
GUIDANCE

CPA SASKATCHEWAN DISCIPLINE PROCEEDINGS

CPA Saskatchewan is established by *The Accounting Profession Act* in order to protect the public. Our legislation is interpreted in that context. The legality and prescription of the processes for discipline proceedings is how the government of Saskatchewan has determined self-regulatory bodies protect the public when a member is charged with professional incompetence or professional misconduct.

CPA Saskatchewan staff, legal counsel or volunteers do not support the respondent in these discipline proceedings for the reason that our duty is to the public, not to our registrants.

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Purpose

The purpose of this guidance is to provide information about the disciplinary processes in place at CPA Saskatchewan. This document, although not authoritative, describes the processes implemented for efficient disciplinary proceedings, which are based on the established CPA Saskatchewan Rules.

An infographic of the process is also available at <https://cpask.ca/protecting-the-public/discipline-process>.

The Basics of a Discipline Proceeding

The discipline proceeding processes are prescribed in *The Accounting Profession Act* (“the Act”). The Act allows the Discipline Committee to form its own rules (referred to as “DC Rules”). Discipline Hearing Panel members, Professional Conduct Committee prosecutors, and respondents are expected to read and understand the DC Rules, as they are the basis for conducting discipline proceedings.

Administrative law principles govern the functioning and decisions related to discipline proceedings. An overview of administrative law is outside this guidance. A helpful guide entitled, “Practice Essentials for Administrative Tribunals” is published by the Ministry of Justice, Office of the Ombudsman of Saskatchewan¹.

There are two parties to a discipline proceeding – the Professional Conduct Committee and the respondent.

A discipline proceeding is commenced when a formal complaint is made and filed by the Professional Conduct Committee with the Discipline Committee. A formal complaint or “charge” is an allegation of professional misconduct against the respondent² by the Professional Conduct Committee based on the investigation.

The Discipline Committee has a **panel** of at least five (5) members hear a formal complaint. It is the Discipline Panel that makes the decision on the formal complaint and issues a sanction order, if applicable.

The Formal Complaint

The Professional Conduct Committee has authority to make and is responsible for the prosecution of the formal complaint(s), the wording which is approved on its behalf by its Chair and Vice-Chair. The Professional Conduct Committee has determined based on the evidence from the investigation that it is more likely than not the respondent has committed professional misconduct.

¹ https://www.ombudsman.sk.ca/uploads/document/files/omb-tribunal-guide_web-en-1.pdf

² Respondent is defined in Bylaw 40.1(d) and “means the registrant or suspended registrant whose conduct is the subject of the formal complaint made pursuant to clause 28(2)(a) of the Act”.

The formal complaint(s) are contained in the Report of the Professional Conduct Committee to the Discipline Committee, which is sent by registered mail and email to the respondent. The complainant of record and the Board are also informed that one or more formal complaints have been made.

The Discipline Committee may hear evidence to amend the formal complaint, via a preliminary application but is likely to only approve an amendment of the formal complaint in exceptional circumstances. Otherwise, the respondent cannot propose amendments to the formal complaint at any time.

Timelines

Timely conclusion of discipline proceedings is in the public's interest. The Discipline Committee Chair will set an expectation for the commencement of the hearing in writing to both parties after the Report from the Professional Conduct Committee to Discipline Committee is deemed to be received. The target is typically six (6) to nine (9) months from the date the formal complaint was delivered by the Professional Conduct Committee; the time period takes into consideration:

- 1) The review and consideration of the formal complaint(s) and DC Rules;
- 2) The preparation and completion of joint submissions, if any;
- 3) Logistics in setting a discipline hearing date; and
- 4) Distribution of the Notice of Hearing.

The Role of the Professional Conduct Committee

The Professional Conduct Committee is responsible for the investigation and makes a determination related to the outcome of an investigation. If the outcome is a referral to the Discipline Committee, the Professional Conduct Committee is responsible to prosecute, or “prove”, the formal complaint(s).

The Professional Conduct Committee is independent of the Discipline Committee and the Board.

