



COMPLAINTS AND DISCIPLINE PROCESS

Approved by CPHR NOVA SCOTIA Board as of November 6, 2020

COMPLAINTS AND DISCIPLINE PROCESS

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I Introduction

The Complaints and Discipline Committee (the “C&D Committee”) is the body appointed by the CPHR Nova Scotia (CPHR NS) to receive complaints from the general public, members of the CPHR NS or the Board itself alleging that one of the CPHR Nova Scotia’s members has violated the Code of Ethics & Rules of Professional Conduct of the CPHR Nova Scotia. The C&D Committee’s mandate is to investigate the allegations and determine the appropriate response based on the facts of each case and following the guidelines outlined below.

It should be noted that the allegation must be linked to a breach of the Code and can only be submitted against an active individual member of CPHR NS, not companies. Decisions made by the C&D Committee extend only to CPHR NS members. The disciplinary process cannot provide any form of compensation or restitution to a Complainant or a Respondent.

II Definitions

For the purposes of this Complaints and Discipline Process, the following definitions shall apply:

1. “Appellant” means a person who makes a formal appeal of a decision of the Complaints and Discipline Committee – only the Complainant or the Respondent can appeal the decision;
2. “Appeals Process” means the individual appointed pursuant to Section VI of the Complaints and Discipline Process;
3. “Association” means the CPHR Nova Scotia (CPHR NS), represented for these purposes by the Executive Committee of the Board;
4. “Board” means the Board of Directors of the CPHR Nova Scotia;
5. “By-laws” means the By-laws of the Association as amended from time to time;
6. “Chartered Member” means a member of the Association who holds the Chartered Professional in Human Resources (CPHR) designation;
7. “Chair of the Committee” means the Chair of the Complaints and Discipline

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Committee;

8. "Clerk of the Complaints and Discipline Committee" means the Clerk as defined in section IV(6) of the Complaints and Discipline Process;
9. "Clerk of the Appeals Process" means the Clerk as defined in section IV(6) of the Complaints and Discipline Process;
10. "Code" means the Code of Ethics & Rules of Professional Conduct of the CPHR Nova Scotia;
11. "Complainant" means a person who makes a formal complaint to the Association according to section V(A) of the Complaints and Discipline Process;
12. "Complaints and Discipline Committee" means the Complaints and Discipline Committee (also referred to as the C&D Committee) established pursuant to Section IV of the Complaints and Discipline Process;
13. "Days" means calendar days;
14. "Member" means an individual who is admitted as a Member of the Association in the categories, and according to the criteria, established in the By-laws of the Association;
15. "Panel" means the specific members of the Complaints and Discipline Committee or the Specialist the Appeals Process has appointed to hear a specific appeal;
16. "Public Member" of the Complaints and Discipline Committee or the Appeals Committee, means the individuals appointed pursuant to section IV(3);
17. "Respondent" means the Member who is the subject of the complaint.

III Establishment of CPHR Nova Scotia Committees Related to Professional Conduct:

The Committee appointed by the Board to handle allegations related to professional misconduct, i.e., violations of the Code is called the: Complaints and Discipline Committee (the "C&D Committee")

Should any findings of this Committee be disputed the Appeals Committee will determine if there is a valid argument and may appoint an independent Specialist who is responsible for upholding or overturning the decision of the C&D Committee.

This Committee and any Specialists are established by the Association and any operating costs of the committee are borne by the Association. Committee Members are appointed and approved by the Board of Directors (the "Board"). Committee Members shall be members in good standing, except the Public Member as outlined below.

Committee Members and Specialists are required to sign a confidentiality agreement, agreeing that any material put before them during the course of their duties will remain confidential.

