



**CPA New Brunswick
Complaint and Discipline Process Guide**

**Approved by the Board of Directors
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OVERVIEW

Pursuant to the *Chartered Professional Accountants Act* (the "Act"), the Chartered Professional Accountants of New Brunswick ("CPA New Brunswick") governs and regulates the conduct of its Members, Candidates, Students, Firms and Professional Corporations, irrespective of the type of professional services being provided, (collectively, and herein referred to as "Member") for the interest of the public and the profession.

CPA New Brunswick is required to maintain a publicly accessible system to address the conduct of its Members and to determine their fitness to render professional services

This Complaint and Discipline Process Guide (the "Guide") is intended to serve as an overview of the process relied upon in addressing all prospective Complaints received by the Registrar, as well as all Complaints received by CPA New Brunswick's Complaints Committee pursuant to **s. 37** of the Act, and those matters heard by CPA New Brunswick's Hearing Committee pursuant to **s. 39** of the Act.

The authority granted to CPA New Brunswick to address Complaints is statutory and must be exercised in accordance with the Act and By-Laws created under the Act.

CPA New Brunswick will follow the procedural requirements set out in this Guide and when a situation is encountered that is not addressed by this Guide, the matter will be dealt with in a manner that is fair and reasonable to all concerned in a spirit consistent with the provisions of this Guide. Should there be any discrepancies between the provisions of this Guide and the Act or the By-Laws, the Act and By-Laws will prevail.



NATURAL JUSTICE & PROCEDURAL FAIRNESS

Natural justice and procedural fairness are standards designed to assure that the parties to a complaint are afforded a fair and unbiased hearing. The standards, minimally, are based on:

- (1) the right to counsel;
- (2) formal notification of an alleged wrongdoing;
- (3) opportunity to respond and to remedy an allegation of wrongdoing;
- (4) hearing the evidence in support of the allegation(s);
- (5) having adequate opportunity to prepare and present evidence in defense;
- (6) having the decision made by only those who have heard the evidence.

Any action taken by CPA New Brunswick limiting or denying the rights or privileges of a Member, must be justified, substantively and procedurally. This calls for strict attention to natural justice and procedural fairness.

Failure to observe natural justice and procedural fairness weakens public trust, and may result in redress by the courts.

OFFICIAL LANGUAGES

CPA New Brunswick is subject to, and operates in accordance with, the *Official Languages Act*. With respect to Complaints, this means that both the individual filing the Complaint and the Respondent subject to the Complaint may proceed in English or in French.



COMPLAINTS

Section 34 of the Act provides that a Complaint is a “Complaint, report, or allegation in writing and signed by the complainant regarding the conduct, actions, competence, character, fitness, health or ability of a Member...”

CPA New Brunswick **does not** act on anonymous allegations and **does not** take action against its Members without a signed written Complaint prescribed within s. 34 of the Act.

INDIVIDUALS INVOLVED IN COMPLAINTS

In order for CPA New Brunswick to effectively process and resolve Complaints, many individuals are involved in varying capacities, including: the Board of Directors (the "Board"), the President & CEO, the Registrar, the Chair of the Complaints Committee, Complaints Committee Panels, Investigators, the Chair of the Hearing Committee, Hearing Committee Panels, the Complainant, the Respondent, Legal Counsel, and witnesses. The role of each is summarized as follows:

The Board of Directors

CPA New Brunswick’s Board of Directors undertakes the following functions:

1. appointing the Chair of the Complaints Committee and maintaining a roster of panelists (See: **s. 37(1)** & **s. 37(4)** of the Act);
2. appointing the Chair of the Hearing Committee and maintaining a roster of panelists (See: **s. 39(1)** & **s. 39(4)** of the Act); and
3. assigning other duties to either committee as contemplated in the Act (See: **s. 37(6)(i)** & **s.39(6)(b)** of the Act).