The Role of the Respondent

The respondent has rights – the right to be heard, including the rights to know the case and reply to the formal complaint(s), to adequate notice and to reply with information and documents.

The respondent is expected to be cooperative and diligently engaged in the proceeding. This includes timely communication of matters that may delay, disrupt or cancel the proceedings.

The respondent is further owed the duty of fairness, meaning decisions be made objectively. The Discipline Panel must have no bias towards or conflict with either party. This ties to the concept that all facts and arguments are heard by the Discipline Panel, i.e. that the decision is not made by those who did not hear facts and arguments.

A respondent may choose to engage legal counsel or not; a respondent may choose to defend the formal complaint(s) that have been laid by the Professional Conduct Committee. Respondents who do not engage legal counsel are encouraged to dedicate time, effort and internal resources to understanding the legality of the processes in which the disciplinary proceeding is conducted. As a professional accountant, the expectation is that self-represented respondents demonstrate appropriate behaviour when navigating the discipline proceeding processes.

The Role of Others in Discipline Proceedings

Discipline Committee Chair

The Discipline Committee Chair appoints the Discipline Panel Chair and Discipline Panel Members. The Discipline Committee Chair may act on hearing management matters, and may delegate this responsibility to the Discipline Panel Chair.

Discipline Panel Chair

The Discipline Panel Chair is appointed by the Discipline Committee Chair after they have been cleared of conflict from the parties and relevant entities in the discipline proceeding. The Discipline Panel Chair is a Discipline Panel Member.

The Discipline Panel Chair is responsible for conducting hearing management conferences, managing an efficient hearing and is a key contact for any preliminary matters raised by the parties.

Discipline Panel Members

The Discipline Panel Members are appointed by the Discipline Committee Chair after they have been cleared of conflict from the parties and relevant entities in the discipline proceeding. Discipline Panel Members of a discipline proceeding conduct hearings, assess evidence, interpret the law and provide decisions in a manner that is similar to the way judges carry out their responsibilities in the court system. Like judges, Discipline Panel Members are authorized to make decisions and are required to use a fair and impartial decision-making process.

Discipline Panel Counsel

The Discipline Committee and the Discipline Panel Members may engage legal counsel at any time in a discipline proceeding. Legal counsel to the Discipline Panel will be clear of conflicts of interest with the parties and relevant entities.

Registrar

The Registrar provides staff support to the Discipline Committee and the Discipline Panel Members for each case. Throughout the DC Rules, the Registrar is the receiver and disseminator of information.

The Registrar is not a decision maker in discipline proceedings.

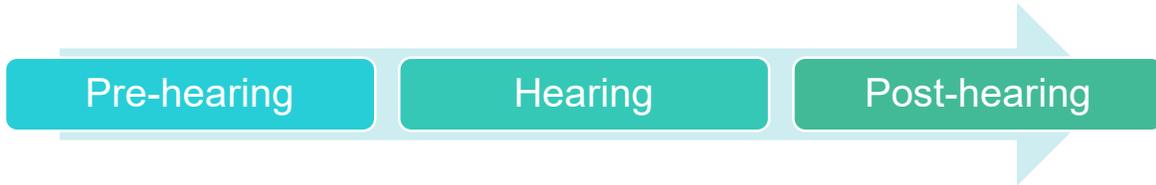
CPA Saskatchewan staff

CPA Saskatchewan staff support the administration of the discipline proceedings.

They are not decision makers in discipline proceedings.

Hearing Stages

There are three common stages prescribed in a discipline proceeding:



1. Pre-hearing

The pre-hearing stage is period from the date the Report of the Professional Conduct Committee is deemed to be received by the respondent, to the commencement of the hearing as set out in the notice of hearing. The notice period (from date notice of hearing is served to first date of hearing) is part of pre-hearing stage.