IV Guidelines for the Complaints and Discipline Committee:

1. There will be an uneven number of members, no fewer than three (3) and no more than seven (7), including the Chair. Complaints may be heard by a Panel, normally including three (3) members to accommodate scheduling of hearings and/or meetings as promptly as possible. Where a Panel sits, other members of the C&D Committee who did not participate throughout the entire hearing and/or meeting process will not participate in the decision. Once assigned to determine the outcome of a complaint, the C&D Committee (or Panel) must be present for the entire process, including the hearing if required. As used herein, the term "C&D Committee" shall refer to the body hearing the matter (either the entire C&D Committee, or a Panel of the C&D Committee).
2. Where a Board member is also a member of the C&D Committee, that Board member will be responsible for reporting to the Board. Otherwise,

the Chair shall report to the Board. C&D Committee appointments shall be approved by the Board to ensure proper governance of the C&D Committee.

3. The Association may or may not appoint one or two Public (i.e., non-Professional) Members to represent the public interest in the profession. At the very least, the Public Member(s) shall have the skill and ability to consider the material and facts presented and have the ability to contribute to discussions and written decisions. Public Member(s) should be familiar with procedures involved in investigating violations of a Code of Ethics & Rules of Professional Conduct, e.g. members of a publicly regulated profession such as nursing or law.
4. Committee members must declare at the outset of their deliberations any conflict of interest. It is vital that there be no overlap in membership between the C&D Committee and the Appeals Committee; no member of one Committee shall be a member of the other one. This is to preserve actual as well as perceived objectivity should the Respondent or Complainant decide to appeal the decision of the C&D Committee. In addition, no Committee member should be employed by the same employer as either of the parties pertaining to the complaint.
5. The Terms of Reference for Committee members will be clearly set out and available to any member of the Association.
6. A staff person (normally the Chief Executive Officer of the Association) will act as ex-officio, non-voting Clerk of the Committee. This person will have administrative responsibility for receiving submissions, distributing material to the members of the Committees and the parties, scheduling meetings, hearings, and so on. The same person will serve as Clerk to both C&D Committee and the Appeals Committee.
7. The C&D Committee shall have the discretion to suspend all of its proceedings at any point should it become aware that an action or proceeding has been undertaken under any other jurisdiction, including any criminal or civil proceeding or a complaint under any other statute.
8. The C&D Committee shall have the power to determine its own rules of evidence and procedures, including the production of and admission of documents and the granting of adjournments in appropriate circumstances, provided the principles of procedural fairness and natural justice are observed. The members of the C&D Committee may ask

questions during the presentation of evidence. The questions should be restricted to clarifying any factual matters.

V Complaint Process (See Appendix A for Process Flow Chart)

A. Complaint In-Take Process:

1. 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. The complaint should be considered by the provincial Human Resources Association to which the Respondent belongs.
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. The allegation must be linked to a violation of the Code in order for it to be considered by the C&D Committee. A sample form is included in Appendix C and Complainants will be required to complete and submit this form.
3. To be considered for adjudication, the complaint must be received within the later of 180 days of the alleged violation or 180 days from the date on which the Complainant knew or reasonably ought to have known of the alleged violation.
4. Where the complaint is filed more than 180 days from the date of the alleged violation, or more than 180 days from the date on which the Complainant knew or reasonably ought to have known of the alleged violation, the Complainant shall file material to explain why the C&D Committee should exercise its discretion to extend the time limit. If the explanation is that the violation is a continuing offence, the Complainant should state this and the basis for that position. The Chair of the C&D Committee can then decide whether to dismiss the complaint as untimely,

- refer the issue of timeliness to the C&D Committee, or rule that the complaint is timely.
5. Either of its own accord or at the request of a Member, the Association may file a complaint where the available information suggests that a Member's conduct appears to violate the Code.
 6. The decision whether to file a complaint on its own behalf rests solely with the Association. While Members may request that the Association file a complaint, no member may compel the Association to do so. The failure or refusal of the Association to file a complaint does not affect an individual Member's right to do so. Where the Association files a complaint, the Association is the Complainant and has the rights of a Complainant as provided herein.
 7. Where a complaint raises an issue of general importance to the Association, the Association may choose to intervene in the complaint. CPHR NS shall provide the Clerk of the C&D 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;
 - (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.
 8. The Association status as intervenor does not provide the Association with the right to call witnesses.
 9. Where the Association is the Complainant or where the Association chooses to intervene in a hearing, Board Members on the C&D Committee, must excuse themselves from Board meetings during the conduct of the case to ensure that the Complainant is independent from the judge.
 10. The Complainant must submit or "file" the complaint with the Clerk of the C&D Committee. The Clerk shall review the complaint for completeness. 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 will, inform the Complainant that in order for the complaint to proceed, the Respondent will receive a copy of the complaint.

