categories should be made in conjunction with the changes to the Rules, to ensure that the *Bylaws* and Rules are in sync.

The amendments shown in the charts below are redlined in the attached draft Bylaws and are colour-coded in yellow, for ease of reference.

1. Suspension and subsequent termination of membership as the consequence of non-compliance with the [Qualification Standard – Requirements for Continuing Professional Development \(CPD QS\)](#)

Currently, the CPD QS imposes a penalty of suspension of membership for non-compliance with the CPD requirements. The QS, along with the [Policy on the Administration of Member Rights and Privileges](#), outlines the process for suspension and reinstatement.

Since no process was established beyond suspension (the *Bylaws* permit termination of membership only for non-payment of dues or disciplinary action), these members could remain suspended indefinitely.

The original proposal was to replace suspension in case of non-compliance by immediate termination. Reflecting comments received, the revised proposal is to provide for suspension in such cases, but with termination after suspension for one year, subject to review by the EQC.

A member is reinstated upon submission of a compliance statement, an exemption application, or a remedy plan.

Also, there is currently no fee associated with suspension or reinstatement from suspension for CPD non-compliance, although the CPD QS does indicate that a fee may be charged for reinstatement. The proposal includes the reestablishment of the \$100 financial penalty for filing a CPD compliance statement after the February 28 deadline, but before suspension later in March. Without such a penalty, there is little incentive for members to file by the deadline, resulting in significant follow-up with members to remind them of their obligation. The financial penalty for late filing of CPD would be added to the member’s dues invoice. The required changes to reintroduce the fee are included in the *Policy on the Administration of Member Rights and Privileges* (included for reference).

Bylaw(s) affected	Changes	Rationale/Comments
2.32, 4.1.2, 4.1.3, 4.1.6, 4.1.7, and 6.2.5	<ul style="list-style-type: none"> Changed to reflect that suspended members cannot use their designation, vote on CIA business, or run for election to the Board. 	<ul style="list-style-type: none"> Suspended members will not have the right to use their CIA designation. Only members in good standing should have the right to vote or run for election (i.e., influence the direction of the CIA). Suspended members will be required to pay dues while suspended. They would retain access to all member resources and would continue to appear in the member directory, but shown as suspended using the existing coloured dot system (new colour).
4.4.2.v	<ul style="list-style-type: none"> A new condition was added to allow for the termination of the membership of a member who remains non-compliant with a professional continuing qualification standard (e.g., the CPD QS), for more than one year. 	<ul style="list-style-type: none"> A CIA designation is equivalent to a “license to practice” and must meet certain criteria to be maintained. Member comments indicated that termination as a first consequence of CPD non-compliance was too harsh. Suspension implies a temporary state, so a solution is still needed to address long-term suspensions. One year would allow sufficient time for a member to resolve their compliance issues. It is noted that for those in less actuarial roles, CPD is not overly onerous to achieve, in that any

		<p>developmental activity relevant for one’s role can qualify as CPD. Those no longer in roles where the actuarial designation is at all relevant may qualify for exempt status.</p> <ul style="list-style-type: none"> • Allows for the administrative termination, once the time has elapsed, similar to termination following non-payment of dues.
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<p>2. Suspension of membership if a member is found to suffer incapacity</p> <p>It is a practice in other professions to suspend or terminate the membership of a member who is considered to be, by a court of law, incapable of administering their own affairs.</p> <p>The wording in the original consultation document “mental illness or incapacity” was broader than intended, and drew several comments. The proposed bylaw itself is much narrower in application. <u>No assessment would be done by or on behalf of the CIA.</u> Suspension would occur only if the CIA were made aware of the appointment by a court of a guardian for a member.</p> <p>This is being recommended from a public interest perspective.</p> <p>A process for reinstatement of active membership, if the member recovered and the decision of the court were reversed, is also included.</p>		
Bylaw(s) affected	Changes	Rationale/Comments
2.19	<ul style="list-style-type: none"> • A new defined term has been added: “Guardian” 	<ul style="list-style-type: none"> • Assists in defining the circumstances under which a member may be suspended.
2.32, 4.1.2, 4.1.3, 4.1.6, 4.1.7, and 6.2.5	<ul style="list-style-type: none"> • Same as noted in Section 1 above 	<ul style="list-style-type: none"> • Same as noted in Section 1 above
4.4.1.ii	<ul style="list-style-type: none"> • A new condition was added to allow for suspension of membership upon the appointment by the court of a guardian. 	<ul style="list-style-type: none"> • Although the original proposal in the first consultation was to terminate membership in these circumstances, it was clear from member comments that suspension (temporary in nature) was a preferred consequence. • Still protects the public. • No further mention around mental illness which was broader than intended in the consultation material.