Key activities in the pre-hearing stage are:

Hearing Management Conference	Logistics	Preliminary matters	Service of Documents
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Agenda	<input type="checkbox"/> Setting the Date, Time and Place	<input type="checkbox"/> Hearing matters together	<input type="checkbox"/> Contact information
<input type="checkbox"/> Submissions	<input type="checkbox"/> Determining the Methods and Means	<input type="checkbox"/> Adjournments	<input type="checkbox"/> Notices

Hearing Management Conference (Section 502 of the Discipline Committee Rules)

After the Report from the Professional Conduct Committee to the Discipline Committee is deemed to be received, a hearing management conference will be scheduled with the parties and the Discipline Committee. Notice of the hearing management conference will be provided at least five (5) days in advance. More than one hearing management conference may be required.

The respondent is strongly encouraged to attend, with or without legal counsel. If the respondent does not attend, the prosecutor cannot attend, and both parties will submit their position on the items in the hearing management conference agenda in writing. Decisions affecting the manner in which the hearing is carried out may be made without the parties attending.

The Discipline Panel Chair will lead the call, and request that the Professional Conduct Committee and the respondent respond to questions on:

- Whether any preliminary applications will be made, and timelines associated with those, if needed.
- Whether any joint submissions will be made, and timelines associated with those, if needed.
- The contact information for both parties.
- The proposed date, time, duration and location of the hearing (including whether or not a video-conference format will be used)

Hearing management conferences are confidential and held without prejudice. Hearing management conferences are not part of the hearing.

Setting the Hearing Date, Time, Place, Methods and Means *(503 of the Discipline Committee Rules)*

The hearing management conference will include requests for the hearing date and duration (i.e. number of days). The parties will be expected to provide at least two or three viable options to have the hearing held, with agreement of the Discipline Panel Chair and the counsel to the Discipline Panel.

Once the options are provided by the parties, CPA Saskatchewan staff will poll the members of the Discipline Committee who are not conflicted for availability. At the end of the poll, a Discipline Panel of at least five (5) members will be appointed by the Discipline Committee Chair. The Notice of Hearing will be sent by the Registrar to the parties after the Panel members are appointed and the date will be considered confirmed.

Parties are also requested to assess the methods and means of the hearing. Hearings may be in-person or virtual.

Preliminary Applications *(Section 505, 506, 507 of the Discipline Committee Rules)*

Any preliminary applications should be made as soon as the parties identify a potential issue. It is not appropriate to hold an issue until the commencement of the hearing. The DC Rules require that preliminary applications be submitted to the Registrar at least twenty (20) business days before the scheduled hearing date.

Preliminary applications may be made by either party, need to be in writing, distributed to the other party and contain the nature behind the application, the grounds for the application, and the remedy sought. The respondent or the Professional Conduct Committee are encouraged to be as specific and factual as possible and include any evidence to be relied upon and a supporting brief of law.

The other party then has ten (10) business days to file their response to the Registrar in writing and include the reasons behind opposing the application, if applicable, any evidence to support the other party's position and a supporting brief of law. The Registrar will distribute the preliminary applications and related material to the other party.

Parties may apply to have matters heard together or consecutively.

If a party requires an adjournment, they should do so as soon as practical. The Discipline Panel Chair will make a decision on whether or not the hearing is adjourned.

Decisions made on preliminary applications will be done in writing and distributed to both parties at the same time.

Service of Documents

(504 of the Discipline Committee Rules)

There are many documents to be served throughout the pre-hearing stage. Service occurs by email, personal service, registered mail, substituted service order. Service is most commonly done by email.

The parties must confirm their contact information at the beginning of the pre-hearing stage to ensure key documents are received on a timely basis.

Notice of Hearing

The Act requires that a notice of hearing be served on the respondent at least ten (10) business days before the Discipline Panel sits. If the address is incorrect by no fault of CPA Saskatchewan, the hearing may proceed without the respondent's appearance.

All upcoming hearings are posted on CPA Saskatchewan's website.

Disclosure

The Professional Conduct Committee will disclose its evidence to prove the charges. To be efficient in the service of documents, both parties are required to provide current contact information. The Professional Conduct Committee directs legal counsel. Courts use formal rules of evidence in their hearing processes; Discipline Panels are not bound by the formal rules of evidence used in the court system.

