

MEMORANDUM

To: All Fellows, Affiliates, Associates, and Correspondents of the Canadian Institute of Actuaries

From: Robert H. Stapleford, President

Date: February 3, 2016

Subject: **Notice to Members – Consultation on Proposed Changes Related to the Protection of the Public Interest**

Document 216008

Introduction and Purpose

As part of the ongoing desire to ensure that Canadian Institute of Actuaries (CIA) members are considered leading professionals in Canada, the Board regularly looks at the CIA's infrastructure, including its Bylaws, Rules of Professional Conduct, and policies, to ensure that they are sufficiently rigorous and consistent with other professions in Canada.

Two changes are being considered by the Board. It is important that all members understand the detailed implications of these changes and how such changes would affect them. In the coming weeks, a set of proposed changes to the Bylaws, Rules of Professional Conduct, and several CIA Policies related to

- a) Compliance with the Continuing Professional Development Requirements (CPD); and
- b) A requirement for the disclosure of a criminal conviction¹,

will be released to CIA members for consultation. The proposed changes share the following goals:

- Enhancement of the CIA's ability to protect the public interest;
- Alignment of the CIA's requirements with those of other professions in Canada; and
- In doing so, the protection of the interests of the actuarial profession in Canada.

The CIA's first Guiding Principle frames the importance of this issue:

“In carrying out its activities and programs, the Institute holds the duty of the profession to the public above the needs of the profession and its members.”

¹ For the purposes of this document, “criminal conviction” refers to any criminal offence, penal offence punishable by incarceration or offences of a similar nature for which the individual is convicted, found guilty of or pleads guilty to, and for which he or she has not been granted a record suspension (formerly a pardon), or a disciplinary determination of guilt. (Note that records of CIA Disciplinary Tribunal decisions are already on file and would therefore not require further disclosure.)

Background

1. Compliance with the Continuing Professional Development Requirements

In early 2014, the CIA Board directed the Eligibility and Education Council (EEC) to conduct a full review of the CPD compliance process, including the CPD requirements themselves (i.e., the CPD Qualification Standard (QS)). The Eligibility Committee (ELIG) undertook the review, at the request of the EEC. This has been a topic of discussion for some time, and in particular, significant consideration has been given to restricting the use of the FCIA/ACIA designation for members who are not compliant with the CPD QS. Members were surveyed in the fall of 2014 in order to gather additional input on the issues. Click [here](#) for a summary of the survey results.

2. Requirement for the disclosure of a criminal conviction

Also in early 2014, the CIA's law firm Fasken Martineau DuMoulin made several recommendations for changes within the Institute to better support Guiding Principle #1, for the Board's consideration. The Governance Committee (GC) was asked to investigate some of Fasken's recommendations.

The requirement to disclose a past criminal conviction was at the top of the list and was pursued by the GC. Such a requirement is already imposed on other professions through provincial legislation. The proposal would enable the CIA, as the professional body in Canada, to assess and determine if such information impairs the professional's ability to provide professional services.

To implement such a proposal would require bylaw and other changes. The Board has undertaken the task of identifying what changes would be needed to require that applicants for enrolment, and existing members, disclose all past criminal convictions, bringing the CIA on par with other professions.

Several discussions have taken place over the last year with the Board, EEC, ELIG, GC, as well with the Committee on Professional Conduct (CPC), and a proposed approach has been identified for both projects, and presented to the Board for consideration.

In September 2015, the Board created the Task Force on the Implementation of the Proposed Changes Regarding the Protection of the Public Interest, comprised of members of the EEC, ELIG, GC, CPC and the new Committee on Professionalism within the CIA (PROF) to seek input from the membership on the proposed changes, and subsequently, implement and communicate the final changes that are adopted by the Board, and most importantly, to help members better understand the implications of the changes.

The Board has now reviewed proposed changes and has approved them for release to the membership for consultation, prior to finalizing the changes in the spring of 2016.

Impact of the Proposed Changes

Compliance with CPD	
1.	No changes are being proposed to the CPD requirements themselves. The minimum requirements would remain as they are currently listed in section 2 of the CPD Qualification Standard (QS) (e.g., minimum of 100 hours, etc.)
2.	The exemptions allowed from compliance with the CPD requirements would now be limited to the following: <ol style="list-style-type: none">Members who are not “Practicing Members” (as now defined in bylaw 1.01 (15.1));Parental leave;Still writing actuarial exams;Special circumstances (e.g., disability); andCompliance with another actuarial association’s CPD requirements.
3.	Members who are not practicing and/or not doing CPD would be allowed to maintain their designation, but it would be made clear to the public that they are not compliant with the CPD requirements (i.e., a “(non-practicing)” qualifier would be appended to the FCIA/ACIA designation).
4.	The use of the “unqualified” designation would be directly related to compliance with the CPD QS. This was supported by the responses to the membership survey in 2014.
5.	Some of the qualification requirements for enrolment (e.g., specific experience requirement) currently in the Bylaws, would be moved to the Policy on Qualification Requirements. The general requirements and process for enrolment would, however, remain in the Bylaws. This would facilitate the implementation of the proposed changes and streamline the Bylaws.