4.5.2	<ul style="list-style-type: none"> • A simple process for reinstatement of a member who was suspended pursuant to Bylaw 4.4.1.ii and who is no longer under the care of a guardian. 	<ul style="list-style-type: none"> • No penalties would be administered. • A process would be in place to reinstate the suspended member, if the guardianship condition was removed.
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Additional changes redlined in the Bylaws that are not colour-coded are being proposed for clarity or improvement, but are not related to membership or discipline topics. They are of an editorial or housekeeping nature.

Changes are also being proposed to the *Policy on the Administration of Member Rights and Privileges* (included) to reflect the proposed membership-related amendments. Although these changes do not require member confirmation, they are being circulated as supporting information. These changes include:

- Clarification of the rights and privileges of suspended members (i.e., use of the designation, voting rights and access to CPD) in accordance with the new Bylaws.
- The reestablishment of the \$100 fee for late filing of a CPD compliance statement.
- A straightforward reinstatement process if a guardianship is removed.

Changes will also be required to the CPD QS. The PCMB will be circulating the related changes to members along with some additional proposed changes as part of a separate consultation in the coming weeks.

All of these policy and CPD QS changes would take effect, along with the *Bylaws*, on January 1, 2023.

Discipline

This section of the notice covers:

- The relevant phase 2 proposed amendments to the *Bylaws* related to discipline matters; and
- The revisions to the draft [Policy on the CIA Disciplinary Process](#).

Although members were consulted on seven discipline topics last winter, only five separate topics are included in this phase 2 consultation:

1. Elimination of private admonishment
2. Record of a letter of advice
3. Elimination of the right to appeal for non-participation in the original disciplinary tribunal
4. Review and confirmation of written settlement agreements by a disciplinary tribunal (with respondent admission of guilt)
 - This is a combination of two originally-proposed topics: 1 - Vetting of disciplinary “Fast Track” sanctions and 2 - Additional detail regarding settlement in advance of a hearing, which were related by nature.
5. Elimination of the role of Secretary of the PCB

Proposed amendments related to a requirement for the respondent to maintain confidentiality of the process until a complaint becomes public were dropped. The key principle underlying that proposal was that the disciplinary proceedings should remain confidential until a charge is filed, which would normally be in the best interest of the respondent. However, it was noted during the consultation that it does tie the respondent's hands in terms of seeking advice. There could be a need to inform a client, employer, etc. It could also be in the public interest to allow the respondent to disclose the case.

The amendments shown in the charts below are redlined in the attached draft *Bylaws* and are colour-coded in green, for ease of reference.

1. Elimination of the “Private Admonishment” sanction		
<p>Transparency is becoming increasingly important in our world today. The idea of disciplining a member without public knowledge of the offence, regardless of its nature, has become unpalatable from a public interest perspective. It is therefore being proposed that this option be eliminated from the sanctions available to the PCB. In practice, the PCB is already opting not to use this sanction.</p> <p>The BRTF reviewed the practices of other associations, actuarial and otherwise, with respect to the use of private admonishment and found that practices vary. Some actuarial associations continue to provide an option for private admonishment while others do not. Provincially regulated professions in Canada also generally do not.</p> <p>It should be noted that in a situation where the PCB is of the view that a sanction is not warranted, the private letter of advice continues to be an important option it has available to it. Also of note is that “Rule 13” encourages, where a member becomes aware of a possible infraction by another member, communication between the two actuaries and subsequent rectification of the matter, hence keeping such potentially minor issues out of the formal discipline process.</p>		
Bylaw(s) affected	Changes	Rationale/Comments
5.2.2.1.iv	Bylaw is removed.	<ul style="list-style-type: none"> • Despite some members’ disagreement with the removal of the private admonishment sanction, it was agreed that the current environment demands as much transparency as possible. • It was also commented that private sanctions don’t work. • It is understood that the PCB would exercise great caution in determining whether only a letter of advice is needed or a charge should be filed.

