



GUIDELINES ON
COMPLAINTS
AND
DISCIPLINARY PROCEDURE

Effective: January 1, 2018

1. INTRODUCTION

The aim of this guideline is to familiarize members, including students, registered graduates or firms, with the disciplinary procedure of the Institute

This guide has no regulatory status and is issued for guidance purposes only and in the event of any conflict between the content of this guideline and the Institute of Chartered Accountants of Trinidad and Tobago Rules and Regulations 2018, the latter shall always take precedence. Accordingly, this guideline should not be regarded as a substitute for familiarizing yourself with the ICATT Rules and Regulations 2018.

Moreover, where a complaint is made, it is not a substitute by a party for any legal claims against you seeking damages or other remedies through the courts.

2. LIABILITY TO DISCIPLINARY ACTION

Members shall be liable to disciplinary action once engaged in “*acts of improper or unprofessional conduct.*” Such conduct, will include but will not be limited to the following:

- ◆ in connection with professional duties, work or conduct of practice, acting in an incompetent, negligent, inadequate or improper manner;
- ◆ misconduct in the course of carrying out professional duties or otherwise;
- ◆ contravention of any rule, regulation, guideline or policy of the Institute;
- ◆ contravention of any principle, requirement or condition in the Code of Ethics or ICATT’s Accounting and Auditing Standards;
- ◆ contravention of any of the statutory duties and controls pertaining to the regulation of accountants;
- ◆ being convicted of an offence which renders the member unfit to act as an accountant;
- ◆ obtaining registration by fraud or misrepresentation;
- ◆ over-indebtedness under insolvency law, including making or seeking to make any composition or arrangements with creditors;
- ◆ failure to satisfy a judgment debt without reasonable excuse for a period exceeding 3 months following the date of entry of that judgment debt; and
- ◆ any act or omission which brings, or is likely to bring discredit to the firm with which the member may be associated, to the accountancy profession, or to the Institute.

3. INITIATION OF INVESTIGATORY PROCESS

3.1 Investigatory Process

There are three ways in which the Institute may initiate its investigative and disciplinary process. They are:

- a. *Written Complaints* – The Institute may initiate its investigative and disciplinary process against any member when a complaint is received in writing from a client, a regulatory body or any member of the public alleging that the member has engaged in an act of improper or unprofessional conduct.
- b. *Information Received* – The investigative and disciplinary process may be initiated, without a complaint, where information is received from reliable sources such as another committee of the Institute, the Council of the Institute, newspaper articles or judicial or quasi-judicial judgments which evidences the possibility of an act of improper or unprofessional conduct.
- c. *Practice Monitoring Action* - The investigative and disciplinary process may be initiated where a member in practice receives an unsatisfactory report from a Practice Monitoring Review or Quality Assurance Review which is deemed by the reviewer to represent serious failings. “*Serious Failings*” includes where the reviewer, while conducting a Practice Monitoring Review or Quality Assurance Review of a member, concludes one or more of the following:
 - ◆ that there has been insufficient audit work completed to reach an audit opinion in at least 50 percent of the audit files inspected or the audit opinion is not appropriate based on the evidence obtained;
 - ◆ that there has been insufficient audit work completed to reach an audit opinion in an audit file relating to a public interest entity or a larger client of the firm; or
 - ◆ there has been an act of improper or unprofessional conduct irrespective of the findings on the audit files inspected.

All matters regarding the practicing monitoring action are referred directly to the Disciplinary Tribunal and not the Investigations Committee.

3.2 Action after complaint is received

Where the Secretary of the Institute receives a complaint or information (hereinafter collectively referred to as “the complaint”), the Secretary will within 14 days of receipt:

1. acknowledge receipt of the complaint;
2. notify the relevant member of the complaint;
3. notify the Standing Investigation Chairman of the allegations; and
4. request that the Standing Investigation Chairman form a Tribunal to consider the complaint promptly but no later than 14 days of notification.

In accordance with the Rules, a complainant must provide his personal information to support the claim.

