

## **OPERATING PROCEDURES COMPLAINTS, INVESTIGATION & DISCIPLINE COMMITTEE (C & D)**

The C & D committee is the body appointed by the association to receive complaints from the general public, other association members or the association itself alleging that one of the association members has violated the National Code of Ethics. The committee's mandate is to investigate the allegations and determine the appropriate remedies to take based on the nature of the allegation/infraction and following the guidelines outlined below.

### Committee Composition:

- The Chair is a member of the Association's Board of Directors
- All members, except a public member as explained below, should hold the CHRP designation. There should be an uneven number of members, preferably 3-7
- A public member may be appointed to represent the public interest in the profession. This member should be familiar with procedures involved in investigating breaches of a professional code of conduct; e.g. nursing or law
- Members are appointed for one year terms with appointments approved by the association Board of Directors
- Renewals are possible based on approval of the association Board, but no member should serve longer than 6 years
- C & D committee members cannot be members of the Appeals committee and vice versa
- The Clerk of the committee – a volunteer or staff person who provides administrative support will be a member ex-officio.

### Role of Clerk of the Committee – staff or volunteer position:

The clerk will have administrative responsibility for receiving submissions, distributing material to the members of the committees and the parties to the complaint, scheduling meetings, hearings, and so on. Depending on the association, the same person could serve as clerk to both the C& D and Appeals or two different people could be appointed. If there are different clerks then there should be communication between the clerks to ensure coordination of activities between the committees when necessary. However, the clerk must be careful not to bias or to appear to have biased the situation by sending information to the Appeals committee while it is still before the C & D committee.

### Committee Confidentiality:

Members will sign a confidentially document agreeing that materials reviewed during the course of membership on the committee will remain confidential and subject to the privacy policy of the association. Further, that during the hearing and prior to the release of the committee's decision, the members agree not to discuss the case outside of the committee meetings. (Copy of agreement is attached below as an appendix)

### Complaint Process:

1. A complaint is received from a **Complainant**. The person who is the subject of the complaint is the **Respondent**. The "Parties" to the complaint are the Complainant and the Respondent. The Association may also be a Party where the Association chooses to intervene, as provided herein.
2. A complaint must set out in writing a detailed statement of the acts or omissions complained of, the times, dates and person(s) involved, any witness(es) to the incident(s)

and the nature of the complaint, so as to allow the Respondent to reasonably understand and respond to the allegations being made. The complaint should include any supporting documentation. There must be some allegation linked to a breach of the Code.

3. To be considered for adjudication, the complaint must be received within the later of 6 months of the alleged violation or 6 months from the date on which the Complainant knew or reasonably ought to have known of the alleged violation.
4. Either on its own accord or at the request of a member, any member Association may formulate and file a complaint where the available information suggests that a member's conduct appears to contravene the Code. This may avoid members confronting each other directly.
5. The decision whether to file a complaint on its own behalf rests solely with the Association. While members may request that their Association file a complaint, no member may compel an Association to do so. The failure or refusal of an Association to file a complaint does not affect an individual member's right to do so. Where an Association files a complaint, the Association is the Complainant and has the rights of a Complainant as provided herein.
6. Where a complaint raises an issue of general importance to the Association, the Association may choose to intervene in the complaint. The Association shall provide the Clerk of the Committee with written notice of its decision to intervene. Should it choose to intervene in any complaint, the Association shall:
  - (a) become a Party to the complaint, and
  - (b) have the right to receive notice of the hearing and production of any documents or other matters on the same basis as the other Parties; and
  - (c) have the right to question witnesses and make submissions regarding the appropriate disposition of the complaint.
7. The Association's status as intervener does not provide the Association with the right to call witnesses.
8. Where the Association is the Complainant or where the Association chooses to intervene in a hearing, the Association must ensure that the C&D Committee members are not also Board members. If there are Board members on the C&D Committee, they must excuse themselves from the case to ensure that the Complainant is independent from the judge. An ad hoc Committee shall be appointed in this instance.
9. The Complainant must send or "file" the complaint with the Clerk of the C&D Committee. The Clerk may review the complaint for sufficiency. The Clerk must maintain a neutral role. While the Clerk may point out any deficiencies in a complaint, it is not the function of the Clerk to provide any assistance in either the formulation of the complaint, or the reply to it. The Clerk should, however, inform the Complainant that in order for the complaint to proceed, the Respondent will receive a copy of the complaint. The Clerk should also inform the Complainant that the Complainant's identity will be revealed to the Respondent.
10. Within thirty (30) calendar days of a complaint being received by the Clerk of the C&D Committee, the Clerk must send the following to the Respondent:
  - (1) a copy of the complaint;
  - (2) a copy of the Discipline Process to be followed; and