Note: The Board of Directors does not otherwise participate in Complaints and the Act prohibits Directors from serving on either the Complaints Committee or the Hearing Committee (See: s. 37(2) and s. 39(2) of the Act).

Registrar

The Registrar is responsible for assisting the Complaints Committee and the Hearing Committee in fulfilling their statutory obligations and implementing their decisions.

The Registrar is not a member of either Committee and does not have authority to make decisions or determinations with respect to Complaints.

The Registrar’s statutory obligations are provided for at **s. 35** of the Act.



Chair of the Complaints Committee

The Chair of the Complaints Committee is a Member of CPA New Brunswick appointed by the Board of Directors.

The Chair of the Complaints Committee is an administrator responsible for receiving Complaints from the Registrar and establishing a Complaints Committee Panel and Chair of a Complaints Committee Panel (See: **By-Laws 15.06 & 15.07**).

Complaints Committee Panels

Complaints Committee Panels carry out the authority of the Complaints Committee as provided for in the Act.

Complaints Committee Panels are composed of a minimum of three individuals appointed to the Complaints Committee.

Complaints Committee Panels exercise the powers and functions as provided for at **s. 37(6)** of the Act, including the power to investigate or request an investigator, order practice inspections, order financial audits, issue cautions or warnings, or resolve the matter.

Panels have the power to dismiss all or parts of a Complaint and also have the authority to suspend or limit the practice of Members who are the subject of Complaints pending the outcome of proceedings of the Hearing Committee.

Except for procedural matters, the deliberations of a Complaints Committee Panel are judicial in nature and Panelists will not discuss their reasons or consult outside their Panel.

Investigators

An investigation of a Complaint by a Complaints Committee Panel may require gathering of additional facts and information not provided by the Complainant or the Respondent and to otherwise validate statements, facts, or findings. In such circumstances the Panel may request that the Registrar appoint an Investigator with the authority under **s. 51** of the Act to inspect the business premises of Members and examine “anything” believed to be relevant.

Chair of the Hearing Committee

The Chair of the Hearing Committee is a Member of CPA New Brunswick appointed by the Board of Directors.

The Chair of the Hearing Committee is an administrator responsible for establishing a Hearing Committee Panel and a Chair of the Hearing Committee Panel. (See: **By-Laws 16.05 & 16.06**).



Hearing Committee Panels

Hearing Committee Panels are composed of a minimum of 3 Members. Hearing Committee Panels hear evidence and determine the merit of a Complaint, and when appropriate, impose sanctions in accordance with **s. 39** of the Act.

Except for procedural matters, the deliberations of a Hearing Committee Panels are judicial in nature and panelists will not discuss their reasons or consult outside their panel.

Hearing Committee Panels have the authority to order the Respondent's registration, license, or membership to be suspended or removed from the Register, award costs of the process, and impose fines not exceeding \$50,000.00.

S. 39(14) empowers the Hearing Committee Panels, with the agreement of the member, to have the complaint dealt with by an alternate dispute resolution process.

Hearings are significant undertakings for everyone involved and it is always appropriate to explore simplification of procedure and voluntary resolutions.

Complainant

Any member of the public or Member of CPA New Brunswick may file a written Complaint with the Registrar consistent with **s. 34** of the Act. The entity or individual who files the Complaint is the Complainant.

CPA New Brunswick

If a Complaint is forwarded to a Hearing Committee Panel, it is CPA New Brunswick that assumes responsibility for presenting the Complaint, and the evidence to sustain the Complaint, to the Hearing Committee. At the Hearing Committee Panel, the matter will be referred to as CPA New Brunswick vs. Respondent.

It is important to understand that although the Complainant will likely be a witness at the hearing, the Complainant is not a "party" to the proceeding and does not make arguments and submissions to the Hearing Committee Panel.

Respondent

Any Member or former Member of CPA New Brunswick may be the subject of a Complaint as provided for in **s. 34** of the Act. The Member who is subject to a Complaint is the Respondent.



