

GUIDANCE TO THE PROFESSION: CONDUCT OUTSIDE OF PRACTICE AND PROFESSIONAL INTEGRITY

Guidance to FP Canada™ Certificants

As professional financial planners, our conduct, within our professional practices as well as more globally, reflects on our personal integrity and professionalism, but also on the profession more generally and the impression the public has of our profession and the integrity of its members.

Our professional reputation is critical to building and maintaining client confidence and trust. Similarly, the reputation of the profession as a whole is integral to gaining and maintaining public confidence in the financial planning profession. Just as our conduct (both professionally and personally) reflects on our personal integrity, our conduct reflects on the integrity of the financial planning profession; misconduct by one member of the profession can negatively impact the public perception of the profession as a whole.

The *FP Canada Standards Council Standards of Professional Responsibility* (the “*Standards of Professional Responsibility*”) contain Principles and Rules which speak to integrity and provide helpful guidance when considering issues of integrity. In addition to examining some of these Principles and Rules, the purpose of this guidance is to address conduct of QAFP™ Professionals and CFP® Professionals (collectively referenced as “Certificants”) outside of their financial planning practice, often referred to as “off duty conduct”, and when such conduct may be of concern to the Standards Council.

The Standards of Professional Responsibility

The relevant Principles and Rules in the *Standards of Professional Responsibility*, which all Certificants must adhere to, intentionally capture both professional conduct and conduct outside of professional practice. They make it clear that one must always act with integrity and professionalism, no matter the context.

The importance of personal and professional integrity is highlighted by the inclusion of [Principle 2 \(integrity\)](#), [Principle 8 \(professionalism\)](#) and [Rule 2](#) and [Rule 4](#) in the *Standards of Professional Responsibility*. As noted in [Principle 8](#), Certificants must act in a manner that reflects positively on the profession and inspires confidence and respect from both clients and the community.

FP Canada Cases Involving Integrity

There are various types of cases involving a Certificant's integrity which have been investigated by the Standards Council, some of which have been referred to a Disciplinary Hearing Panel.

Several circumstances where a Certificant's integrity may be called into question, for conduct unrelated to the provision of financial planning services, arise in the context of the *Fitness Standards*. When one of these bars to certification (or good character issues) arise, the conduct will automatically be subject to review by the Conduct Review Panel¹ and may result in a finding that an individual should be denied entry into the profession or not be allowed continued certification:

- A presumptive bar arises where a Certificant pleads guilty, is found guilty or is convicted of a criminal offence. In this regard, the Standards Council has considered cases involving: impaired driving, domestic abuse and physical or sexual assault.
- Another presumptive bar arises if the Certificant is currently in bankruptcy or consumer proposal proceedings. The Disciplinary Hearing Panel recently considered two matters where the circumstances giving rise to the personal bankruptcies involved large debts to Canada Revenue Agency and/or suggested personal and/or business financial mismanagement². These cases were distinguishable from cases where the circumstances arose due to personal hardship such as illness, divorce or injury.

The Standards Council also reviews conduct which occurs on the path to certification and considers an individual's character and integrity prior to certification as an early indicator of whether the person, once admitted to the profession, will act with integrity and embody the characteristics of the profession. By way of example, a matter was referred to the Hearing Panel where a Certificant breached a Capstone Course provider's code of conduct by submitting a financial plan that was largely authored by another student.³ The Hearing Panel also recently considered two examination misconduct cases which resulted in serious consequences for the Candidates.

In addition to the presumptive bar matters referred to above, other matters which have been considered by the Hearing Panel involving "off duty" conduct and integrity include:

- A Certificant was appointed as a co-executor and trustee of the estate of his father and misappropriated funds which were to be set aside for the benefit of his brother, in accordance with the father's Will. Notwithstanding that the Certificant was acting

¹ The Conduct Review Panel determines the appropriate disposition of complaints and presumptive bar matters, in the public interest

² <https://www.fpcanada.ca/docs/default-source/standards-and-enforcement/bretzer---disciplinary-report---aug-2019.pdf> and <https://www.fpcanada.ca/docs/default-source/standards-and-enforcement/bretzer---disciplinary-report---aug-2019.pdf>

³ <https://www.fpcanada.ca/docs/default-source/standards-and-enforcement/mcmahon---disciplinary-report---oct-2018.pdf>

in his personal capacity and the conduct related to dealings with family members, the Hearing Panel permanently banned the Certificant from renewal or reinstatement of his CFP certification. 4 In its decision, the Hearing Panel stated that:

[The Certificant] breached the most basic of duties owed by an estate executor and trustee to the beneficiaries of an estate. [The Certificant] failed to act honestly in the discharge of his duties. Instead of protecting the beneficiaries' interests he misappropriated them through self-dealing.

- A Certificant accepted cash from her client and then attempted to circumvent “Large Cash Transaction Reporting” requirements (meant to circumvent money laundering) by depositing the cash into her personal account in two transactions. The Hearing Panel found that she acted without integrity and banned her from seeking renewal or reinstatement of her CFP certification for 18 months.⁵

Cases Involving Members of Other Professions

There has been a steady increase in the number of disciplinary proceedings relating to “off duty” conduct by professionals. The courts have confirmed that while not all “off-duty” conduct will give rise to discipline, those matters that raise concerns about the professional’s ability to function in a professional capacity, or lowers the reputation of the profession, may result in professional discipline.

For example, findings of unprofessional conduct were found against a physician who made unprofessional and offensive Facebook posts which were inflammatory and threatening⁶ and against a registered nurse who posted about the death of individual on Facebook⁷.