Disclosure of a Criminal Conviction	
1.	All new applicants to the Institute, as well as existing members <u>who are not fully retired</u> would be required to disclose a criminal conviction within 30 days of the date of the conviction. As a transitional measure, disclosures by existing members of all past criminal convictions would need to be made to the Institute within 30 days of the effective date of the proposed changes.
2.	The Committee on Professionalism within the CIA (PROF) would initially assess all disclosures (from applicants and existing members) <u>based on a clear set of assessment criteria and procedures</u> , to determine whether or not the criminal conviction warrants further action on the part of the CIA. This process would be defined and described in a new policy. Note that the Head Office would keep the identity of the individuals who disclose a criminal conviction confidential, and transmit only pertinent information about the criminal conviction to the PROF for assessment.
3.	For existing members, in cases where the PROF determines that the criminal conviction could impair the professional’s ability to provide professional services, the matter would be referred to the CPC. The CPC would then initiate the same disciplinary process as all other complaints or information received by the CPC. <u>No new disciplinary measures are being proposed.</u>

Additional Communications

To assist members in understanding the proposed changes, a Guide to the Proposed Changes Related to the Protection of the Public Interest is being developed in the form of a Question and Answer (Q&A) interactive webpage.

The full guide will be released along with the proposed changes in the coming days, and will include several detailed Q&As related to these two topics, including some basic CPD-related questions, which will provide members with a better understanding of the proposed changes, as well as the CPD requirements in general. The guide will be available on the CIA website throughout the consultation period.

A few of the broader Q&As that will be included in the guide are shared in [Appendix A](#), to help members gain an initial understanding of the key issues and how they would be addressed.

A webcast is also planned for early March to provide members with an opportunity to ask questions of the task force members.

Proposed Timeline

More detailed proposed changes will be released to the members in mid-February, for a six-week consultation period. Following the consultation period, it is anticipated that the proposed changes will be finalized based on member input and brought to the Board in April 2016 for formal adoption, and to the membership in June 2016 for confirmation.

Action for Members

Members are asked to review and consider the proposed changes and to submit any comments to Lynn Blackburn, director, professional practice and volunteer services at lynn.blackburn@cia-ica.ca **no later than March 21, 2016.**

The Board encourages all members to take the necessary time, now and during the upcoming consultation period, to understand these important changes and to share their thoughts, prior to the potential implementation of the final changes in 2016. Now is the time to ask your questions and get answers.

Thank you.

RS

Appendix A

Guide to the Proposed Changes Related to the Protection of the Public Interest – Q&A – Broad Issues

Why should CIA members support these changes?

1. The CIA is a self-regulating profession. When it comes to professionalism and professional responsibilities, CIA members must impose rules and standards on themselves that will serve to protect the public interest. It is a serious responsibility and one which we must not take lightly, when the need for change arises, in order to protect the status of the profession.
2. The current requirements with regard to CPD compliance and also criminal convictions, are too passive in nature, and much less stringent than other professions:
 - In order for a member of the public to find out if a CIA member has confirmed that they meet the CPD requirements, the public must approach the CIA and check the member directory for a CIA member's CPD compliance status (i.e., coloured dots next to the name). The proposed changes would require that non-CPD compliant members not promote themselves to the public as an FCIA/ACIA, or else be in potential breach of the Bylaws and Rules of Professional Conduct.
 - If a member has a criminal conviction on his or her record, the CIA currently has no mechanism for finding out in a timely manner, in order to conduct a further investigation pursuant to Rule of Professional Conduct #11. The proposed changes would require that a member disclose all criminal convictions, so that the CIA could take action in a timely manner, to protect the public, if necessary.
3. The proposed changes put the responsibility squarely on the member, for his or her own choices and actions.
 - If a member chooses not to meet the CPD requirements, he or she would remain a Fellow or Associate of the CIA, but would be choosing the option of qualifying their FCIA/ACIA designation (i.e., "(non-practicing)"). All other rights, privileges, and benefits would continue.
 - If a member has a criminal conviction on his or her record, the member would be obliged to disclose it to the CIA in a timely manner, which would in turn allow the CIA to make a timely and appropriate determination as to whether or not the criminal conviction affects the member's ability to provide professional services, always with an eye on protecting the public interest.
4. Non-practicing/retired members would be able to retain the use of the new "qualified" designation (e.g., FCIA(non-practicing)), which will make it possible for these individuals to remain enrolled in the CIA once they discontinue their CPD. This is desirable for the Institute, from a cultural, historical, and reputational perspective.