CPA New Brunswick Legal Counsel

When a Complaint is forwarded to the Hearing Committee, CPA New Brunswick may engage legal counsel to conduct the hearing.

Legal Counsel to Committees

Both the Complaints Committee and the Hearing Committee panels may, at their discretion, request that the Registrar engage legal counsel to provide advice and assistance as required.



APPLICABLE PROCEDURE FOR ALL COMPLAINTS

Language

Complaints may be addressed in English and in French in accordance with the *Official Languages Act*.

Unless advised otherwise, CPA New Brunswick will communicate with the Complainant in the language used in the Complaint and will communicate with the Respondent in the language that is habitually used for communication with the Registrar.

Confidentiality & Conflict of Interest

Every individual involved in Complaints has an obligation to maintain confidentiality and to avoid conflicts of interest.

CPA New Brunswick and its representatives will not discuss a Complaint with anyone outside the process before, during, and/or after any proceeding. Specifically, Committee Chairs are required to annually sign a confidentiality agreement while Panelists are required to sign confidentiality agreements for each Complaint in which they are involved.

With respect to conflicts of interest, CPA New Brunswick and its representatives take active steps to avoid conflicts. Again, prior to commencing any proceeding, Committee Chairs and Panelists must provide a certification that they are not in conflict and are capable of exercising impartial decision-making.

Further, to ensure the above noted process is transparent, Complainants and Respondents are notified of the identity of the individuals involved in handling Complaints.

Notices

Any notice required to be given or any document required to be served may be personally served or delivered, or sent by courier, prepaid certified or registered mail, or by any other means, including e-mail, that will assure that private and confidential notice has been given to the person's last known address for delivery or mailing purposes.

Any notice sent by certified or registered mail is deemed to have been received not more than four days following its issuance; otherwise if sent by courier, it is deemed received when delivered and signed for.



It is important that the Committee adhere to the notice and time periods in the Act and this Guide. For greater clarity, where notice is to be given or received within a specified period or number of days, the period is interpreted to represent calendar days. Further, if any action is required by the person receiving the notice, the notice shall state the date by which time the action is required.

For example, a Notice requiring 14 days means 14 calendar days and not 14 business days.

Note: It is the Respondent's responsibility to maintain a current address with CPA New Brunswick. Specifically, where a Respondent does not maintain a current address, the Registrar is not responsible for a failure of that Respondent to receive information and extraordinary efforts to locate a Respondent will not be made.

Admissions

At every stage of the Complaints process, Respondents are advised of the potential to make voluntary admissions and are provided with multiple opportunities to simplify the process.

CPA New Brunswick is committed to ensuring fair processes that include responsible alternate dispute resolution mechanisms and procedural simplifications when fair and reasonable to the parties.

Form of the Decision

Any decision of either the Complaints Panel or a Hearing Committee Panel must be in writing, signed by all Panelists.

With respect to the Hearing Committee Panels, **15.19** of the By-Laws provides that decisions are intended to be rendered within 21 days and in all instances, not longer than 90 days after the completion of its proceedings.

Communication of the Decision

A Complaints Committee Panel provides its report to the Registrar, who then notifies the Complaints Committee Chair, the Complainant, and the Respondent.

A Hearing Committee Panel provides its decision to the Registrar, who then notifies the Chair of the Complaints Committee, the Chair of the Hearing Committee, the Complainant, the Respondent, and the Board of Directors.



COMPLAINTS COMMITTEE PROCESS SUMMARY

Introduction

The Chartered Professional Accountants of New Brunswick (“CPA New Brunswick”) oversees a comprehensive complaints and discipline process to determine if a Member is deemed to have breached their professional obligations or is unfit to practice (the “Complaint and Discipline Process”).

Working with the President & CEO, CPA New Brunswick’s Registrar administers the Complaint and Discipline Process.

The following statutes, By-Laws, and other documents are relevant to the Complaint and Discipline Process and are all available on CPA New Brunswick’s website:

1. *Chartered Professional Accountants Act, 2014* (the “Act”);
2. CPA New Brunswick’s Code of Professional Conduct;
3. CPA New Brunswick’s By-Laws; and,
4. CPA New Brunswick’s Complaint and Discipline Process Guide.

