

THE SYNDIC'S ROLE AND SERVICES



The sole purpose of this brochure is to provide information on the role of the syndic of the Ordre des comptables agréés du Québec and the services offered. It is not intended to be a substitute for official texts or to interpret them. The official texts are those published in the *Gazette officielle*. The administration versions of the law and regulations can be consulted on the Ordre's website at www.ocaq.qc.ca.

The masculine is used indiscriminately, for the sole purpose of readability.

Role of the syndic

The syndic of the Ordre des comptables agréés du Québec ensures that chartered accountants (CAs) comply with the provisions of the *Professional Code*, the *Chartered Accountants Act*, the *Code of Ethics of Chartered Accountants* and other Ordre regulations.

The syndic sees to it that CAs do not perform any acts that are derogatory to the honour and dignity of the profession. The syndic's mission is to protect the public.

Any person who believes that a chartered accountant has violated an Act or regulation relating to the profession can ask the syndic of the Ordre to lodge a complaint against the CA. The syndic follows up on the request and conducts the necessary inquiries. The syndic's role and powers are defined in the *Professional Code*, the statute that governs all professional orders in Quebec.

The syndic receives the complaints against a CA or against a person who was a CA when the alleged acts took place. These acts may have been committed by the CA, by a person under his supervision or by a person involved with him in the practice of his profession.

Types of recourse

There are three main types of recourse against a CA:

- 1) Disciplinary recourses** lodged with the Committee on Discipline to sanction a CA who has violated the laws and regulations governing the profession, in particular professional standards, the *Code of Ethics of Chartered Accountants* and the other Regulations adopted by the Ordre.
- 2) Recourses respecting professional fees** to contest the amount of fees tied to the professional services rendered by a CA.
- 3) Other legal recourses** conducted through the courts to obtain, among other things, financial compensation in cases where a CA may have caused civil damages (civil recourse) or to sanction the conduct of a CA who committed a penal or criminal act (criminal recourse).
 - Only disciplinary recourses and recourses respecting professional fees fall within the jurisdiction of the syndic.
 - Disciplinary recourses do not give rise to financial compensation or the passing of a sentence (such as imprisonment).

The three types of recourse may be launched simultaneously, circumstances permitting. The syndic is legally required to take an oath of discretion and, consequently, cannot testify before civil or criminal courts.

Disciplinary recourse

Reception of the request

If you wish to have a complaint lodged against a CA, you must provide the syndic with the following information in writing:

- a detailed description of the alleged facts and acts;
- an accurate chronology of the events;
- all available evidence concerning the facts and acts relating to your request (letters, e-mails, transcripts of telephone conversations, personal notes, etc.);
- the name and contact information of any person who can corroborate your claims, if applicable.

There is no specific form to fill out but it is essential that you provide the syndic with the most complete and accurate information possible. This information allows the syndic to conduct an inquiry into the matter and make an informed decision.

The syndic must first determine whether your request is receivable, i.e. if the facts described are in fact a violation of the professional regulations that CAs must adhere to. If the syndic concludes that a violation has occurred, an inquiry is launched.

In some cases, the syndic may find that the alleged actions call for other types of intervention than the lodging of a complaint before the Committee on Discipline. For example, the syndic may decide to contact the CA directly to have the necessary corrective actions taken. The syndic may also provide sample letters to be sent to a CA to attempt to quickly settle the matter. A number of disputes are settled in this way, without any further intervention by the syndic.

Inquiry by the syndic

The purpose of the inquiry is to gather all the relevant information in order to reach an informed decision concerning the allegations. It is essential for the person who has requested an inquiry to fully cooperate with the syndic and provide the necessary information to support his claims. During the inquiry, the syndic may ask this person for additional information and schedule a meeting. The syndic will also contact the CA to obtain his version of the facts and his explanations. Both parties may be interviewed several times.

The syndic informs the person who requested an inquiry about its status at regular intervals, but is prohibited from disclosing any details. All of the information gathered remains confidential and is not accessible to any of the parties.

During the inquiry, the syndic may suggest conciliation to each party if this approach can resolve the matter.



Conciliation

Conciliation is one way to resolve a conflict between a CA and a client who has requested an inquiry. This approach may be of benefit to both parties. The expectations of the person who requested the inquiry can be better met since he has a stake in resolving the situation that gave rise to the complaint. For the CA, a successful conciliation normally means that the complaint will not be brought before the Committee on Discipline.

If no agreement is reached, if either of the parties withdraws from the conciliation process or if the syndic decides to terminate it, the complaint process follows the normal procedure. The file is entrusted to another syndic who was not involved in the conciliation process.

Results of the inquiry

After having completed the inquiry, the syndic may decide:

- not to lodge the complaint;
- to issue a written warning to the CA;
- to lodge a complaint with the Committee on Discipline.

If the syndic decides not to lodge the complaint or to issue a warning to the CA, he informs the person who requested the inquiry in writing of the reasons for the decision. The person can then request the opinion of the Review Committee.

Where there are reasonable grounds to believe that the CA's professional competence or the manner in which he practices his profession should be the subject of an audit or an inquiry, the syndic also informs the Professional Inspection Committee.

Review Committee

The role of the Review Committee is to provide the person who requested the holding of an inquiry with an opinion regarding any decision of the syndic not to lodge a complaint before the Committee on Discipline. A request for an opinion must be sent to the secretary of the Review Committee within 30 days from the date of reception of the syndic's decision.

The request is reviewed by a three-person bench, including one representative from the public. The Review Committee reviews the entire file and, if appropriate, summons the syndic and the person who requested the inquiry and issues its opinion in writing. The Review Committee does not meet with the chartered accountant.