2. Record of a letter of advice
<p>Currently, if the PCB issues a letter of advice, it is not permitted to keep a copy on file in the member’s record. It is proposed to require that a letter of advice be kept on file for a period of five years, to be referenced ONLY by the PCB if a further matter regarding the member’s professional conduct arises during that time.</p>

Bylaw(s) affected	Changes	Rationale/Comments
5.2.2.1.ii	Allows a letter of advice to be kept on file for five years.	<ul style="list-style-type: none"> • The key principle is to keep a record of the letter of advice so that if ever a further offence is committed, the PCB would have the ability to better understand whether the behaviour had changed following the first letter (i.e., was the advice taken?), where it may be applicable to the second offence. Two borderline offence situations that occur for the same member could impact the PCB's decision, which could also be in the public interest. • The BRTF agreed with some member comments, however, about the duration of the period of time the record of the letter is to be kept. It is now being recommended to keep it for only five years instead of the originally proposed ten. Five years is consistent with other Bylaws dealing with similar principles (e.g., Board eligibility following disciplinary action). • It was also commented that there should be an appeal process for a letter of advice. However, since there would have been no breach and no charge was filed, there would be no need for an appeal process.

3. Elimination of the right to appeal should the Respondent not appear and participate in the Disciplinary Tribunal

Under our current Bylaws, respondents can file (and be granted) an appeal to a decision of a Disciplinary Tribunal even if they refused to participate in the original tribunal. Eliminating the ability for a respondent to disregard their first tribunal, only to demand a second, both of which are costly and time-consuming, decreases the potential for abuse of the system.

Bylaw(s) affected	Changes	Rationale/Comments
5.1.3.vii	Adds a reference to Bylaw 5.5.2 where the circumstances of the revocation of an appeal are stated	<ul style="list-style-type: none"> • A member who refuses to participate in their own disciplinary tribunal will no longer have the right to appeal the disciplinary tribunal’s decision. • Legal opinion: We do not have to offer an appeal at all, so this is an acceptable option.
5.4.8.v	Add to the power of a disciplinary tribunal	<ul style="list-style-type: none"> • The circumstances in which an appeal can be revoked are limited to failure on the part of the respondent to adequately participate in their own disciplinary tribunal. Included is the process and rationale that the disciplinary tribunal is to follow to reach such a decision. • The right to an appeal is limited in the <i>Bylaws</i> to curtail any potential abuse of the disciplinary system.
5.5.2	Add restriction on the respondent’s right to an appeal if it has been revoked by a disciplinary tribunal	<ul style="list-style-type: none"> • Needed for clarification of the circumstances in which an appeal can be made.

4. Review and confirmation of settlement agreements (with respondent admission of guilt) by a Disciplinary Tribunal

The PCB currently has the option to lay a charge and make a recommendation of sanction in certain circumstances, subject to the respondent pleading guilty. It is commonly referred to as the “Fast Track” and avoids sending the case to a Disciplinary Tribunal (DT) (see current Bylaw 20.05 (1)).

The “Fast Track” is essentially a form of settlement agreement where suspension or termination is not warranted for the offence, that allows both parties to avoid a lengthy disciplinary hearing, as well as the additional money and resources needed to manage the disciplinary process when a DT is convened. The respondent also avoids the stress and defense costs pertaining to a disciplinary hearing. It also means that the complainant and witnesses do not have to testify before a DT.

It has been recommended by the CIA’s legal counsel to implement a step in the “Fast Track” process that provides for the vetting of a written settlement agreement reached between the PCB and the Respondent by an objective and independent third party such as a DT. Such a process would be more streamlined than a standard DT and include only the review of written documentation (i.e., no hearing) and a requirement for the DT to make its decision within 30 days, for example. This step would also allow the PCB and the respondent to consider the written settlement agreement option for offenses that may warrant a suspension or a termination .

There is a level of public distrust towards professionals, particularly self-regulating professions, and disciplinary proceedings conducted in private are a major contributor to that distrust. The argument has been made that if public trust of professions is to be heightened, disciplinary systems can no longer operate behind closed doors. Although there is a degree of transparency in the form of public notice of the agreement and sanction, once the agreement has been reached, the fact remains that we are conducting an element of our disciplinary proceedings without any independent oversight, prior to rendering justice. This current process could be perceived as a means of protecting our members' interests before that of the public.