11. Within 30 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 Complaints and Discipline Process to be followed; and
 - (3) a letter advising the Respondent that he/she has 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.
12. 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.
13. 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 and to the Association.

B. Complaint Complaints Process – C&D Committee Review:

1. Within 14 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.
2. Within 30 days of the expiry of the time for filing of the Respondent's 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 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 true, would justify a conclusion that the Respondent violated 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 adjourn their review of the complaint for 30 days and provide leave to the Complainant to submit additional information. Following receipt of the further information, 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).

3. The C&D Committee shall communicate its decision to the Parties in writing, setting out its reason(s) for the decision, within 30 days of the meeting.

C. Complaint Complaints Process – Hearing:

1. If the C&D Committee decides to proceed in accordance with subparagraph V.B.2(c), the Clerk of the C&D Committee shall schedule a hearing. The hearing should be scheduled for a date not less than 30 days, and not more than 90 days, from the date of issuance of the decision in subparagraph V.B.3.
2. The hearing is formal and based upon the steps outlined within this Discipline Process. 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 representatives. Typically, the process for submission of evidence is that the Complainant will present evidence first 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. The Parties are responsible for any costs associated with the witness(es) they call.

3. The Parties then present final arguments and/or submissions in support of their positions to the C&D Committee as to what decision the C&D Committee should reach on the matter. The procedure is the same as the presentation of evidence: Complainant, Respondent, and Complainant. Should the Association intervene, the C&D Committee shall determine the order of submissions and final arguments.
4. Unless the outcome is very clear, the C&D Committee will usually reserve its decision to consider the evidence and submissions.

D. Complaint Process – Decision:

1. The C&D Committee shall set out in its written decision the following:
 - a. The C&D Committee must first determine whether the member in fact engaged in the conduct complained of. The balance of probabilities standard will be met where the C&D Committee finds that it is more likely than not that the conduct complained of occurred.
 - b. The C&D Committee must next determine whether the conduct constitutes a violation of the Code.
 - c. The C&D Committee must then determine whether the conduct warrants a disciplinary response. The C&D Committee shall follow these principles that get set out herein.
 - d. If disciplinary measures are warranted, the C&D Committee must determine the appropriate level of discipline. The range of responses open to the C&D Committee includes, but is not limited to:
 - i. Dismissal of complaint;
 - ii. Letter of advice and/or caution;
 - iii. Letter of reprimand;

- iv. Suspension of membership; and/or
 - v. Expulsion and revocation of designation
2. A written decision, with reasons in support of the decision, must be issued within 60 days following the conclusion of the formal hearing.
 3. The time limit for filing an appeal is 30 days from the date of decision. Any disciplinary action will occur after 30 days have passed since issuance of the C&D Committee's written decision, or upon written confirmation by the parties that they do not wish to appeal, whichever comes first.
 4. Where the discipline results in the revocation of the Member's membership and/or designation, the name of the disciplined Member maybe published depending upon the severity of the violation. Such publication will include notification to Association Members via newsletter or other means, and to the general public via a Notice posted on the Association website for a period not to exceed six (6) months and published externally, as deemed appropriate by the Association.
 5. The Clerk of the C&D Committee shall retain a copy of all documents until all appeals are completed. The Clerk shall retain a record of all decisions indefinitely. The Clerk shall be responsible to communicate the decision of the C&D Committee to any appropriate parties such as the Board or the Registrar.
 6. Where the decision of the C&D Committee resulted in some form of discipline, a copy of the C&D Committee's decision shall be maintained in the Respondent's file with the Association.
 7. In any case where the complaint is found to be frivolous, malicious, or vexatious, the C&D Committee can make any order they see fit regarding the Complainant. Without limiting the generality of the foregoing, this may include an order to pay the reasonable costs of the Association in holding a hearing and/or to suspend and discipline the membership of the Complainant.