As indicated earlier, complaints from Practice Monitoring Action would be referred directly to the Disciplinary Committee by the Licensing Committee.

3.3 Formation and Powers of the Investigation Tribunal

The minimum number of members on the Tribunal for any meeting is 4 and 1 shall be a non-accountant. A member of the Council of the Institute may participate in Investigation Tribunal as an ex-officio member.

3.4 Lay observer

The requirement of a non-accountant on the Tribunal is designed to allow fairness and impartiality in the Tribunal’s investigative procedures.

3.5 The Investigation Process

Once the Investigation Tribunal is formed, the tribunal investigates and obtains clarification of the suspected or alleged act of improper or unprofessional conduct with a view of deciding whether there is sufficient merit in the complaint to warrant the matter being referred to the Disciplinary Tribunal.

Accordingly, the relevant member shall be provided with a copy of the complaint and any supporting documents for comments. The Investigation Tribunal may require the provision of documents, records or other information relevant to the complaint within a reasonable period. The Investigation Tribunal may also require the attendance at meetings to clarify information or the contents of documentation. If the relevant member fails to comply with the request of the Investigation Tribunal, the member may be subjected to further disciplinary action.

While there is no time limit for the completion of an investigation, the Investigation Tribunal will attempt to conduct the investigation with speed and efficiency. However, where there are

ongoing civil and/or criminal proceedings or commission of inquires relating to the matter, the investigation may be put on hold until the proceedings and inquiries are completed.

Once all the information relating to the investigation is obtained by the Investigation Tribunal, the Tribunal will consider the evidence and decide whether there is a case to answer.

3.6 Confidentiality

Generally, the Institute's investigatory and disciplinary procedures are confidential. This means that the correspondence and documentation in relation to a particular complaint shall not be discussed or disclosed save and except where required by ICATT's Rules, Regulations, Processes and the Law.

3.7 No Prima Facie Case/ No Case to Answer

Where the Investigation Tribunal determines that the complaint is without merit or no case has been made out, the relevant member and the Complainant will be advised in writing. Subject to the decision of Council (see below), the Investigation Tribunal will also inform the Complainant of the right to appeal to the Appeals Committee within 30 days of its decision.

If the Council agrees with the decision of the Investigation Tribunal, the matter would be closed and no further action can be taken. However, where the Council considers that the matter is of public interest it will review the report of the Investigation Tribunal and may refer the matter to the Appeal Committee within 14 days.

3.8 Prima Facie Case/ Case to Answer

If the Investigation Tribunal determines that the compliant has merit and there is sufficient evidence to support the allegations, the Investigation Tribunal will refer the matter to the Disciplinary Tribunal.

3.9 Alternative Dispute Resolution (ADR)

Where the investigation arises from a written complaint (also referred to as "Complaints-based Action" in the ICATT Rules and Regulations 2018"), the matter may be adjourned by either the Investigation Tribunal or Disciplinary Tribunal and referred to ADR if it appears the parties may be inclined towards an amicable or pragmatic resolution between themselves. ADR will not be limited to mediation. If the complaint is resolved through ADR, the Investigation Tribunal or Disciplinary Tribunal (as the case may be) may dismiss the complaint, unless the resolution includes sanctions to be imposed in which case the Disciplinary Tribunal shall impose such sanctions. If no agreement is reached through ADR, the Investigations or Disciplinary Tribunal shall hear and determine the complaint.

4. DISCIPLINARY PROCEEDINGS

4.1 Formation of the Disciplinary Tribunal and Disciplinary Proceedings

For the purpose of dealing with a referral, the Disciplinary Tribunal shall consist of four (4) members, one of whom shall be a non-accountant.

Where a matter is referred to the Disciplinary Tribunal, the Tribunal shall set the date of hearing no more than 90 days after the date of referral. However, this period could be extended by the Disciplinary Tribunal, as it may deem fit, to deal with any interim or interlocutory applications or preliminary matters.