What is NOT changing?

1. The CPD requirements themselves (i.e., 100 hours over two years including 12 hours of technical, 24 hours of structured, etc.) are NOT changing.
2. No proposed changes will directly affect a member's enrolment status in the CIA.
 - a. The proposed CPD changes would not cause a member to lose his or her membership. If a member does not meet the CPD requirements, he or she would only modify his or her use of the FCIA/ACIA designation with the "(non-practicing)" qualifier until such time as the requirements were met.
 - b. All Voting Members would retain voting rights.
 - c. If a criminal conviction is disclosed, and it is determined by the PROF that it warrants further action on the part of the CIA, the current CIA Disciplinary Process would be initiated. There are no new disciplinary measures being imposed.

What is a criminal conviction?

A criminal conviction is any criminal offence, penal offence punishable by incarceration or offences of a similar nature for which the individual is convicted, found guilty of or pleads guilty to (i.e., an offence under the Criminal Code of Canada, a Federal statute, a Provincial statute or under a foreign legislation if the offence would be punishable in Canada), and for which he or she has not been granted a record suspension (formerly a pardon), or a disciplinary determination of guilt. (Note that records of CIA Disciplinary Tribunal decisions are already on file and would therefore not require further disclosure.)

How would a criminal conviction be assessed?

The Executive Director (Head Office) receives the disclosure. The identity of the applicant or member remains confidential. The PROF would be the body which conducts the review and assessment of a criminal conviction upon disclosure to the Institute and is advised of the criminal conviction that has been disclosed (without the identity of the individual).

There is, unfortunately, no simple list of criminal convictions that would or would not warrant further action on the part of the CIA. The legal definitions and descriptions are complex.

All decisions of the PROF would be based on Criminal Conviction Assessment Criteria, which would initially include the following:

Criminal Conviction Assessment Criteria

The criminal conviction assessment criteria shown below have been established in order to provide the Committee on Professionalism within the CIA (PROF) and its governing council with some guidance in assessing criminal convictions that are disclosed to the Institute.

Judgment and reasonableness will still be needed, however, on the part of the PROF members, to assess the seriousness of the criminal conviction and the implications of their determination, on a case-by-case basis.

The criteria listed below are not the sole factors to be used in determining the best course of action, but provide guidance to the PROF/governing council with regard to the issues to consider:

<p>1. Has a similar assessment been done previously? Referencing the master list of previous decisions may be helpful, but each case is unique and should be considered on its own merits as well.</p>
<p>2. Is the criminal conviction related to the practice of the actuarial profession? It is not an easy task to answer this question and would need to be done with competence, sensitivity, and judgment. According to the professional case law in the province of Québec, the expression “relates to” connotes the idea of a relationship or a connection between separate elements. On the other hand, there can be no link between two distinct elements when they are found to be independent of each other, incomparable, or unrelated.</p>
<p>3. If it is not related to the practice of the actuarial profession, does the offence put the character of the member in question, tainting his or her ability to provide professional services? Is it likely to undermine (perhaps irreparably) the trust of the public? When a professional commits an offence while practicing his or her profession, the correlation is obvious. It might not be the case for other offences, which may perhaps complicate the matter under closer examination. However, protecting the public must extend to criminal convictions that are not committed in the course of professional activities. Indeed, some offences committed in a non-professional context could still have an impact on the profession if they are likely to undermine the trust of the public and those with whom the professional shall intervene while practicing his or her profession.</p>
<p>4. Would it be unfair to prevent the individual from earning a living in his or her chosen profession, given the nature of the offence that was committed? There is an issue of proportionality to be considered—what fate does the member deserve based on the offence, and is it fair, considering the impact of the actions that the Institute may take?</p>

In assessing a disclosure from an applicant to the Institute, the PROF would determine whether or not the individual should be enrolled in the CIA, based on the Criminal Conviction Assessment Criteria. An applicant to the Institute who is denied enrolment could appeal the PROF’s decision to the governing council (e.g., Eligibility and Education Council (EEC)). If the governing council upholds the PROF’s decision, the applicant will be denied enrolment and the decision will be final. If the governing council does not uphold the decision, the applicant would be granted enrolment in the CIA, subject to meeting all other qualification requirements.

In assessing a disclosure from an existing member, if the PROF’s assessment resulted in the determination that the offence could put the character of the member in question, possibly impairing his or her ability to provide professional services, based on the Criminal Conviction Assessment Criteria, the criminal conviction would be reported to the CPC for further investigation, pursuant to bylaw 20.09. The normal disciplinary process would then be initiated. The identity of the individual would, of course, be provided to the CPC at this stage.

If the PROF’s assessment resulted in a determination that the offence did not put the character of the member in question, there would be no further action taken by the PROF and the decision of the PROF would be final.

