

Discipline

Rules of Practice and Procedure of a Disciplinary Tribunal

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Rules of practice and procedure of a disciplinary tribunal

Section 1. General Provisions

- 1.01 The present rules govern the practice and procedure before a Disciplinary Tribunal of the Canadian Institute of Actuaries. They are meant to supplement the Bylaws of the Institute and shall be interpreted accordingly.
- 1.02 The purpose of timeframes in these Rules of Practice is to encourage a timely and cost-efficient completion of the discipline process for both parties while maintaining an equitable process. Upon request by a party or on its own initiative, the chair of the Tribunal Panel or a Disciplinary Tribunal may abridge or extend the time stipulated in these rules for doing any act as it may consider appropriate in the circumstances, including the prolongation of time that has expired.
[Modified June 17/14; Sept. 16/20]
- 1.03 If a party fails to participate in the discipline process, the Disciplinary Tribunal may make necessary case management determinations it considers appropriate, including proceeding with the prescribed hearing. **[Adopted June 17/14]**
- 1.04 The Respondent shall be notified by the Professional Conduct Board as required under Bylaw 20.04(3) of its decision to file a charge pursuant to Bylaw 20.04(1)(d) and to refer the charge to a Disciplinary Tribunal for the process set out in Bylaw 20.06. **[Adopted June 17/14; Modified Sept. 16/20]**
- 1.05 The Professional Conduct Board shall notify the chair of the Tribunal Panel within a reasonable time period of its decision taken pursuant to Bylaw 20.04(1)(d) to file a charge against the Respondent and the need for a Disciplinary Tribunal under Bylaw 20.04(3). Within 20 days of providing such notification, the chair of the Tribunal Panel shall create a Disciplinary Tribunal consisting of a retired judge and two members of the Tribunal Panel as set out in Bylaw 20.06. Within 10 days of appointing a Disciplinary Tribunal, the chair of the Tribunal Panel shall advise both parties of its composition, as set out in Bylaw 20.06(2). Either party may object to the composition or jurisdiction of the Disciplinary Tribunal and advise the chair of the Tribunal Panel at any time up to 10 days prior the pre-hearing conference. The other party may respond to the objection prior to or at the pre-hearing conference. **[Adopted June 17/14; Modified Sept. 16/20]**

Section 2. Disclosure of Documents

- 2.01 Upon filing of a charge in accordance with Bylaw 20.04(1)(d), the Professional Conduct Board shall provide to the Respondent and to the chair of the Tribunal Panel, a copy of the charge laid against the Respondent, the Investigation Team Report, and a statement of the facts which underlie the charge and all relevant documents which are in its possession, including those which the Professional Conduct Board intends to introduce into evidence and those which it does not, and whether the evidence is inculpatory or exculpatory. The chair of the Tribunal Panel shall forward these documents promptly to the members of the Disciplinary Tribunal, upon its appointment. **[Modified Nov. 20/98; June 17/14; Sept. 16/20]**
- 2.02 Within 60 days of receiving the documents referred to in Rule 2.01, the Respondent shall provide to the Disciplinary Tribunal and the Professional Conduct Board a formal response to the charge and to the report of the Investigation Team, which shall contain a detailed statement of the material facts on which the Respondent relies, and all documentary evidence the Respondent proposes to use in support of the response that is not part of the documents provided pursuant to Rule 2.01. **[Modified Nov. 20/98; June 17/14; Sept. 16/20]**
- 2.03 Notwithstanding the 60-day time frame for the formal response, the Respondent shall acknowledge receipt of the document from the Professional Conduct Board within 30 days and indicate to the Disciplinary Tribunal and the Professional Conduct Board an intention to continue participation in the disciplinary process. **[Adopted June 17/14; Amended Sept. 16/20]**
- 2.04 Should the Respondent fail to respond as provided for in Rule 2.02 and is not relieved of the said default, the Disciplinary Tribunal may proceed with the matter in the Respondent's absence. **[Adopted June 17/14]**
- 2.05 **[Note: repealed Sept. 16/20]**
[Modified Nov. 20/98; June 17/14]
- 2.06 **[Note: repealed June 17/14]**