Bylaw(s) affected	Changes	Rationale/Comments
5.1.3.iv, 5.4.3, 5.4.4, 5.4.11	Remove description of role of DT and references to hearings	<ul style="list-style-type: none"> • A DT may now have two different purposes (hearing and settlement), so it needs to be broad reference here. • We can't refer to a "hearing" when referring to both types of DTs since one does not conduct hearings.
5.1.3.vi	Adds the right of a member to negotiate a settlement	<ul style="list-style-type: none"> • The right to a hearing is included, and since a hearing is not part of the settlement process, a reference to the right to negotiate a settlement without a hearing should be included as well.
5.2.2.1.vi, 5.3.2, 5.3.3	Removes the PCB's sanction power; adds power to negotiate a written settlement agreement (subject to the respondent's admission of guilt) without a limit on the sanction since it will be reviewed and confirmed by the DT	<ul style="list-style-type: none"> • The settlement agreement process is now simple; no need for a separate "Fast track". • Ensures transparency of the process with the review of the agreement by a DT. • Could reduce time and cost to allow the already-appointed DT to simply review and confirm the agreement.
5.4.8.vi	Adds the power for a DT to review and confirm a settlement agreement	<ul style="list-style-type: none"> • All other powers are listed; needs to be included since there is a different process for the review of settlements.
5.4.9	Provides framework for a DT that reviews and confirms a settlement agreement	<ul style="list-style-type: none"> • This is quite detailed but provides members with a level of protection against potential abuse of the system.

5. Elimination of the role of Secretary of the PCB

Currently the Secretary of the PCB is assigned specific duties related to receiving a complaint or information, record keeping, issuing notices, reporting, etc. that are, in practice, now conducted by Head Office and/or the chair of the PCB and/or the chair of the Tribunal Panel. When the role was created several decades ago, there was no Head Office or team to handle the operations related to discipline.

Bylaw(s) affected	Changes	Rationale/Comments
4.3.9 5.8.1	Replaced Secretary of the PCB with an alternative	<ul style="list-style-type: none"> • This is a remnant from a time when the CIA did not have any paid staff. • It was agreed that there is no need to burden volunteers with these administrative tasks. • It was commented during the consultation that members should be dealing with members and that the role of Secretary of the PCB should remain. • In some instances, where appropriate, the Secretary is to be replaced by the Chair of the PCB rather than Head Office staff. • Head Office already performs some of the current responsibilities of the Secretary before forwarding on to them; these are now logically being assigned to Head Office.

Changes are also being proposed to the new *Policy on the CIA Disciplinary Process* (included). A first draft of that policy was circulated to members with the Phase 1 amendments. It has now been revised to reflect the proposed discipline-related Phase 2 amendments. Although these changes do not require member confirmation, they are being circulated as supporting information. In addition to the changes made to the relevant sections of the *Bylaws* that are reproduced within the policy, the relevant wording was also adjusted in the policy statements. Other key changes include:

- Policy statements regarding settlement agreements in Sections 2 e), 3 d), 3 h).
- In Sections 6 and 8 d), the Chair of the Tribunal Panel also takes over a few of the responsibilities of the Secretary of the PCB.
- In Section 12, the list of elements to include in reports was streamlined to remove redundancies.
- Additional process details will also be included in Appendix B - Process related to written settlement agreements and Appendix C – Process regarding the issuance and recording of a letter of advice. These are both still in development, but will provide additional details regarding the respective processes.

Editorial and housekeeping

In addition to the amendments related to membership and discipline topics, a few editorial and housekeeping changes were also identified during this exercise. They are redlined in the attached draft *Bylaws* and are not colour-coded.

Project timeline

The projected effective date of the Phase 2 amendments is now January 1, 2023. After consideration of comments received during this consultation and any further changes, the CIA Board will be asked to approve the proposed amendments at its October 6-7, 2022 meeting. A special general meeting of members will be convened in November 2022 to confirm the amendments.

The chart below provides the proposed high-level timeline and activities for the remainder of the Bylaw review project, from consultation to adoption.

Target date	Activity	Comments
2022		
August 26	Deadline for comments from CIA Members and stakeholders on Phase 2	
October 6-7	Board meeting – Approval of Phase 2 final amendments	
Week of October 17	Release final Phase 2 amendments to members for confirmation	
Week of November 7	Hold Bylaw webcast – Phase 2	
Week of November 7 (after webcast)	Proxy voting begins – Phase 2	Minimum 14-day proxy voting period required
Week of November 21	Special General Meeting	Member confirmation of Phase 2 amendments
October to December	Changes made to all remaining policies, guidelines and website for Board approval in December to reference new <i>Bylaws</i> and policies	Member consultation where appropriate
2023		
January 1	EFFECTIVE DATE OF ALL BYLAW AMENDMENTS AND RELATED POLICIES/QS (Phases 1 and 2)	

Action for members

Members interested in commenting are asked to provide feedback to the BRTF on the proposed amendments to the *Bylaws* by **August 26, 2022** using the [online form](#) or by email to Lynn Blackburn, Director, Professional Practice, Research, and Governance at lynn.blackburn@cia-ica.ca.

DP

Encl.