This Complaints Committee Process Summary represents an overview of the process and is not intended to serve as a substitute of or for the provisions of the aforementioned references, nor is it intended to constitute legal advice.

Respondent’s Reply

On receiving the Complaint by CPA New Brunswick, the matter is forwarded to the Respondent, who will be provided 14 days to make a written Reply and provide relevant documents and information. Respondent members should note, and will be informed by the Registrar, that they have this one and only opportunity to put their response in writing and provide relevant supporting documents. The complainant is then provided with a copy of the member's response and is given an opportunity to respond. This is not an opportunity for the complainant to restate their case, but instead to either refute statements made by the member, or address any new issue raised by the member. The member is provided a copy of the complainant's reply to their response, however will not be given another opportunity to respond. In matters of regulation, this back and forth information gathering process is referred to as the "Rule of Three" (complainant-member-complainant). The complaint and documentation are then provided to the Chair of the Complaints Committee.



Complaints Committee:

The Complaints Committee Panel, which will receive and adjudicate a Complaint, is comprised of a minimum of 3 individuals appointed to the Complaints Committee. The Panelists will certify prior to undertaking their work that they are not in a conflict of interest and that there is nothing preventing them from fairly addressing this matter. They will also execute a Confidentiality Agreement and Conflict of Interest Declaration.

In all instances, the Complainant and the Respondent are notified of the appointment and composition of the Complaints Committee Panel.

The Complaints Committee shall consider all Complaints referred to it and may do one or a combination of things pursuant to **s. 37(6)** of the Act.

- a) cause such investigation or further investigation of the Complaint as it deems necessary;
- b) dismiss the Complaint, in which case it shall give its reasons in writing to the complainant and the Member;
- c) issue a written caution or warning to the Member in circumstances considered by the Committee not to justify other forms of sanction;
- d) order a practice inspection of the Member's practice;
- e) order a financial audit of the Member's practice;
- f) refer the whole or part of the Complaint to the Hearing Committee;
- g) settle the Complaint to the satisfaction of the Complainant and the Member,
- h) take such other action, consistent with its responsibilities under the Act and the By-Laws, as it considers necessary in the public interest, in which it shall give its reasons in writing to the Complainant and the Member,
- i) perform such other duties as may be assigned to it by the Board, or
- j) without hearing suspend the registration, license or Membership of a Member if the Complaints Committee has reasonable and probable grounds for believing that the Member in question has been convicted of any criminal or other offence of such kind or type that the Complaints Committee is of the opinion that the continued registration, licensing or Membership of the Member in question would affect the good name of the CPA New Brunswick or the profession or would be contrary to the interests of the public or other Member's clients and upon the Complaints Committee ordering the suspension, the Committee shall immediately refer the matter to the Hearing Committee.



Deliberation Generally by Documents Only

The Complaints Committee is in charge of its own procedure and will determine if and when it would seek any “in person” meetings with the Respondent or the Complainant.

Conciliator

At the request of the Complaints Committee panel or one of the parties, the Chair of the Complaints Committee shall designate a member of the Complaints Committee who will act as a conciliator (hereinafter the “Conciliator”).

The Conciliator will assist the parties in attempting to find a mutually acceptable settlement and may, at their sole discretion:

- a) Discuss with the parties separately, either via telephone, in person, or other; and
- b) Meet with the parties together.

All discussions that are held between the parties and the Conciliator are confidential and are held on a without prejudice basis.

Unless directed otherwise by the Complaints Committee panel, the Conciliator shall have 14 days to attempt to settle the complaint with the parties. The Conciliator may write to the Chair of the Complaints Committee for an extension of time. Such request must be communicated to the Complaints Committee panel, who will determine if such an extension is acceptable in the circumstances.