At any stage of the proceedings, the Disciplinary Tribunal may order that any defect in a complaint be remedied provided that the respondent and the relevant member is not prejudiced.

4.2 Provision of Documents

Once the matter is referred to the Disciplinary Tribunal, the member is entitled to be provided with the following no later than 30 days from the date of referral:

- ◆ a statement of the allegations and notification of the time and place fixed for the hearing;
- ◆ a summary of the case setting out the relevant facts and matters;
- ◆ copies of all relevant documents;
- ◆ a document summarising the procedure before the Disciplinary Tribunal and the Institute's disciplinary process, in a form approved by the Disciplinary Tribunal; and
- ◆ a notice inviting the member to indicate whether the member:
 - i. accepts all or any of the allegations made, and if so, any matters which the member believes the Tribunal ought to consider in mitigation of the infraction committed; and
 - ii. intends to attend the hearing and be represented.

4.3 Preliminary matters/issues

The Disciplinary Tribunal may conduct a preliminary hearing, prior to the date of the hearing of the substantive complaint, to decide interlocutory and preliminary matters. At a preliminary hearing consideration may be given but not limited to the following:

- ◆ Simplification or clarification of the issues in the proceedings;
- ◆ Disclosure of documents;
- ◆ Facts or evidence that may be agreed upon;
- ◆ Identifying any issues as to admissibility of evidence
- ◆ Amendments to the complaint/statement of allegations or response;
- ◆ Identifying any preliminary objections;
- ◆ Scheduling the proceedings;
- ◆ Giving directions for the conduct of the proceedings and the procedures to be adopted;

- ◆ Resolution of any or all of the issues in the proceedings; and
- ◆ The hearing of arguments orally or by documents or a combination of both.

Additionally, prior to fixing a date for a hearing, a Disciplinary Tribunal may decide that based on the information before it the complaint/statement of allegations should be dismissed. The Disciplinary Tribunal will then provide the parties with its reason(s) for its decision.

4.4 Respondent's Production of Documents

When the member receives the documents referred to in clause 4.2 above, the member may be required to notify the Tribunal of the member's contact details along with the member's legal representative (if one is chosen) within 8 days of receipt of the documents.

If the member wishes to draw any documentation or information to the Disciplinary Tribunal's attention, such documentary evidence or information, including witness statements, must be submitted no later than 14 days prior to the date of the hearing. Usually, the Disciplinary Tribunal will order that all witness statements in the matter be filed no later than 14 days before the date of the substantive hearing. Six copies of the documents, including witness statements, should be filed with the Institute and one will be provided to the Complainant or Investigation Tribunal by the Secretary of the Institute.

Failure to provide the relevant documents within period specified above shall not prevent the tribunal from determining the complaint.

4.5 Right to be heard

At the hearing of the matter, the relevant member is entitled to be heard and to be represented by such person as the member may choose. Notwithstanding, the Tribunal may proceed to hear and determine any complaint where the relevant member has received due notice of the hearing and does not attend.

4.6 Case Management and Substantive Hearing

The Disciplinary Tribunal does not operate as a court and is not bound by the strict rules of evidence that apply in courts of law.

The hearing is usually held in private and all witnesses, , will be required to wait in a waiting area until called to give evidence, except for the Complainant and the relevant member

Once the member is present at the first hearing, the member shall be invited to either admit or deny the allegation which is the subject of the complaint(s).

Where the member is absent, the Disciplinary Tribunal may proceed where the member has previously admitted or denied the allegations in writing, or the Tribunal may make any order for the hearing of the complaint as may be appropriate. The Tribunal may proceed to hear any proceedings in which the relevant member, having received due notice, does not attend. The relevant member is also entitled to retain legal representation throughout the proceedings.

If witnesses are to be called by the Investigation Tribunal, notice is normally to be given at least 21 days before the hearing. The notice will include the witness's name and the written witness statement containing the evidence the witness intends to give to the Disciplinary Tribunal.