An Alberta Court of Appeal⁸ upheld a disciplinary finding of unprofessional conduct where a chartered professional accountant sent emails threatening to frivolously report the builder of her residential condominium and the property management company to various government agencies. The Court of Appeal aptly stated:

While acknowledging the legitimate demands of one’s personal life, and the rights and privileges that we all enjoy, private behaviour that derogates from the high standards of conduct essential to the reputation of one’s profession cannot be condoned.

Professional regulators are also increasingly scrutinizing social media posts by the professionals that they regulate. Social media posts that are highly inappropriate or

⁴ <https://www.fpcanada.ca/docs/default-source/standards-and-enforcement/cahill---disciplinary-report---oct-2018.pdf>

⁵ <https://www.fpcanada.ca/docs/default-source/standards-and-enforcement/disciplinary-report---wang---feb-2019.pdf>

⁶ *Ontario (College of Physicians and Surgeons of Ontario) v. Waddell*, 2020 ONCPSD 9

⁷ *College of Nurses of Ontario v Cosgrove*, 2019 CanLII 132966 (ON CNO)

⁸ *Erdmann v. Institute of Chartered Accountants of Alberta*, 2013 ABCA 147

unprofessional, have been found to constitute professional misconduct. These cases consistently raise the question of whether the professional was acting with integrity. Some examples of such conduct include:

- intemperate and insulting comments about religion made by a teacher⁹;
- a sexually and racially offensive tweet by a lawyer in the context of a debate over the colonial nature of the curriculum at English universities¹⁰; and
- highly offensive posts on race, pedophilia and terrorism made by a doctor¹¹.

In another example, The College of Nurses of Ontario is investigating two nurses who travelled to Washington D.C. to allegedly participate in an anti-lockdown event immediately preceding the Capitol Hill riot in January 2021. In videos posted to social media by the group, "Nurses Against Lockdowns", the women are seen addressing the crowd at the "Global Frontline Nurses" summit¹². Similarly, the College of Physicians and Surgeons of Ontario issued three separate cautions to a pediatrician following a series of complaints about her tweets on COVID-19 and the pandemic that challenged accepted public health advice and regulations.¹³

In addition, in a recent Saskatchewan Court of Appeal decision¹⁴, although the Court did not find professional misconduct in that case (a nurse posted comments on Facebook about the care that her grandfather had received during his final days at a care home), the Court found that it is entirely legitimate for a regulatory body to impose requirements relating to civility, respectful communication, confidentiality, advertising, and other matters that impact the professional's ability to express themselves freely, and that failing to abide by such rules has been found to constitute professional misconduct. The Court's reasons suggest that so long as a contextualized approach is taken by regulators in scrutinizing social media posts by practitioners, findings of professional misconduct would likely be upheld.

The Standards Council regularly and proactively monitors media reports and other publications. Where public allegations involving an FP Canada Certificant include very serious misconduct, the Standards Council may seek an interim suspension of Certification pending the hearing of the matter and/or publication of the investigation as a measure of public protection.

⁹ <https://www.timescolonist.com/news/local/b-c-teacher-reprimanded-for-posting-insulting-comments-about-islam-1.24084516>.

¹⁰ <https://www.bailii.org/ew/cases/EWHC/Admin/2020/467.html>

¹¹ <https://ifpress.com/news/local-news/local-surgeon-suspended-over-tweet-as-regulatory-body-starts-eyeing-online-decorum>

¹² https://beta-ctvnews-ca.cdn.ampproject.org/c/s/beta.ctvnews.ca/local/toronto/2021/1/11/1_5262804.html

¹³ <https://www.cbc.ca/news/health/college-cautions-doctor-tweets-1.5936538>

¹⁴ <https://www.canlii.org/en/sk/skca/doc/2020/2020skca112/2020skca112.pdf>

Guidance

As a national professional body working in the public interest, Certificants should be aware that where their conduct appears to be linked to their professional character and good judgment, the Standards Council will generally wish to review this conduct and such review may lead to disciplinary action.

The Principles and Rules set out in the *Standards of Professional Responsibility* are designed to guide Certificants in their practice and to serve as a primary reference for the Standards Council in investigating complaints against Certificants. The *Standards of Professional Responsibility* also serve as notice to the public regarding the conduct expectations they can and should have of Certificants. The public's perception of the integrity of the financial planning profession as a whole, rests on the universal adherence to these principles.

It is possible that circumstances may arise which raise issues involving your integrity. If you are ever faced with such circumstances, the Standard Council recommends that you err on the side of caution and refrain from being involved in any conduct that may call your integrity into question. When in doubt, ask yourself: if your or your peer's conduct was summarized in your local newspaper or reported on the evening news, would you be comfortable? Think carefully before posting, liking or following anything on social media and consider whether you would be comfortable having clients, colleagues or employers see it. Remember that your integrity and professional relationship are key to building trust and a positive reputation among your clients and your peers.

We hope that this Guidance will help you in assessing whether your "off duty" conduct might be subject to review by the Standards Council.

Yours truly,



Debbie Ammeter, LL.B., CFP
Chair, Conduct Review Panel

About the FP Canada Standards Council™ and Conduct Review Panel:

A division of FP Canada, the FP Canada Standards Council (the "Standards Council") establishes and enforces financial planning standards, sets the certification requirements for professional financial planners and develops and delivers certification examinations. The Standards Council ensures FP Canada Certificants (CFP® professionals and QAFP™

professionals) meet appropriate standards of competence and professionalism through rigorous requirements of education, examination, experience and ethics.

An independent panel of the Standards Council, the Conduct Review Panel ("CRP"), is composed of CFP professionals, a licensed financial planner from the province of Québec and a public member. The CRP's purpose is to support the fulfilment of the Standards Council's professional-oversight mandate by reviewing staff reports and determining the appropriate disposition of complaints, in the public interest.