Should the Conciliator not be able to settle the complaint to the satisfaction of the complainant and the Member within the time allowed by the Complaints Committee panel, the Conciliator shall advise the Chair of the Complaints Committee, who shall, in turn, advise the Complaints Committee panel to proceed with the Complaints and Discipline Process.

Should the Conciliator be able to settle the complaint to the satisfaction of the complainant and the Member, the Conciliator shall present the terms of the agreement to the Complaints Committee panel who shall, at its sole discretion, determine whether the terms are reasonable and just pursuant to the *Act*, the By-Laws and the Code of Professional Conduct.

If the Complaints Committee panel is satisfied with the terms of settlement, they shall draft a report detailing their reasons and decision.



If the Complaints Committee panel is not satisfied with the terms of the agreement, they may return the matter to the Conciliator and the parties, with its comments and concerns, for consideration and negotiation. The Conciliator and the parties shall have an additional 7 days to attempt to resolve the matter, at which point they shall communicate a new proposed settlement to the Complaints Committee panel, or advise the latter of their inability to come to a resolution.

If the parties are unable to reach an amicable resolution or the new proposed settlement is not acceptable to the Complaints Committee panel, the Chair of the Complaints Committee panel shall advise the Complaints Committee Chair. Thereafter, the Complaints Committee Chair shall appoint a new Complaints Committee panel to consider the matter.

When the new Complaints Committee panel proceeds with the Complaints Committee Process, the Conciliator shall not be called as a witness and no settlement discussions stemming from the conciliatory process shall be presented into evidence.

Investigations

When appropriate, the Complaints Committee Panel may request the services of an Investigator to prepare a report regarding a Complaint. If the Committee appoints an Investigator, the Complainant and Respondent will be informed and provided with information in relation to that process.

Form of Decision

Decisions of the Complaints Committee Panel will be in writing and communicated to the Registrar, who provides copies thereof to the Complainant and Respondent and the Complaints Committee Chair.



HEARING COMMITTEE PROCESS SUMMARY

Introduction

The Chartered Professional Accountants of New Brunswick (“CPA New Brunswick”) oversees a comprehensive complaints and discipline process to determine if a Member is deemed to have breached their professional obligation or is unfit to practice (the “Complaint and Discipline Process”).

Working with the President & CEO, CPA New Brunswick’s Registrar administers the Complaint and Discipline Process and related determinations of fitness to practice.

The following statutes, By-Laws, and other documents are relevant to the Complaint and Discipline Process and are all available on CPA New Brunswick’s website:

1. *Chartered Professional Accountants Act, 2014* (the “Act”);
2. CPA Code of Professional Conduct;
3. CPA New Brunswick’s By-Laws; and,
4. CPA New Brunswick’s Complaint and Discipline Process Guide.

This Hearing Committee Process Summary represents an overview of the process and is not intended to serve as a substitute of or for the provisions of the aforementioned references, nor is it intended to constitute legal advice.

Hearing Committee Panel

When the Complaints Committee refers a matter to the Hearing Committee, the Hearing Committee shall appoint a Hearing Committee Panel, which will hold a Hearing or otherwise resolve the matter.

Though CPA New Brunswick and the Respondent subject to the Complaint are the parties to the Hearing, there may be other necessary participants including the Complainant, the Hearing Committee Panel (minimum of three individuals); the Registrar (responsible for administration of the hearing); the Court Reporter (responsible for ensuring a written record of the proceedings); any duly authorized agent of CPA New Brunswick, any witnesses required by the Complainant and Respondent, and legal counsel to the parties as sanctioned by the Hearing Committee.