4.7 Eviction from Hearing

The Tribunal may expel any person from the proceedings for any good reason, including where that person:

- a) Insults another person;
- b) Interrupts the hearing; or
- c) Behaves in such a manner that would constitute a contempt of court if the Tribunal were a superior court of record.

4.8 Ex parte Hearing

Where you are given notice of the date of the hearing and you and/or your representative fails to attend a hearing, the case may be heard in your absence.

4.9 Standard and Burden of Proof

In deciding whether any allegation has been proved, the burden and standard of proof to be applied by the Disciplinary Tribunal or Appeals Committee (see below) shall be as follows:

- a) Subject to sub-paragraph (b) below, the starting point shall be the civil standard; that is to say proof on a balance of probabilities;
- b) Where the alleged act of improper or unprofessional conduct is of a criminal nature or tantamount to a criminal offence, the criminal standard shall be applied; that is to say, proof beyond a reasonable doubt.

4.10 Closing Submissions

Once the case and the defences are presented by the respective parties, the Disciplinary Tribunal will invite the parties to present closing submissions either orally or in writing by a specified date.

4.11 Decision/Judgment

At the conclusion of the hearing and once the closing submissions are presented, the Disciplinary Tribunal will retire to consider the matter and, within a reasonable timeframe, shall return to

announce its findings in respect of each of the allegations. A notice of the said date would be provided to all parties.

4.12 Mitigation

If the Disciplinary Tribunal has found that any of the allegations have been proven, the relevant member will be invited to make any statements in mitigation. Where the member does not make any plea in mitigation, the tribunal shall be entitled to consider any matter which may be relevant, including any written submission the relevant member may have made.

The Disciplinary Tribunal is entitled to treat any finding of fact contained in a judgment of any court as conclusive evidence of that fact for the purpose of determining whether the member may have participated in any type of activity, whether of a professional nature or not, which is disreputable to you, the relevant firm, the Institute or the profession of accountancy as a whole.

The Disciplinary Committee shall, in determining what order may be appropriate, consider any relevant matter, including the previous conduct of the relevant member or any previous order which may have been made against the relevant member.

5. SANCTIONS

5.1 Types of Sanctions

Where the Disciplinary Tribunal is satisfied that an act of improper or unprofessional conduct has been proven against and:

A relevant member, it may in its discretion make one or more of the following orders:

- i. A reprimand or admonishment.
 - ii. An order to participate in further educational or remedial training as directed.
- iii. Designate corrective action necessary for you to remain a member of the Institute.
- iv. Recommend corrective action to the relevant firm.
- v. An order for the payment of restitution to the complainant, which may include a waiver or reduction of fees charged by the member.
- vi. A fine that is just and reasonable considering costs.
- vii. Suspension from any rights or privileges as a member of the Institute for a period not exceeding 2 years.
- viii. Revocation of membership in the Institute.
- ix. Withdraw, suspend, or attach conditions of any practising or auditing certificate.
- x. Disqualification from entitlement to a certificate for a specified period or until the occurrence of a specified event.

If it is a student or registered graduate, the Disciplinary Tribunal may impose the following sanctions:

- i. Reprimand or admonishment.
- ii. An order to participate in further educational or remedial training as directed.
- iii. Disqualification for such period as shall be specified from sitting an examination or examinations of the Institute (or such part or parts thereof) as shall also be specified in the order.
- iv. An order that a period, which shall be specified in the order, shall not be reckoned as part of the relevant member's approved accountancy experience for the purposes of the Institute's Rules and any regulations made pursuant thereto.
- v. Removal from the Graduate or Student Register.

5.2 Order

Written notice of the terms of the order shall be provided within 14 days of the hearing to the member, and a written statement of the reasons for the decision of the Disciplinary Tribunal 28 days of the decision or such longer period as shall be necessary in the circumstances.

An order made by the Disciplinary Tribunal shall take effect 30 days after the date on which the relevant member has been informed of the right to appeal, unless an appeal has been filed, in which case it shall become effective in accordance with the decision of the Appeals Committee.

