

What you should know before lodging a private complaint before the Disciplinary council

Complainant's responsibilities

The complainant's responsibilities include:

- drafting the complaint and ensuring it is in due form;
- preparing the file for the hearing before the Disciplinary council (witnesses, experts, supporting documents, etc.);
- being involved in every step of the process;
- seeing to the conduct of the complaint before the Disciplinary council and submitting evidence demonstrating that an offence contravening the *Code of ethics of CPAs* was committed;
- paying the fees related to the conduct of the disciplinary complaint (see the "Fees and costs" section below).

The complainant must comply at all times with the laws and regulations governing the processing of a disciplinary complaint before the Disciplinary council.

A complainant can decide to self-represent or be represented by a lawyer, in which case the lawyer must appear in writing at the Records Office, and the complainant must assume the legal fees.

Form and content of a complaint

Sections 127 and 129 of the *Professional Code* set out the following regarding the form and content of a disciplinary complaint:

"127. The complaint must be made in writing and supported by the oath of the complainant."

"129. The complaint must state summarily the nature, time and place of the offence with which the professional is charged."

In addition, section 6 of the *Rules of evidence and practice* states:

"6. Every complaint lodged against a professional must be made in writing, supported by the oath of the complainant and, where applicable, a notice of disclosure of the exhibits invoked in its support. The complaint must set out summarily the facts on which it is based."

In addition to what is provided for in sections 127 and 129 of the Professional Code (chapter C-26), the complaint must indicate:

(1) the name and address of the complainant, telephone number and, where applicable, electronic address as well as fax number; and

(2) the name, title and address of the respondent. [...]"

If these requirements are not met, the complaint may be refused by the secretary of the Disciplinary council and deemed never to have existed.

Disclosure of evidence and exhibits

Under the rules guaranteeing the respondent's right to present a full and complete defence, the complainant must disclose the evidence by bailiff in a timely manner after the complaint has been filed.

Exhibits and evidence must be produced no less than 15 days before the hearing in accordance with sections 17 and following of the *Rules of evidence and practice*.

Calling of the provisional roll or case management conference

Within a month after your complaint has been filed, the Bureau des présidents des conseils de discipline will convene the parties to the calling of the provisional roll to be held at the head office of the Order or to a case management conference to be held by conference call, depending on the matter or on the guidelines set by the Bureau des présidents des conseils de discipline, in order to, among other things:

1° come to an agreement with the parties as to the trial of the complaint, specifying the undertakings of the parties and determining the timetable to be complied with, including the filing of a preliminary motion or an expert opinion;

2° if the parties fail to agree, determine a timetable for the proceeding, which will be binding on the parties; and

3° determine how the trial of the complaint may be simplified, facilitated or accelerated and the hearing shortened, among other things by better defining the questions at issue or recording admissions concerning any fact or document.

Hearing

As soon as the hearing date is set, the parties are informed of the date, time and place of the hearing before the Disciplinary council. The complainant must then appear before the Disciplinary council and demonstrate that the complaint is well founded. Accordingly, the complainant must prove that the respondent committed the alleged violations and file the supporting documents. The Disciplinary council will also hear the respondent's evidence and representations.

If the parties intend to call witnesses, an application can be made in writing to the Records Office of the Disciplinary council so that he or she may subpoena the witnesses whose testimony is required. Unless there are urgent circumstances and the notification period is shortened, witnesses are summoned at least three weeks before the scheduled date of their appearance. The parties may also summon their own witnesses.

For information about the trial of complaints, please read sections 137 to 149.1 of the *Professional Code* (CQLR, C. 26), the *Rules of evidence and practice* and the guidelines of the senior chair of the Bureau des présidents.

Decision of the Disciplinary council

Decisions are rendered by the Disciplinary council within 90 days of the matter being taken under advisement. Once the decision is rendered, it is served on the parties by the Records Office of the Disciplinary council.

If there is a conviction, a second hearing is scheduled to hear representations with respect to the penalty.

Fees and costs

The disciplinary council may condemn the complainant or the respondent to pay the costs, or it may apportion the costs between them in the proportions it indicates.

However, where the complainant has lodged a complaint under the second paragraph of section 128, the Disciplinary council may condemn the complainant to pay the costs only if the respondent is acquitted of every charge contained in the complaint and the complaint was excessive, frivolous or clearly unfounded.

If the chair of the Disciplinary council dismisses a complaint under section 143.1, he or she may condemn the complainant to pay the costs.

The costs are those related to the processing of the complaint. They include, in particular, service costs, registration fees, the cost of expert opinion admitted in evidence as well as the indemnities payable to summoned witnesses, computed in accordance with the tariff established in the *Regulation respecting indemnities and allowances payable to witnesses summoned before courts of justice* (chapter C-25.01, r. 0.5). If the respondent is found guilty, the costs also include the travel and lodging expenses of the council members appointed by the Board of directors of the Order.

If you have any questions about the Disciplinary council, please contact us:

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