The respondent, or their legal counsel, may request more disclosure from the Professional Conduct Committee. If the respondent has information that is relevant to the case, it should be disclosed to the Professional Conduct Committee.

2. Hearing

The hearing stage is from the commencement of the hearing, to and including the date the written Decision, or the Order, is signed by the Discipline Panel Chair.

The Discipline Panel Chair will conduct the hearing using a script developed by legal counsel to the Discipline Committee. A court reporter will be present for the purposes of recording the hearing and generating a transcript.

There are two general types of hearing – contested or uncontested. A **contested** hearing is where a respondent does not plead guilty to one or more of the charges. Respondents need to be honest with themselves when reviewing the formal complaints and identify if they are in fact, guilty of professional incompetence and professional misconduct. An **uncontested** hearing is then where a respondent does plead guilty to one or more charges.

A hearing may proceed without the respondent's appearance.

Hearing Procedures

(508 of the Discipline Committee Rules)

The Discipline Panel Chair is responsible for the orderly administration of a hearing. Generally, hearings at CPA Saskatchewan are open to the public, however the Discipline Panel Chair may exclude a person who is being disruptive.

Documents

(509, 510, 511 of the Discipline Committee Rules)

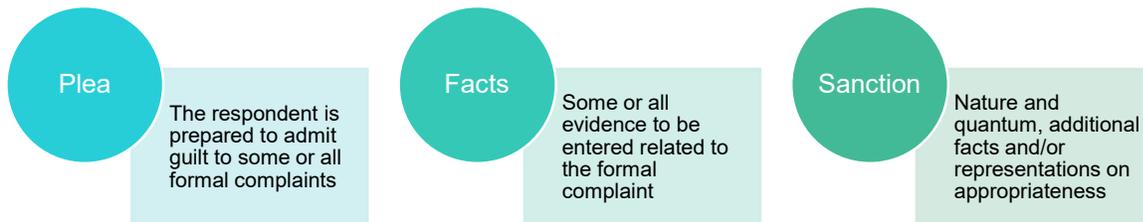
The expectation is that all documents are filed in an electronic form. There are specific requirements for the type of those documents – they must be a .pdf, .doc, .ppt or .xls. Picture files will not be accepted. Secure links will be sent to the parties for the confidential distribution of electronic documents.

Any physical documents filed at the hearing will be digitized and not retained. Only electronic documents will form part of the hearing record.

Joint Submissions

(515 of the Discipline Committee Rules)

A joint submission is a document that contains information both parties agree to. Joint submissions expediate the hearing process. Both parties are encouraged to determine whether any or all evidence will be entered in the form of a joint submission. A joint submission may be made in the following matters:



A Discipline Panel may determine that it requires additional information and make a request of the parties to provide that information. The additional information must be based on something referenced in a party's submission or noted by the Discipline Panel as necessary for its assessment of facts.

When all the evidence is entered through a joint submission, a court reporter will not be present at the hearing.

Example: Schedule of a Hearing

A high-level schedule includes:

- 1) Call to Order by the Discipline Panel Chair.
- 2) Reading of the formal complaint(s) by the Discipline Panel Chair to the parties.