Any order that a sum be paid to the Institute must be complied with within 21 days from the date the order becomes effective.

If an Appeal application is lodged, the order of the tribunal will be Stayed until the determination of the appeal.

Once the Order is perfected, a copy of the said Order and the written statement of reasons of the finding may be provided to the Complainant, relevant member and to Council.

5.3 Right to Appeal

The tribunal shall inform the relevant member of a right to appeal its decision to the Appeals Committee within 30 days after receipt of the written statement of reasons.

6. APPEAL PROCESS

6.1 How to appeal

An appeal is made by the respective party filing an application notice of appeal in the prescribed form with the Secretary of the Institute. The appeal shall be deemed to have been made on the day it is filed with the Secretary of the Institute. The Appeal Form is attached at Appendix 1 for ease of reference.

Where an application notice is filed by Council, the Secretary shall notify the Respondent and supply a copy of the application to the Complainant within 14 days. The aggrieved member may submit grounds of opposition to the application within 30 days thereafter.

6.2 Time for filing an Appeal

The appeal must be filed with the Secretary of the Institute at the Institute's registered address as follows:

- ◆ In relation to a decision of Council involving to an application for *membership*, within **30 days** of being informed of the decision.
- ◆ In relation to the decision of the *Licensing Committee regarding the Practice Monitoring Action*, within **30 days** after receipt of the written statement of the reasons for the decision.
- ◆ In relation to the decision of an *Investigation or Disciplinary Tribunal*, within **30 days** after receipt of the written statement of the reason for the decision of the Tribunal.
- ◆ In relation to a *public interest matter*, Council may appeal against a decision made by an Investigation Tribunal, a Disciplinary Tribunal or the Licensing Committee within **14 days** after receipt of the written statement of the reasons for the decision of the Tribunal or Committee.

6.3 Extension of time

The Appeals Committee may entertain an appeal after the expiry of the 30 days specified above if satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period specified. (See *Disciplinary Tribunal and Appeals Committee Guideline on Postponements, Adjournments and Proceeding in the Absence* for further details.)

6.4 Form of Application Notice and Grounds of Appeal

The application notice is required to be in writing addressed to the Secretary and the Appellant is required to state:

- the appellant's name and address together with the following additional information;
- whether the appellant has authorised a representative to act on the appellant's behalf in the appeal and, if so, the representative's name and address;

- whether the appellant intends to appear at the hearing of the appeal if permission is granted;
- in the case of an appeal from a decision made by an Investigation Tribunal, a Disciplinary Tribunal or the Licensing Committee, whether the appellant appeals against one or more of its findings and orders or one or more of its orders only;
- which of the grounds of appeal the appellant is putting forward in support of his application;
- the arguments in support of each ground of appeal; and
- any available documents which the appellant wishes the Appeals Committee to take into account.

An Appellant may appeal against a decision of an Investigation Tribunal, a Disciplinary Tribunal, the Licensing Committee or the Council (except where an appeal is made on the ground of public interest) on any of the following grounds:

- ◆ The decision of the relevant Tribunal, Committee or Council failed to consider a relevant factor.
- ◆ Breach of the principles of natural justice.
- ◆ Error of law, whether or not apparent on the face of the record.
- ◆ Absence of evidence on which a finding or assumption of fact could reasonably be made.
- ◆ A defect in form or a technical irregularity resulting in a substantial wrong or miscarriage of justice.
- ◆ Any other ground which substantially affects the merits of the decision of the relevant Tribunal, Committee or Council.

An appeal by the Council against a decision of an Investigation Tribunal, a Disciplinary Tribunal, the Licensing Committee or the Council may be successful only upon either of the following grounds:

- ◆ That the decision was one that no Tribunal, Committee or Council acting reasonably would have made.
- ◆ That the appeal is justifiable in the public interest in the circumstances of the case.

Also, a sole ground of appeal *cannot* be on the question of costs.