VI Appeal Process (See Appendix A for Process Flow Chart)

1. The Appeals Committee is a Board Committee consisting of three Board members that will:
 - (a) Determine if there is a valid argument and if so;
 - (b) At the Appeals Committee discretion may appoint an individual with appeals experience in the handling of complaints at the Association's Expense. There will be a list of potential specialists provided to the Appeals Committee by the Clerk.
2. Either the Complainant or the Respondent may appeal the decision of the C&D Committee to the Appeals Committee.
3. An appeal must be received by the Clerk of the Appeals Committee in writing within 30 days of the C&D Committee's decision pursuant to Section V.D.
4. The appeal must set out in detail the grounds of the appeal. This is not a *trial de novo* or a complete re-hearing of the matter. The Appeals Committee will review a complaint only on the basis of a manifest error in:
 - (a) facts;
 - (b) interpretation of the Code;
 - (c) application of the Complaints and Discipline Process and,
 - (d) the application of principles of natural justice.
5. Within 30 days of an appeal being received by the Clerk of the Appeals Committee, the Clerk must send the following to the parties including the C&D Committee Chair:
 - (1) a copy of the appeal; and
 - (2) a letter advising them that they have 30 days to file written submissions with the Clerk of the Appeals Committee if they

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wish to file submissions.

6. The appeal is to be delivered in person, by registered mail or by courier to the current address on file with the Association, and a signature ensuring receipt of the appeal should be requested.
7. At the time of delivery of the appeal, the Clerk of the Appeals Committee must send a copy of the appeal to the members of the Appeals Committee.
8. Not later than 14 days after receiving submissions from the other party, the Clerk of the Appeals Committee shall send a copy of the submissions to the Appeals Committee and to the Appellant.
9. Not later than 30 days after the time for filing submissions has expired and if the Appeals Committee has determined the Appeal valid, the Clerk of the Appeals Committee shall notify the Parties and the Specialist of the date for the appeal hearing before the Appeals Committee. The Clerk of the Appeals Committee shall provide at least 30 days' notice of the hearing date to the Parties.
10. Not later than 14 days prior to the hearing, the Clerk of the Appeals Committee shall provide to the Parties and the Specialist an Appeal file. The Appeal file shall contain all of the correspondence received from the Parties, the original complaint and reply, the decision of the C&D Committee, the appeal document and any submissions filed by any Party.
11. Whether or not it intervened at the C&D Committee hearing, where a complaint raises an issue of general importance to the Association, the Association may choose to intervene in the appeal. The Association shall provide the Clerk of the Appeals Committee with written notice of its decision to intervene. Should it choose to intervene in any appeal, the Association shall:
 - (a) become a Party to the appeal, 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 make submissions regarding the appropriate disposition of the appeal.

12. Because this is an appeal and not a new hearing, no new evidence is presented. Rather, all Parties set out their positions and submissions on the grounds of the appeal. Since the Specialist has the record before it, submissions should be confined to those documents.
13. Without limiting the ability of the Specialist to determine the admissibility of evidence, should new facts be uncovered by any Party which could not have been reasonably discovered by due diligence prior to the hearing before the C&D Committee that may have affected the outcome of the hearing before the C&D Committee, the Specialist may consider whether to admit the new evidence. Should the Specialist determine that it is appropriate in the circumstances to admit the evidence, they may do so on such terms as it considers are just, including admitting the evidence as part of the appeal and determining the matter, or referring the matter back to the C&D Committee for a new hearing.
14. The Specialist may confirm the decision of the C&D Committee in part or in its entirety or overturn the decision. If it overturns the decision, it may substitute its own decision regarding the culpability of the Respondent or Complainant or may reduce or increase the penalty imposed by the C&D Committee. The Specialist may also refer the matter back to the C&D Committee for a new hearing regarding culpability, penalty or both.
15. The Specialist will reserve their decision and inform the Appeal Committee and the Association after the hearing of the conclusions reached prior to the release of the decision. The Specialist must render its decision, in writing, with reasons for the decision. The Specialist shall endeavour to render their written decision as soon as is reasonably possible. If more than 180 days are to elapse between adjournment of the hearing and release of the decision, the parties shall be notified by the Clerk.