- 3) The Discipline Panel Chair will request that the respondent enter a plea.
- 4) The Discipline Panel Chair will request that the Professional Conduct Committee present the prosecution case, including the calling of witnesses. If there is a joint submission on any evidence at this time, that will be entered by the Professional Conduct Committee.
- 5) The respondent, or their legal counsel, will be granted the opportunity to cross-examine the witnesses.
- 6) The Discipline Panel will ask questions of the Professional Conduct Committee and the witnesses, but only to clarify evidence.
- 7) The respondent, or their counsel, will present its defense case, including the calling of witnesses.
- 8) The Professional Conduct Committee will be granted the opportunity to cross-examine the witnesses.
- 9) The Discipline Panel will have the opportunity to ask questions of the respondent and the witnesses.
- 10) The Discipline Panel Chair will adjourn the hearing and advise the parties that the panel will issue its decision on the formal complaints with reasons in writing and that the hearing will be reconvened if there is a determination of guilt. The Discipline Panel will be in closed session for as long as necessary for them to determine whether the respondent is guilty or not guilty on the formal complaint.
- 11) At the agreed future date, the Discipline Panel Chair reconvenes the hearing, if there is a determination of guilt on any of the formal complaints.
- 12) Submissions, additional evidence (if any) and arguments on sanction by each party are presented.
- 13) The Discipline Panel Chair will adjourn the hearing and advise the parties that the Discipline Panel will issue its decision on sanction with reasons in writing. The Discipline Panel will be in closed session for as long as necessary for them to determine the appropriate sanction.

A Discipline Panel has two types of sessions where parties may be excluded – an ‘in-camera session’ and a ‘closed session’. A **closed** session, or caucus, is when the Discipline Panel and its counsel are together. An **in-camera** session is where the Discipline Panel meets without a person present.

Sanction/Penalty, including Costs

The Discipline Committee is guided by precedent and its sanction framework when ordering the sanction, or penalty, when a respondent is found guilty of professional misconduct.

Rehabilitation is the primary objective of a sanction order. In the large majority of cases the main objective of sanction is for the respondent to provide, prospectively, competent professional services with an ethical frame of mind (i.e. be competent and of good character). Rehabilitation reinforces the duty to protect the public through assuring competent professional practice and conduct impacting the relevant public. There are several options including continuing professional development and supervised practice.

Deterrence, specific and general, is an objective of a sanction order. **Specific** deterrence is achieved through actions taken by regulatory body which get the attention of the specific registrant and are expected to cause him/her to not repeat the misconduct. Examples include written reprimand, suspension of practice or title rights or a fine. **General** deterrence is achieved through actions taken by regulatory body which gets the attention of all registrants and which in turn, are expected to cause other registrants not to undertake similar misconduct. Publication is the obvious sanction which achieves this objective; other sanctions such as suspension of practice rights or fines provide emphasis.

Expulsion of professional rights applies when the respondent, due to their misconduct, is not suitable to practice as a professional accountant.

The following are specific components previously considered in determination of a sanction by a CPA Saskatchewan discipline hearing panel:



¹ Regulatory Bylaw 2.1(m) "condition" means a specific obligation of a registrant which is mutually agreed upon between the Institute and the registrant;

² Regulatory Bylaw 2.1 (mm) "restriction" means a limitation imposed by the Institute on the registration or licence of a registrant;

³ Regulatory Bylaw 2.1 (rr) "suspend" or "suspension" means an action taken by the Institute to temporarily or conditionally remove a registrant's rights and privileges established pursuant to the Rules;

Rehabilitation, reprimands and publication occur in most cases. Fines, conditions, restrictions and suspension of registration are used to determine the appropriate aggregate sanction. Sanction components are used to focus the registrant's attention on rehabilitation given the degree of seriousness of his/her misconduct.

Costs may be assessed by the Discipline Committee. CPA Saskatchewan is a self-regulatory body and it is not fair to all of the registrants to fund disciplinary proceedings. The respondent does bear responsibility in funding a portion of the discipline proceeding.

Often, when the respondent is cooperative and engaged in the discipline proceedings in an effective manner, costs are reduced or waived.

3. Post-hearing

The post-hearing stage is period from the date immediately following the last day of the hearing stage, to the date the respondent has complied with all components of the Order, and required notices are sent and published.

Generally, the respondent will have 60 days to comply with all aspects of the Order. If the respondent does not comply their registration will be suspended, with publication in CPA SK Connect and/or the appropriate regional newspaper on a named basis. Failure to comply with all aspects of the Order within 120 days of receipt of the Order shall result in the respondent being expelled, with publication in CPA SK Connect and/or the appropriate regional newspaper on a named basis.