In its opinion, the Review Committee may:

- uphold the syndic's decision not to lodge a complaint before the Committee on Discipline. In this case, the person who requested an inquiry can personally lodge a complaint with the Committee on Discipline;
- suggest that the syndic complete the inquiry;
- suggest that the syndic refer the matter to the Professional Inspection Committee;
- decide that there are grounds for lodging a complaint with the Committee on Discipline. Since the Review Committee cannot lodge the complaint, a syndic is assigned to the case.

The Review Committee informs the person who requested the inquiry of its decision.

Lodging a complaint with the Committee on Discipline

The syndic who decides, following an inquiry, to lodge a complaint against a CA before the Committee on Discipline, acts in the capacity of the complainant. From that moment on, the parties involved are the syndic and the professional. The syndic is responsible for preparing the file and presenting the evidence before the Committee on Discipline. The person who requested the hearing is informed that the complaint has been lodged, but is not apprised of the specific counts.

The Committee on Discipline may also receive a complaint lodged by a private citizen. In this case, the complainant is responsible for preparing the file and presenting the evidence before the Committee on Discipline. The complainant must assume the costs and may be assisted by a lawyer. The procedure is launched when the complainant files a complaint with the secretary to the Committee on Discipline.

Once the complaint is filed, it becomes the responsibility of the Committee on Discipline and may only be withdrawn with the Committee's approval. The roll for the Committee on Discipline hearings is public, but not the complaints. The complaints become public, however, when the hearing begins, unless the Committee on Discipline declares that the proceedings be held in private.

- The Committee on Discipline is an administrative tribunal.
- Cases are heard by a three-person bench.
- The chair of the Committee on Discipline is a lawyer appointed by the Government.
- The parties and witnesses have the right to be accompanied by a lawyer or any other person of their choice.

The Committee may impose penalties that range from a reprimand to the revocation of the member's permit, a fine, the imposition of a period of refresher training or a refresher course, the limitation of the right to practice or the temporary or permanent striking off the roll. The Committee on Discipline may also find that the professional has not committed an offence. The decision of the Committee on Discipline may be appealed to the Professions Tribunal by the syndic, the chartered accountant or, if applicable, the private citizen.

In the event that no appeal is brought before the Professions Tribunal, the disciplinary process ends upon the expiry of the period for appeal.

Professions Tribunal

Appeals to the Professions Tribunal begin with a motion served on the parties and on the secretary to the Committee on Discipline. The motion must contain a detailed statement of the grounds for appeal and be filed within 30 days of the service of the decision of the Committee on Discipline.

The Professions Tribunal may confirm, alter or quash a decision rendered by the Committee on Discipline. It may hand down the decision it believes should have been rendered. It may also substitute any other penalty for a penalty imposed by the Committee on Discipline.

Recourse respecting fees

Conciliation of accounts

If you have been unable to settle a dispute over the professional fees of a CA by mutual consent, you may seek recourse from the Ordre. You may contest a statement of fees if you feel it exceeds the expected or anticipated amount, if you disagree with any of the amounts billed, or if you consider the fees excessive in relation to the services rendered.

The syndic offers a conciliation service for professional fees. The office of the syndic receives complaints about CA fees and attempts to bring the two parties together through conciliation.

An application to lodge a disciplinary complaint may be filed at the same time as an application for conciliation of a member's account.

The following conditions must be satisfied:

- ▶ the account must not have been paid, or if it has been, either in full or in part, the application for conciliation must be presented within 45 days of receiving the invoice;
- ▶ no other legal proceeding (before small claims court, for example) may be underway.

The application respecting a member's fees must be filed in writing with the syndic and include the invoices and any other relevant voucher. In the case of an estate, the application is made by the liquidators.

The syndic informs the CA involved within three days of receiving the application for conciliation. From that moment on, the CA may not undertake any other legal proceedings.

The syndic then gathers the information relevant to the application. It is important to point out, however, that the conciliation process does not evaluate the quality of the work performed by the CA.

If an agreement is reached at the end of the conciliation process, this agreement is recorded in writing. The ensuing payment is sent to the Ordre and then forwarded to the CA.

If no agreement is reached at the end of the conciliation process, a report is submitted to the person who requested the conciliation. The report must mention arbitration as a possible recourse and may include a suggestion from the syndic regarding the amount of fees.

Committee for the arbitration of accounts

If no agreement is reached at the end of the conciliation process, the person who requested conciliation has 20 days from the date the syndic's report was received to apply for arbitration by completing the application for arbitration form and sending it to the secretary of the Ordre's Committee for the Arbitration of Member's Accounts along with a solemn declaration. The solemn declaration must be certified by a commissioner for oaths or a person authorized to receive solemn declarations, a lawyer or a notary for instance.

The application for arbitration is heard by a bench made up of one to three persons, depending on the amounts involved. At least 10 days before the hearing date, the secretary to the Committee for the Arbitration of Member's Accounts notifies the parties, i.e. the client and the CA, of the date, time and location of the hearing, as well as the name of the arbitrators. Both parties must attend the hearing.

The arbitrators may maintain or reduce the disputed fees. The decisions rendered by the Committee for the Arbitration of Member's Accounts are final and without recourse and binding on the parties.

**Ordre des comptables agréés du Québec
Office of the syndic**

Ginette Lussier-Price, FCA, syndic
Guy Breton, FCA, assistant syndic
André Coupal, FCA, assistant syndic
Claude Maurer, CA, assistant syndic

If you wish to contact the office of the syndic
concerning any ethics-related issue, please call:

Thérèse Coutu at 514 982.4618
or toll free at 1 800 363.4688, ext. 4618.

To use the conciliation service for professional
fees, please contact:

Manon Vandal at 514 982.4643
or toll free at 1 800 363.4688, ext. 4643.

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