VII Further proceedings

Any Party to the appeal may seek to have the decision judicially reviewed where such right is provided by statute or in the applicable By-laws. This involves making an application to a court of competent jurisdiction for oversight of the process and disposition of a complaint.

VIII Liability

The general principle is that where a Member; that being the complainant, respondent and/or witness and not members of the Complaints and Discipline Committee is acting within the scope of the terms of the Member's appointment, there is qualified privilege attached to the Member's actions. However, it is possible that Members may incur legal expenses to defend their action on an individual basis.

IX Case Summary

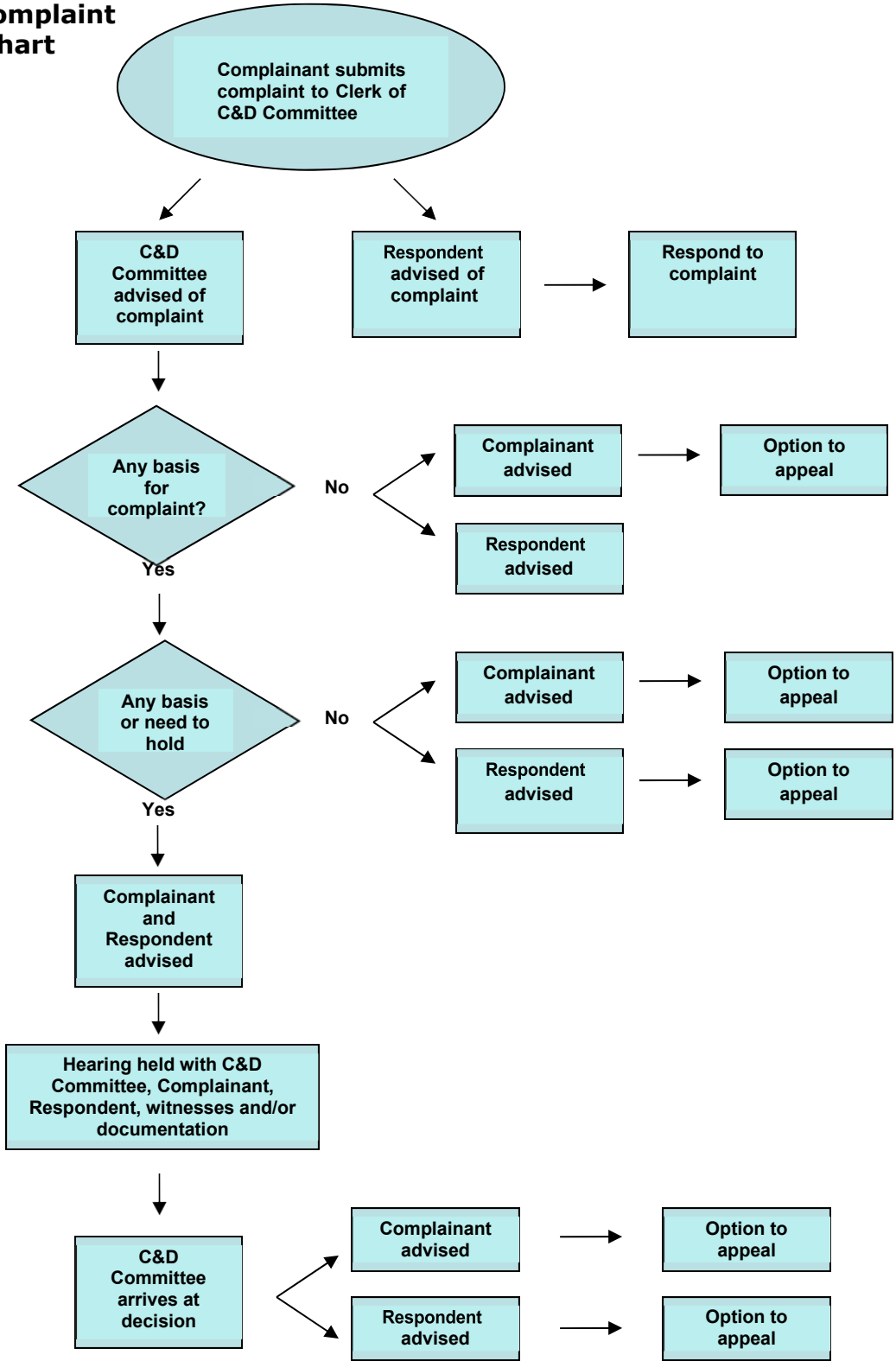
The C&D Committee and the Appeals Committee (where applicable) will provide a Case Summary to the Association Board within 60 days of finalizing all complaint and/or discipline cases.