The Appellant is required to supply the Appeals Committee shall be supplied with 6 copies of:

- a) all the documents which had been placed before the Tribunal, Committee or Council whose decision is the subject of the application notice;
- b) the notice of the relevant Tribunal, Committee or Council's decision;
- c) the statement of the relevant Tribunal, Committee or Council's reasons for its decision;
- d) the application notice and any documents submitted with it;
- e) any written submissions that may have been made by the respondent;

- f) any other documents or information which the Appeals Committee may request; and
- g) any notes of evidence and proceedings.

Upon request by an Appellant, the Appeals Committee may grant permission to amend any ground of appeal specified in the application notice.

6.5 Preparation for the appeal hearing

The appeal is not a re-hearing of the matter. It is a review of the Disciplinary Tribunal's decision with specific reference to the grounds of appeal. The appellant and respondent may submit such written submissions and additional documentary evidence as the parties may wish to be drawn to the Appeals Committee's attention, provided that any such written submissions and documentary evidence must be submitted to the Appeals Committee and the opposing party not less than 14 days prior to the hearing of the appeal.

6.6 Additional Evidence/Fresh Evidence

The Appeals Committee shall be exceptionally entitled to admit additional evidence which was not before the Tribunal, Committee or Council whose decision is under appeal where the additional evidence was not available at the time of the matter appealed against and such additional evidence is relevant to the appeal. The Appeals Committee may give directions as to the matter and time within which such evidence is to be submitted.

6.7 Notice, representation and adjournments

Notice

The Appeals Committee shall provide the parties with no less than 28 days written notice of the time and place of the hearing of the appeal and may proceed with any hearing in the absence of a party which has duly been served with notice of the hearing.

Representation

At the hearing of the appeal, the Appellant will be entitled to be heard before the Appeals Committee and to be represented by such person as the appellant may wish. The Institute may be represented by such person as it may nominate.

Advisers to the Appeals Committee

The Appeals Committee may have its own legal advisor and may adjourn proceedings for its legal counsel to be present.

Adjournments

The Appeals Committee may, in its sole discretion or on the application of a party to an appeal, adjourn any hearing, whether part-heard or not, where it considers that an adjournment is

necessary. (See *Disciplinary Tribunal and Appeals Committee Guideline on Postponements, Adjournments and Proceeding in the Absence* for further details.)

6.8 Powers of Appeals Committee

In the case of an appeal against one or more of the findings or orders of an Investigation Tribunal, a Disciplinary Tribunal, the Licensing Committee or the Council, the Appeals Committee may do any one or more of the following:

- 1) Affirm or vary any findings.
- 2) Confirm the order, with or without modification.
- 3) Affirm, vary, rescind or substitute any order.
- 4) Quash the order and make such order as it thinks appropriate having regard to all the circumstances.
- 5) Refer the matter back to the tribunal, committee or Council for re-hearing in its entirety or on a particular issue.

Where the Council has appealed against a decision of an Investigation Tribunal on the grounds of public interest, the Appeals Committee may:

1. Affirm the decision of the Investigation Tribunal.
2. Order that a new Investigation Tribunal re-consider the matter.
3. Refer the matter to a Disciplinary Tribunal for adjudication.

6.9 Stay of Execution

An Appeal does not operate as a stay of execution unless the Appeals Committee otherwise directs, subject to such conditions as the Appeals Committee may determine.

6.10 Costs

On conclusion of the matter, the Appeals Committee may consider an award of costs.

6.11 Notification

The Appeals Committee shall announce its decision at the hearing. Formal written notice of the order made shall be provided to the parties within 14 days after the hearing, and a written statement of the reasons for the decision of the Appeals Committee shall be given to the parties within 28 days after the hearing, or such longer period as shall be necessary in the circumstances.

6.12 Publication of Decision

The findings and orders of an Appeals Committee may be published by the Secretary in daily newspapers and/or the Institute's website:

- 1) Where a successful appellant or relevant firm so requests; and
- 2) Where such findings and orders can provide guidance or directions, promulgate best practice or clarify issues of uncertainty which may be of benefit to Members or the public as a whole.