



## **Regulation No: 2006-09-01 Disciplinary Committee**

Regulation as adopted by the Council of the New Brunswick Registered Barbers' Association for **Disciplinary Committee for the hearing procedure, attendance of witnesses, method of appeal and investigations.**

### **1. Hearing Procedure:**

- (a) In a hearing before the Disciplinary Committee (hereinafter referred to as the Committee), the Association and the member against whom a complaint is made are parties to the hearing and may be represented by council.
- (b) A member against whom a complaint is made shall be given, before the hearing, a reasonable amount of time to examine any written or documentary evidence that will be produced, or any report the contents of which will be given in evidence at the hearing.
- (c) A party intending to use expert evidence at a hearing shall give the other party at least 10 days notice before the hearing, the identity of the expert and a copy of the experts report or, if there is no written report, a written summary of the evidence to be given by the expert.
- (d) Hearings of the Committee shall be held in private unless and until the member whose conduct is being investigated requests otherwise by notice delivered to the Registrar at least 5 days before the hearing.
- (e) Oral evidence shall be recorded by electronic means, including digital video, and if a party requests a copy of the transcript it shall be furnished at that party's expense.

### **2. Conduct of Hearing:**

- (a) The parties shall be allowed to call evidence and to cross-examine witnesses.
- (b) The Committee is not bound by the rules of evidence which apply in judicial procedures.
- (c) The Committee may adjourn the hearing from time to time at the request of the parties upon reasonable grounds being shown.
- (d) The burden of proof is the same as in civil cases.
- (e) The member against whom the complaint is made is a compellable witness.
- (f) A witness shall not be excused from answering any question on the ground that the answer:-
  - (i) tends to incriminate,
  - (ii) might subject the witness to punishment under the Act (Registered Barbers' Act),
  - (iii) might tend to establish liability in a civil proceeding or liability to prosecution.

### **3. Attendance of Witness:**

- (a) The Committee, or someone designated by it to act on its behalf, may summons in a form prescribed by by-law on the written request of any party to the proceedings, require the attendance before it of any person whose evidence may be material to the subject matter of the hearing and may order any person to produce such records, reports or other documents as appears necessary for the purpose of the hearing.
- (b) A person served with a summons shall attend and answer all questions concerning matters being inquired into at the hearing and shall produce to the Committee all records, reports or other documents that are under the person's custody or control.
- (c) The testimony of a witness may be taken under oath or affirmation administered by the chairperson of the Committee or any person designated to do so on the chairperson's behalf.
- (d) If a person on whom a summons has been served, either personally or by leaving a copy of the summons with some adult person at the persons last or most usual place of residence or business, fails to appear before the Committee or upon appearing refuses to be sworn or refuses without sufficient cause to answer any question relevant to the hearing, may by application to the Provincial Court, cause the person to be cited for contempt under the provisions of the Rules of Court in the

same manner and to the same extent as if the alleged contempt took place in proceedings before the Court.

- (e) If the person referred to in paragraph (d) is a member, refusal to attend and give evidence at the hearing is professional misconduct and such conduct shall be punishable in accordance with the Act.
- (f) A person, other than the member whose conduct is the subject of the hearing, who is served with a summons under this regulation shall be tendered the same fees as are payable to a witness in an action in The Court of Queen's Bench of New Brunswick at the same time the summons is served in the form of a certified cheque payable to the witness. Such fee shall be paid by the party who has requested the attendance of the witness.

4. **Appeal of Committee Decision:**

- (a) A party to proceedings before the Committee may appeal within 30 days from the date of decision or order of the Committee to the Council of the Association by way of Notice of Appeal on the prescribed form, in accordance with the Rules of Court.
- (b) When requested by a party intending to appeal, and on payment of any reasonable expenses relating to the request, the Registrar shall provide the party with a copy of the record of the proceedings, including the documents received in evidence and the decision or order being appealed.
- (c) An appeal under this regulation shall be based on the record of the proceedings before the Committee and its decision, and may be on questions of law or fact, or both.
- (d) On an appeal from the decision of the Committee the Council may:-
  - (i) affirm, vary or reverse the decision of the Committee,
  - (ii) exercise all powers of the Committee,
  - (iii) substitute its decision for that of the Committee,
  - (iv) refer the matter back to the Committee for rehearing in whole or in part, in accordance with such directions as the Council considers proper, or
  - (v) make any order it considers appropriate including costs.

5(1) **Investigation:**

- (a) In the absence of a complaint, the Council may carry out an investigation if it has reason to believe that the conduct or actions of a member may constitute professional misconduct, incompetence or incapacity, or may direct that the Inspection & Investigation Committee carry out such investigation.
- (b) The Council may appoint one or more investigators to assist in an investigation under paragraph (a), or to assist the Inspection & Investigation Committee in any investigation it is required to conduct under the Act, by-laws or this regulation.

5(2) **Responsibilities of Member:**

- (a) A member who is being investigated under the Act shall cooperate with the Council, the Inspection & Investigation Committee and the investigator, and shall produce all documents and disclose to the Council, the Inspection & Investigation Committee and the investigator, all information that may be relevant to the investigation.
- (b) No member shall obstruct, or cause to be obstructed, an investigator while the investigator is performing duties under the Act, by-laws or this regulation.
- (c) No member shall withhold, conceal or destroy, or cause to withhold, conceal or destroy, anything that is relevant to an investigation under the Act, by-laws or this regulation.
- (d) A member who violates paragraph (a), (b) or (c) commits an act of professional misconduct and such conduct shall be punishable in accordance with the Act.

This regulation is adopted by the Council on 18<sup>th</sup> of June 2007, at the City of Fredericton, Province of New Brunswick.

.....  
President

.....  
Secretary - Treasurer