X Appendices

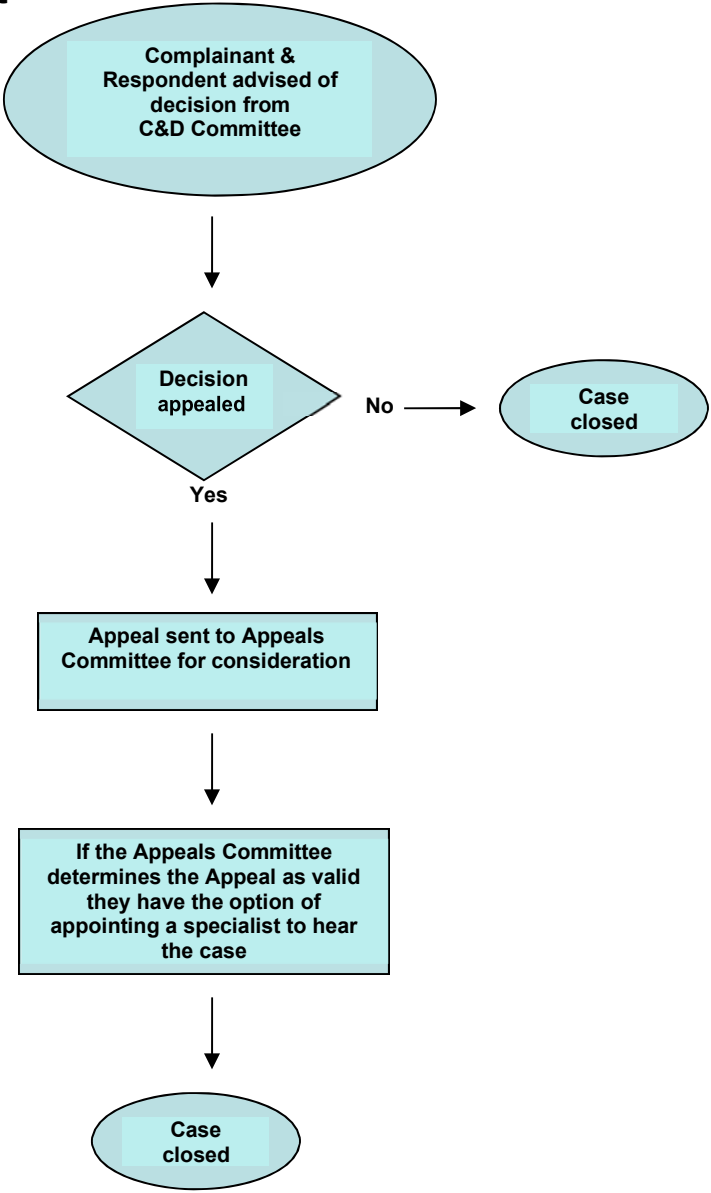
Appendix A – Process Flow Charts

Appendix B – Forms

Appendix A: Complaint Process Flow Chart



**Appendix A Continued:
Appeals Process Flow Chart**



Appendix B: Forms

CPHR Nova Scotia – CODE of Professional Conduct COMPLAINT FORM

If you believe that there has been, or may have been, a violation of the CPHR Nova Scotia Code of Professional Conduct by a Member of CPHR Nova Scotia, please complete this Complaint Form clarifying the details of the incident(s). Should you wish to submit a formal complaint and should CPHR Nova Scotia Complaints & Discipline Committee determine there is a basis for such a formal complaint, this Form will serve as documentation of the complaint. If more space is required, please attach additional pages.