- (3) a letter advising the Respondent that he/she has thirty (30) days to file a written reply with the Clerk of the C&D Committee, including any documents on which the Respondent will be relying.
11. The complaint is to be delivered to the Respondent in person, by registered mail or by courier to the current address on file with the Association, and a signature ensuring receipt of the complaint should be requested.
12. At the time of delivery to the Respondent, the Clerk must send a copy of the complaint to the members of the C&D Committee.
13. Within seven (7) calendar days of receiving a reply from the Respondent, the Clerk shall send a copy of the reply to the C&D Committee, to the Complainant and to the Association, if the Association has indicated an intention to intervene.
14. Within two weeks of the expiry of the time for filing a reply, the C&D Committee shall convene a meeting, without the Parties, at which time it shall decide on one of the following courses of action:
  - (a) Dismiss the complaint as not well founded, where, assuming the facts alleged in the complaint are true, there is no violation of the Code.
  - (b) Where no reply was received from the Respondent, assume all facts in the complaint are true, and proceed with a decision based on the facts stated in the complaint.
  - (c) Determine that, on the face of the material received, there is a basis on which to hold a hearing; i.e., there is a prima facie case on the balance of probabilities. This conclusion is warranted where the complaint contains allegations which if believed would justify a conclusion that the Respondent breached the Code.
  - (d) Determine that on the face of the material received, there may be some cause for complaint, but more information is required before a hearing can be convened. In this circumstance, the C&D Committee shall request further particulars from any Party on such terms and subject to such time limitations as the C&D Committee may direct. Following receipt of the additional particulars requested, the other Party(ies) shall have an opportunity to reply, on such terms and subject to such time limitations as the C&D Committee determines. Following receipt of the particulars and the reply(ies), the C&D Committee shall proceed with either steps (a), (b) or (c).
15. The C&D Committee shall communicate its decision to the Parties in writing, setting out its reasons for the decision, within two weeks of the meeting.
16. If the C&D Committee decides to proceed in accordance with subparagraph 14(c), the C&D Committee Clerk shall schedule a hearing. The hearing should be scheduled on not less than thirty (30) calendar days' notice to the Parties, and within sixty (60) calendar days of the date of notification to the Parties of the decision to hold a hearing.
17. The hearing is formal based upon the steps outlined within this procedure. At the hearing, the Parties may, if they wish, be accompanied by legal counsel, or some other representative who should understand the nature and purpose of such a hearing. The Parties are responsible for the costs of their representative. The Complainant presents evidence on the substance of the complaint. Witnesses may be called, examined by the Complainant then cross-examined by the Respondent, following which the Complainant shall have the right to redirect on any points raised in cross-examination. The Respondent then presents evidence in defense of the allegations. Witnesses may be called by the

Respondent for examination, cross-examination and reply. The Complainant may then call further evidence to deal with any new issues raised by the Respondent. Should the Association intervene, the C&D Committee shall determine the procedure to be followed, including the order of questioning witnesses. Although a by-laws based Association does not have the legislative backing to compel witnesses to attend, Complainants and Respondents are still encouraged to call witnesses where deemed appropriate. The Parties should be aware that if they do not call witnesses, a decision will be made based on the evidence presented. Rules regarding the submission of witness lists, and how far in advance submissions, documents and evidence must be received should fall within the time frames outlined in #16 above.

18. The Parties then present final arguments or submissions in an attempt to convince the C&D Committee as to what decision the Committee should reach on the matter. The procedure is the same as the presentation of evidence: Complainant, Respondent, Complainant. Should the Association intervene, the C&D Committee shall determine the order of submissions and final arguments. During this part of the proceeding the members of the C&D Committee may ask questions of clarification as to the points being made by the Parties.
19. Unless the outcome is very clear, the C&D Committee will usually reserve its decision to consider the evidence and submissions. Decisions are prepared in writing and the Association's Executive Committee is informed prior to the Complainant being informed. Notification of the Executive Committee or equivalent body is for information purposes only.
20. The C&D Committee shall set out in its written decision the following:
  - (1) The Committee must determine whether the member in fact engaged in the conduct complained of. For all offenses of a quasi-criminal or fraudulent nature, the standard of clear and convincing evidence will apply; for all other offenses, the balance of probabilities standard will apply.
  - (2) The Committee must determine whether the conduct constitutes a breach of the Code.
  - (3) The Committee must determine whether the conduct warrants a disciplinary response.
  - (4) If disciplinary measures are warranted, the Committee must determine the appropriate level of discipline.
21. A written decision, with reasons, must be issued within thirty calendar days of the conclusion of the formal hearing.
22. The range of disciplinary responses requires a vote of 2/3 of the C&D Committee in favour of a particular course of action. Decisions could range from:
  - Dismissal of the complaint if no evidence of breach of conduct has been found.
  - A caution and/or coaching not to repeat the conduct: Where the C&D Committee finds that there has been a breach of the Code, but the breach is merely technical or trivial.
  - Letter of Advice: Where a minor impropriety has occurred and it is a first occurrence.
  - Reprimand: Where a contravention of the Code has occurred, but it is not of sufficient seriousness to warrant more than a reprimand.
  - Suspension: Where a serious contravention of the Code has been found and expulsion is not warranted. The C&D Committee may impose a temporary

suspension of membership (including CHRP status) and a probationary period, with the time and conditions determined by the Committee.

- Expulsion/Revocation of CHRP Designation: For the most serious violations of the Code, the C&D Committee may expel a member, revoke his/her CHRP designation and set conditions of re-instatement. This measure may also be imposed for repeated actions of a less serious nature when other disciplinary measures have been exhausted.
23. Where the discipline results in the revocation of the designation, the name of the disciplined member will be published. The CCHRA office should be notified immediately so the revoked member's name may be removed from the National Registry.
  24. The Clerk of the Committee shall retain a copy of the complaint and the decision, along with all exhibits and other documents, for at least twelve months from the date the decision is issued.
  25. Where the decision of the Committee resulted in any caution, advice, reprimand, suspension or expulsion/revocation, a copy of the C&D Committee's decision shall be maintained in the Respondent's file, including notes to file in instances where there have been previous verbal warnings.
  26. The time frames listed above are to be used as guidelines. The Committee has the discretion to waive or extend any time limit(s) provided in the Discipline Process on such terms as the Committee may determine. In exercising its discretion, the Committee shall consider whether there is prejudice to any Party and whether, in the Committee's opinion, it would be just to do so.