Section 3. Pre-hearing Conference

- 3.01 The Disciplinary Tribunal shall convene the parties and their legal counsel, if any, to a pre-hearing conference, which shall take place within 30 days after the 60-day deadline set forth in Rule 2.02. The purpose of the pre-hearing conference is to provide for the timely and cost-efficient conduct of the proceedings, and not to address in any way the merits of the parties' positions. **[Modified Nov. 20/98; June 17/14; Sept. 16/20]**

- 3.02 If the Respondent has failed to produce a formal response in accordance to Rule 2.02, the Respondent is not entitled to participate in the pre-hearing conference nor present a defence, unless decided otherwise by the Disciplinary Tribunal.
[Adopted June 17/14]
- 3.03 At least 10 days before the scheduled date for the pre-hearing conference, each party shall provide to the other party and to the members of the Disciplinary Tribunal a pre-hearing brief containing the following:
- (1) a concise statement of all the legal issues which the party intends to raise at the hearing, including preliminary objections to the composition and jurisdiction of the Disciplinary Tribunal and motions to strike the charge;
 - (2) a concise presentation of the matters on which the party intends to file expert reports;
 - (3) a list of the names of individuals which the party intends to call as witnesses, together with a concise statement of the evidence which each of them proposes to adduce;
 - (4) a list of the documents which the party intends to file in evidence; and
 - (5) an estimate of the number of days which the party will require for the introduction of its evidence and the presentation of its argument.
- 3.04 The pre-hearing conference may be held by conference call or otherwise, and shall be conducted in a manner determined by the Disciplinary Tribunal.
- 3.05 The parties shall attend the pre-hearing conference to:
- (1) discuss any objection registered by a party to the composition or jurisdiction of the Disciplinary Tribunal and the subsequent response from the other party. The Disciplinary Tribunal may render its decision at the pre-hearing conference on any such objection or motion to strike the charge, or may reserve its judgement until after the evidence has been submitted at the hearing. Any agreed change in composition of the Disciplinary Tribunal shall be communicated promptly to both parties following the pre-hearing conference;
[Modified June 17/14]
 - (2) determine the issues to be tried;
 - (3) discuss the possibility of agreeing on certain facts and of filing a joint statement of facts with the Disciplinary Tribunal;
 - (4) resolve any disputes between the parties concerning the preparation of the case for the hearing, including the communication or discovery of documents;

- (5) discuss the possibility of agreeing on the production of documents without proof of their authenticity and of filing with the Disciplinary Tribunal a joint book of documents;
 - (6) determine what evidence, if any, can be introduced by affidavit, will-say statements, or otherwise, prior to the hearing;
 - (7) determine what matters, if any, shall be supported by an expert report, establish a schedule for communicating such a report to the other party and for filing it with the Disciplinary Tribunal, and determine the manner and time in which the other party shall respond to such an expert report;
 - (8) discuss the possibility of having the Disciplinary Tribunal decide on the basis of a pre-constituted record and of written submissions and, if an agreement is reached, determine the content of this pre-constituted record and the time and manner in which each party's written submissions shall be communicated to the other party and filed with the Disciplinary Tribunal;
 - (9) discuss the date, time, place, and format of the hearing; and
[Modified June 17/14]
 - (10) discuss any other matters which may facilitate the conduct of the hearing.
- 3.06 The Disciplinary Tribunal shall ensure that minutes are prepared of the pre-hearing conference which shall be signed by the chair of the Disciplinary Tribunal and which shall form part of the record before the Disciplinary Tribunal. A copy of the minutes shall be transmitted to the parties, who shall have 10 days following the transmission thereof to request correction, failing which they shall be foreclosed from doing so. The Disciplinary Tribunal shall evaluate the merits of the request for a correction and proceed therewith, where applicable. The decisions and agreements stipulated in those minutes shall govern the hearing before the Disciplinary Tribunal, unless the Disciplinary Tribunal decides that it would be unjust or inappropriate to proceed in this manner and the Disciplinary Tribunal allows or orders the parties to proceed otherwise. **[Modified June 17/14]**
- 3.07 If a party fails to comply with the decisions, agreements, or timetable, the Disciplinary Tribunal may make the appropriate determinations, including foreclosure of a right under the agreement and/or allocation of fees and disbursements. It may, on request, relieve the defaulting party from default if it believes that this would serve the interests of justice.
[Adopted June 17/14; Modified Sept. 16/20]
- 3.08 All matters discussed in the pre-hearing conference, which are not subject to an agreement or a decision, are confidential and without prejudice to the parties.