Forward the written complaint to:

Clerk of the Complaints & Discipline Committee
CPHR Nova Scotia
84 Chain Lake Drive, Suite 103
Halifax, NS B3S 1A2

<u>NAME</u> of Member allegedly violating the CPHR Nova Scotia's Code of Ethics & Rules of Professional Conduct
<u>WHEN</u> did the incident(s) take place?
<u>WHERE</u> did the incident(s) take place?
<u>WHAT</u> did they do? (Be as detailed as possible; attach additional information if required)
<u>HOW</u> is this action or behavior in violation of the CPHR Nova Scotia Code of Ethics & Rules of Professional Conduct (please include the specific code i.e. P403 – Health and Safety)?

Has this complaint been filed with any other legal body? Yes No

If yes, please provide the name of this other legal body:

Please list the supporting documents you are sending (attach additional sheets if required).

Note: Please do not send originals.

1.	
2.	
3.	
4.	
5.	
6.	

Your contact information:

Name:	
Home Phone Number:	
Work Phone Number:	
Cell Phone or other Contact Number:	
Fax Number:	
May we contact you at work?	<input type="checkbox"/> Yes <input type="checkbox"/> No
E-mail address:	
Mailing Address:	

NOTE: No anonymous complaints will be accepted.

If the Complaints & Discipline Committee accepts this complaint, a copy of this complaint will be sent to the CPHR Nova Scotia Member (the Respondent) for their response as part of the Complaints Process.

Frivolous, malicious or vexatious complaints are a serious matter and could be subject to discipline up to and including revocation of membership in the Association and/or assignment of costs. Frivolous Complaints are those which, upon Complaints, are determined to have been brought forward to embarrass or annoy the Respondent and without any basis in fact.

Malicious or vexatious Complaints are those which, upon Complaints, are determined to have been brought forward in a spirit of dishonesty and malicious intent on the part of the Complainant.

If you have questions about the Complaints Process, please contact the Clerk of the Complaints & Discipline Committee via e-mail at registrar@cphrns.ca or by phone at 902-446-3401.

By signing below, I verify that I have read, understand and agree to the following:

- i. CPHR Nova Scotia will share some or all of the information and documents that it receives from me and other parties with the Respondent;
- ii. CPHR Nova Scotia may not be able to process my complaint without supporting documents and;
- iii. I have attached copies of documents that relate to my complaint.

Signed and dated at _____ this _____ day of _____,
20__.

Signature of Complainant: _____

Appendix B Continued: Forms

CPHR NOVA SCOTIA - NOTICE OF APPEAL FORM

Clerk of the Appeals Committee
CPHR Nova Scotia
84 Chain Lake Drive Suite 103
Halifax, NS B3S 1A2

I, _____, hereby appeal the decision of the CPHR Nova Scotia Complaints & Discipline Committee dated _____, 20____(copy enclosed herein), and hereby file this Notice of Appeal with the Clerk of the Appeals Committee.

This Notice of Appeal is being submitted on the following grounds (check one or more as applicable)

- Facts,
- interpretation of the Code,
- the Complaints and Discipline Process and/or;
- in the application of principles of natural justice.

3. Please list specific reason(s) for this appeal (attach additional sheets if required):

Your contact information:

Name:	
Home Phone Number:	
Work Phone Number:	
Cell Phone or other Contact Number:	
Fax Number:	
May we contact you at work?	<input type="checkbox"/> Yes <input type="checkbox"/> No
e-mail address:	
Mailing Address:	

By signing below, I verify that I have read, understand and agree to the following:

- i. The CPHR Nova Scotia will share some or all of the information and documents that it receives from me and other parties with the Non-Appellant and;
- ii. The CPHR Nova Scotia may not be able to process my appeal without supporting documents.

Signed and dated at _____ this _____ day of _____, 20_____.

Signature of Appellant: _____