

FP Canada Standards Council™

and

Michael Francis O'Brien, CFP®

STATEMENT OF ALLEGATIONS

THE CFP® PROFESSIONAL

1. Michael Francis O'Brien ("Mr. O'Brien" or the "Respondent") was certified by FP Canada™, then the Financial Planning Standards Council (FPSC®), as a CERTIFIED FINANCIAL PLANNER® professional, on April 1, 1999. Mr. O'Brien has consistently renewed his certification and, as of the date of this Statement of Allegations, is a CFP professional in good standing with FP Canada. Mr. O'Brien does not have a disciplinary history with FP Canada.
2. In May 2012, Mr. O'Brien joined RBC Dominion Securities ("RBC"). His employment was terminated on November 15, 2017. Mr. O'Brien became a Registered Representative with Raymond James Ltd. ("Raymond James") from December 1, 2017 until March 26, 2020. From March 26, 2020 to the date of this Statement of Allegations, Mr. O'Brien has remained employed by OP Elite Integrated Wealth Management of Raymond James. His title is "Business Development Specialist".

HISTORY OF THE PROCEEDINGS

3. This matter came to the attention of FP Canada Standards Council™ (the "Standards Council") via a News Release from the Investment Industry Regulatory Organization of Canada ("IIROC") dated March 7, 2019¹ as well as by a self-report by Mr. O'Brien to FP Canada in March 2019.
4. On or about June 5, 2019, the Standards Council initiated an independent investigation into Mr. O'Brien's conduct. The investigation was completed on March 9, 2021.

¹ [IIROC News Release dated March 7, 2019](#) and [IIROC Notice of Hearing issued February 21, 2019](#)

5. By Reasons for Decision dated December 31, 2019², the IIROC Hearing Panel found that, Mr. O’Brien engaged in conduct that contravened Dealer Member Rule 43 (engaging in personal financial dealings with a client), and Dealer Member Consolidated Rule 1400 (making misleading representations regarding client dealings).
6. By way of Penalty Decision dated March 26, 2020, the IIROC Hearing Panel ordered, among other things: a prohibition from registering with an IIROC Dealer member for a period of two (2) years; a fine of \$100,000 costs of \$20,000; and eighteen (18) months of strict supervision following re-registration.³
7. Mr. O’Brien appealed the IIROC decisions, and the Alberta Securities Commission (“ASC”) overturned the IIROC Hearing Panel’s decision with respect to one particular relating to one of the allegations. The ASC also reduced the suspension from 2 years to 9 months and reduced the fine from \$100,000 to \$50,000.⁴
8. On March 23, 2021, the Conduct Review Panel (“CRP”) convened and referred this matter to a Hearing Panel.

NOTICE

9. Further to the direction of the CRP, and in accordance with Article 5.1 of the *FP Canada Standards Council Disciplinary Rules and Procedures*, I hereby give notice of the Standards Council’s request that a hearing date be set with respect to the matter identified as: *FP Canada Standards Council™ and Michael Francis O’Brien, CFP®*.
10. The Standards Council requests that the hearing in respect of this matter be held in writing.

APPLICABLE STANDARDS

11. The conduct subject to the allegations set out below occurred between May 2017 and September 2017 and the IIROC Decision was made on December 31, 2019. Accordingly, Mr. O’Brien’s conduct is governed by the *Standards of Professional Responsibility* in force for the period from March 2016 to December 2018 and from April 1, 2019 to December 31, 2019. The applicable Principles and Rules of the *Standards of Professional Responsibility* are set out at **Appendix “A”**.

² [IIROC Reasons for Decision dated December 31, 2019](#)

³ [IIROC Penalty Decision dated March 26, 2020](#)

⁴ [ASC Order dated June 4, 2020; ASC Decision dated October 15, 2020](#)

ALLEGATIONS

The Standards Council makes the following allegations against the Respondent:

1. Between May and September 2017, the Respondent borrowed over \$156,600 from his client, an 81-year-old widow, and thereby failed to put his client's interest first, failed to act with integrity, objectivity, good judgement, fairness and professionalism and acted in a conflict of interest and failed to make written disclosure of the conflict, contrary to Principles 1, 2, 3, 5 and 8 and Rules 2, 8, 8.1(b), 9, 10 and 15 of the *Standards of Professional Responsibility* in force between March 2016 and December 2018.
2. By engaging in conduct that contravened Dealer Member Rule 43 and Dealer Member Consolidated Rule 1400, as found by the IIROC Hearing Panel in Reasons for Decision dated December 31, 2019, the Respondent failed to provide professional services in accordance with applicable laws, regulations, rules or established policies of governmental agencies or other applicable authorities, contrary to Rule 24 of the *Standards of Professional Responsibility* in force between April 2019 and December 2019.