Joint Submission

The professional regulation hearing process can be time-consuming and, in the result, expensive for both the regulator and for the member. The fact that a discipline tribunal has the power to, and may award costs against the respondent member makes it financially challenging to defend charges. For these reasons, most regulators across the country have adopted a joint submission process which encourages parties to come to an agreement, before a hearing, on what has actually taken place, how the conduct of the member violated their ethical obligations, and how should this be remedied. CPA New Brunswick has adopted such a process, which is as follows:

Counsel for CPA New Brunswick and counsel for the Respondent (it could also be just the Respondent if they so choose) would engage in “negotiations” prior to the hearing and hopefully come to an agreement on admissions to transgressions by the Respondent and on a joint recommendation respecting sanctions, which would be proposed to the panel of Hearing Committee appointed for this matter, in a short hearing, usually no more than an hour, with all parties present. The Hearing Committee members would typically take the opportunity to review all relevant documentation and ask questions of the parties if anything needs to be clarified. In such situations, while the Hearing Committee Panel is not bound by the sanctions proposed, it cannot reject it unless the joint submission is inappropriate, not within the range of sentences, unfit or unreasonable, or contrary to the public interest. If it rejects the proposal, it must clearly articulate its reasons for refusing to follow the joint proposal.

When dealing with such joint recommendations, counsel for CPA New Brunswick will typically advise the chair of the panel that the parties would like to appear for a short hearing to present a joint recommendation on sanction(s). Hearing Committee Panels should acquiesce to such requests. Also, it would not be necessary for the Hearing Committee to have its own legal counsel or advisor at the hearing, resulting in even more savings.

Joint submissions are an essential tool which should be considered in all cases.

Hearing Procedure

When the Hearing Committee is convened, its procedures must comply with the “rules of natural justice” and “procedural fairness”, which include the right to counsel, notice of hearings and compliance with rules of evidence.

A fair and unbiased hearing encompasses a number of principles premised on the basic right to:

- (1) the right to counsel;



- (2) opportunity to respond to and remedy an allegation of wrongdoing; hearing the evidence in support of the allegation(s);
- (3) have adequate opportunity to prepare and present evidence in defense;
- (4) having the decision made by only those who have heard the evidence;

Decision

Upon hearing the evidence, the Hearing Committee Panel determines if the Complaint is sustained (and when applicable, fitness to practice).

The standard of proof required for this determination is the balance of probabilities and not the virtual certainty of “beyond a reasonable doubt”, as applied in criminal prosecutions.

If the Hearing Committee Panel sustains the Complaint, it has the authority to impose discipline including **suspension of membership, licence or permit, remedial education, supervision, fines, and the recovery of costs associated with any investigation proceeding or hearing.** (For a full account of Hearing Committee Powers, see s. 39(12) of the Act.)

Note: Though there is a limit as to a fine which can be imposed in the amount of \$50,000, there is no set limit to the amount of costs, which can be imposed by the Hearing Committee Panel. CPA New Brunswick consequently makes good faith effort to reduce procedures and costs where reasonably possible.

The Hearing Committee Panel has the authority to publish its decisions in any manner. Further, Hearing Committee Hearings are public, and Decisions are typically forwarded to the Respondents, may be included in CPA New Brunswick publications, and may be published in media inclusive of newspapers.

Any appeal of a Hearing Committee decision is made to the New Brunswick Court of King’s Bench.



FLOW CHART: DISCIPLINARY PROCESS

Registrar receives Complaint sends a copy to the Respondent and provides a deadline of 14 days for a written Reply. On receiving the Reply, the Complainant is requested to confirm if the complaint is withdrawn. If not withdrawn, the Complaint is forwarded to the Complaint Committee Chair.

COMPLAINTS COMMITTEE PANEL		
1) Investigates, and /or 2) Orders a Practice Inspection, and/or 3) orders an audit, and/or 4) Dismisses Complaint, or 5) Cautions to Respondent	Refers the Complaint to the Hearing Committee	Resolves the Complaint to satisfaction of Complainant and the Member.



Decisions by the Committee as outlined above are final and not subject to appeal.

HEARING COMMITTEE HEARING
Optional Pre-Hearing Conference and Potential Simplification or Resolution of Matter
Full Hearing and Penalty Hearing and Written Decision



Statutory Appeal to the New Brunswick Court of King’s Bench