Section 4. Hearing of the Charge

- 4.01 The hearing of the charge before the Disciplinary Tribunal shall take place, as determined during the pre-hearing conference, at a date and time that is convenient to the parties and the Disciplinary Tribunal and to the extent possible within 90 days following the pre-hearing conference. **[Modified June 17/14]**
- 4.02 A Disciplinary Tribunal shall not render its decision without the parties having been heard or duly convened, unless the parties have agreed otherwise. **[Modified June 17/14]**
- 4.03 A hearing before a Disciplinary Tribunal shall be conducted in the following manner and in the following order:
- (1) **[Note: repealed June 17/14]**
 - (2) **[Note: repealed June 17/14]**
 - (3) **[Note: repealed June 17/14]**
 - (4) The Professional Conduct Board may make an opening statement summarizing the facts it proposes to prove and presenting the relevant bylaws, Rules of Professional Conduct, Standards of Practice, or other rules, standards, or recommendations of the Institute. The Respondent may make a similar opening statement.
 - (5) the charge, the Investigation Team report, the Respondent’s formal response, and any documents that are being jointly submitted shall be adduced in evidence in accordance with established procedure. **[Modified June 17/14; Sept. 16/20]**
 - (6) The parties shall adduce their evidence by:
 - a) filing documents if their authenticity has been accepted by the other party; and
 - b) examining the individuals called as its witnesses, if any, and having them file exhibits which must be formally proven.
 - (7) When a party has ceased examining a witness it has produced, the other party may cross-examine such witness on all the facts in issue and may also establish in any manner whatsoever the grounds it may have for objecting to such witness. A witness may be heard again by the party who produced him or her, either to be examined on new facts elicited by the cross-examination or to explain his or her answers to the question put by the other party. **[Modified June 17/14; Sept. 16/20]**

(8) Members of the Disciplinary Tribunal may ask questions to a witness and the parties may ask further questions in respect of these questions of the Disciplinary Tribunal.

(9) When all the evidence has been entered, the Professional Conduct Board shall make submissions, orally or in writing as the Disciplinary Tribunal may direct, with respect to the sufficiency of the evidence in support of the charge. This shall be followed by the Respondent's submissions on the sufficiency of the evidence in support of the defence, and then by the Professional Conduct Board's reply to the Respondent's submissions.

[Modified Sept. 16/20]

(10) When all submissions have been made, which marks the end of the hearing, the Disciplinary Tribunal may reserve and shall render its decision in accordance with Bylaws. **[Modified Nov. 20/98; June 17/14; Sept. 16/20]**

4.04 The proceedings at the hearing shall be recorded by a court reporter unless the Disciplinary Tribunal and both parties agree that certain elements do not need to be recorded. **[Modified June 17/14]**

4.05 The testimony of all witnesses shall be given under oath or solemn affirmation.

Section 5. Evidence

5.01 A party may adduce all the relevant evidence it deems necessary to establish its case.

5.02 The Disciplinary Tribunal may refuse the production of evidence which could have been communicated to the other party at the pre-hearing conference but has not been so communicated, unless the Disciplinary Tribunal decides that it would be unjust or inappropriate to proceed in this manner.

5.03 The Disciplinary Tribunal may refuse the production of any evidence which, in its opinion, after it has given the opportunity to the parties to make submissions, was illegally obtained or is not relevant to the issues as they have been defined.

[Modified June 17/14; Sept. 16/20]

5.04 The Disciplinary Tribunal shall take official notice of its previous determinations, of the valid adoption and confirmation of the contents, and of the publication, without being specially pleaded, of a certified copy of a bylaw, rule, regulation, recommendation, or proceeding of the Institute as provided in Bylaw 18.03.

[Modified June 17/14]

5.05 The members of the Disciplinary Tribunal may take official notice of all facts, opinions, and information which are or should be, in the Disciplinary Tribunal's opinion, generally within the knowledge of such a tribunal. **[Modified June 17/14]**

- 5.06 A Disciplinary Tribunal shall not base its decision on facts, opinions, or information of which it has taken official notice in accordance with Rule 5.05, unless it has given all parties the opportunity to make submissions with regard to those facts, opinions, or information.
- 5.07 The evidence of any witness may be introduced in the record by means of an affidavit, a will-say statement, or otherwise. In such event, the other party shall nevertheless be given the opportunity to cross-examine this witness, if the evidence is disputed.