Dated the 22nd day of April, 2021



Tamara Center
Director, Professional Conduct and Enforcement
Counsel to FP Canada Standards Council™

APPENDIX “A”

Standards of Professional Responsibility for CFP® Professionals and FPSC Level 1® Certificants in Financial Planning (March 2016 to May 2017 and June 2017 to December 2018)

Principle 1: Client First

A CFP professional shall always place the client's interests first.

Placing the client's interests first requires the CFP professional to act honestly and to place the client's interests ahead of his/her own and ahead of all other interests.

Principle 2: Integrity

A CFP professional shall always act with integrity.

Integrity means rigorous adherence to the moral rules and duties imposed by honesty and justice. Integrity requires the CFP professional to observe both the letter and the spirit of the Code.

Principle 3: Objectivity

A CFP professional shall be objective when providing advice and/or services to clients.

Objectivity requires intellectual honesty, impartiality and the exercise of sound judgment, regardless of the services delivered or the capacity in which a CFP professional functions.

Principle 5: Fairness

A CFP professional shall be fair and open in all professional relationships.

Fairness requires providing clients with what they should reasonably expect from a professional relationship, and includes honesty and disclosure of all relevant facts, including conflicts of interest.

Principle 8: Professionalism

A CFP professional shall act in a manner reflecting positively upon the profession.

Professionalism refers to conduct that inspires confidence and respect from clients and the community, and embodies all of the other principles within the Code.

Rule 2	A CFP professional shall not engage in any conduct that reflects adversely on his or her integrity or fitness as a CFP professional, the CFP marks or the profession.
--------	---

Rule 8	<p>When the services include financial planning or material elements of the financial planning process, a CFP professional shall disclose the following information in writing to the client:</p> <ul style="list-style-type: none"> a) An accurate and understandable description of the compensation arrangements being offered. This description must include information related to costs to the client and the form and source of compensation to the CFP professional and/or the CFP professional's employer, including any contingency or referral fees. Further, the description must include the terms under which the CFP professional and/or the CFP professional's employer may receive any other source of compensation and, if so, what the sources of these payments are and what they are based on; b) A general summary of potential conflicts of interest between the client and the CFP professional, between the CFP professional's clients in the case of a joint engagement, the CFP professional's employer, or any affiliates or third parties, including, but not limited to, information about any familial, contractual or agency relationship of the CFP professional or the CFP professional's employer that has a potential to materially affect the relationship with the client; c) Any information about the CFP professional or the CFP professional's employer that could reasonably be expected to materially affect the client's decision to engage the CFP professional; d) Any information that the client might reasonably want to know in establishing the scope and nature of the relationship, including, but not limited to, information about the CFP professional's areas of expertise; and e) Contact information for the CFP professional and, if applicable, the CFP professional's employer.
Rule 8.1 (b)	<p>When the services include financial planning or material elements of the financial planning process:</p> <ul style="list-style-type: none"> a) ... b) Where a conflict of interest arises during the course of an ongoing relationship with a client either between the client and the CFP professional or between the CFP professional's clients in the case of a joint engagement, a CFP professional shall, immediately upon discovery of the conflict of interest, advise the client, in writing, of the conflict of interest. In such circumstances a CFP professional shall cease providing services (acting in accordance with the provisions of Rule 11) unless and until the client makes the informed decision to continue with the engagement. The CFP professional must obtain the client's written consent to continue. Such written consent must include a description of the conflict of interest and confirmation of the client's decision to proceed.

Rule 9	On an ongoing basis, the CFP professional shall make timely disclosure to the client of any material changes to the above information, in accordance with the provisions of Rule 10.
Rule 10	<p>A CFP professional shall take all reasonable steps to ensure that the client is informed of material changes in circumstances that arise subsequent to the original engagement that may have an impact on the professional relationship or services to be rendered. Such changes may include, but are not limited to:</p> <ul style="list-style-type: none"> a) conflicts of interest; b) the CFP professional's business affiliation; c) compensation structures affecting the professional services to be rendered; and d) new or changed agency relationships.
Rule 15	A CFP professional shall exercise reasonable and prudent professional judgment in providing financial planning.

Standards of Professional Responsibility (April 2019 to December 2019)

Rule 24	A Certificant shall provide their professional services in accordance with applicable laws, regulations, rules or established policies of governmental agencies and other applicable authorities, including FP Canada and the FP Canada Standards Council.
---------	--