If a criminal conviction that was previously disclosed is subsequently reported to the CPC by a third party, the CPC would consult the Head Office records to ensure that it had indeed been reported and assessed. The PROF’s initial assessment would remain binding, and the applicant/member would not

be assessed again, by any entity within the CIA, for the same criminal conviction (the “double jeopardy” rule would apply).

The documentation of all of the PROF and governing council assessments would be kept strictly confidential. For transparency, all assessments would be reported anonymously, in a regularly scheduled report to the members, identifying the criminal convictions and the result of the assessments.

The names of the individuals assessed would not be publicized, and would be kept in a confidential and secure file, as a reference for the Head Office and the CPC, as required. This would ensure consistency in the decisions where similar criminal convictions are assessed. It would also serve to ensure that an individual who discloses a criminal conviction, and is assessed pursuant to CIA policy, is not investigated again, if the CPC is made aware of the criminal conviction from a third party.

HOW would these changes affect me?

Disclosure of a criminal conviction

- **I have a criminal conviction on my record from 10 years ago. Would I have to disclose it to the CIA?**

Yes. If you are still practicing (i.e., not fully retired with your dues waived accordingly), you would be required to disclose your criminal conviction to the Institute within 30 days of the effective date of the proposed changes.

- **I am fully retired and have a criminal conviction on my record. Would I have to disclose it to the CIA?**

No. As long as you remain fully retired with your dues waived accordingly, you would not be obligated to disclose a criminal conviction. However, if you come out of retirement, you would need to disclose your criminal conviction immediately, assuming you were already beyond the 30-day threshold for disclosure.

- **I am “semi-retired” and have a criminal conviction on my record. Would I have to disclose it to the CIA?**

Yes. By definition, if you are “semi-retired”, you would still be a “Practicing Member” some of the time. You would therefore be required to disclose your criminal conviction.

- **Two years from now, I am convicted of a criminal offence. I do not disclose it to the CIA within the 30-day threshold. What do I do now?**

You would contact the Executive Director at the Head Office and disclose your criminal conviction immediately. Not reporting a criminal conviction within the 30-day threshold is a breach of the Rules of Professional Conduct which would result in the automatic initiation of the CPC disciplinary process pursuant to Bylaw 20.02 (1). However, your disclosure might be considered a mitigating factor and would be preferable to risking the alternative – that it be communicated to the CPC by a third party.

- **How do you obtain a record suspension (formerly a pardon) and how long does it take?**

You can apply for a record suspension for an eligible offence through the [Parole Board of Canada \(PBC\)](#), after the completion of all sentences (e.g., fines, restitution, imprisonment, probation, etc.), followed by a waiting period of five or 10 years, depending on the offence.

It can take anywhere from six to 24 months for a record suspension to be processed, depending on the offence.

Further information is available on the PBC website.

CPD Requirements and Compliance/Use of the Designation

- **I am not CPD compliant. How does this affect my FCIA/ACIA designation (as applicable)?**

If you are not CPD compliant, you would need to append the “(non-practicing)” qualifier to your designation whenever you use it, so that the public is aware that you are not a “Practicing Member” (see Bylaw 1.01 (15.1)).

- **Do I get a discount on my dues if I don’t do my CPD?**

No. The proposed changes would not affect your status as a member of the CIA, and therefore, member dues would remain the same. The changes would only restrict the use of your FCIA/ACIA designation, depending on your circumstances.

- **I am fully retired. Could I use my designation?**

As a fully retired CIA member, who has claimed a waiver of dues, you would be entitled to use the FCIA(non-practicing) or ACIA(non-practicing) designation. You would no longer be able to use the FCIA or ACIA designation without the “(non-practicing)” qualifier.

- **I am “semi-retired”. Could I use the new FCIA/ACIA(non-practicing) designation?**

No. By definition, if you are “semi-retired”, you would still be a “Practicing Member” some of the time. You would therefore be required to do CPD, and would be eligible to use the FCIA/ACIA designation without the “(non-practicing)” qualifier.

- **I am not retired, but I don’t do CPD. Could I use my designation?**

Yes, but you would need to append the qualifier “(non-practicing)” to your designation.

- **I am a senior manager with actuaries reporting to me. Should I do CPD?**

Yes. From a qualification perspective, if you are reviewing the work of other actuaries, you would likely need to be current, and thereby be required to do CPD. Also, if you do not do CPD, you would need to qualify your designation with “(non-practicing)”, which is likely inappropriate for you, as a supervisor of other FCIA/ACIAs.

- **I am a senior manager, no longer doing technical actuarial work and have no actuaries reporting to me. I do not do CPD. Could I use my designation?**

Yes, but you would need to append the qualifier “(non-practicing)” to your designation. The use of the FCIA/ACIA designation without the qualifier would be directly linked to fulfilling the CPD requirements.