

CN Police Service Complaints Procedure

Established pursuant to section 44.1 of the *Railway Safety Act*, R.S.C. 1985, c. 32 (4th Supp.)

Title

1. This Procedure may be cited as the *CN Police Service Complaints Procedure*.

Definitions

2. In this Procedure,

“Act” means the *Railway Safety Act*, R.S.C. 1985, c. 32 (4th Supp.); (*Loi*)

“arbitrator” means an arbitrator appointed under section 18 [*selection of arbitrator*]; (*arbitre*)

“arbitration roster” means the roster established in section 17 [*arbitration roster*]; (*liste d’arbitres*)

“Assistant Chief” means an Assistant Chief of CNPS; (*assistant chef de police*)

“Chief” means the Chief of CNPS; (*chef de police*)

“CN” means the CN Railway Company; (*CN*)

“CNPS” means the CN Police Service; (*Police du CN*)

“CNRPA” means Canadian National Railway Police Association; (*APCN*)

“Code of Ethics” means the Code of Ethics in Schedule A to this Procedure; (*Code d’éthique*)

“complainant” means any person who makes a complaint, other than a member, Deputy Chief, Assistant Chief or Chief; (*plaignant*)

“complaint” means a complaint made by a complainant under section 4 [*how complaints are made*]; (*plainte*)

“complaints committee” means a committee consisting of

- (a) two CNPS management employees at the Staff Sergeant level or higher, but not the Chief; and
- (b) a Deputy Chief, an Assistant Chief or an Inspector of CNPS; (*comité des plaintes*)

“Deputy Chief” means a Deputy Chief of CNPS; (*chef adjoint de police*)

“member” means a police constable under Part IV.1 of the Act who is appointed by a superior court by application of CN or a police officer of CNPS operating in the United States of America, but does not include the Chief, a Deputy Chief or an Assistant Chief; (*membre*)

“Minister” means the Minister of Transport; (*ministre*)

“outside police agency” means a police agency created and maintained under Canadian federal or provincial statute, or United States federal or state statute with jurisdiction over the substance of the complaint; (*service de police externe*)

“prescribed complaint form” means the form described in subsection 3(1) [*intake of complaints*]; (*formulaire de plainte prévu*) and

“respondent” means a member against whom a complainant makes a complaint, or the Chief, a Deputy Chief or an Assistant Chief in the instance that a complaint is made against him or her. (*personne visée par une plainte*)

PART I: INTAKE AND CLASSIFICATION OF COMPLAINTS

Intake of complaints

3. (1) The Chief or his or her designate shall create a prescribed form for use by complainants in making complaints regarding the conduct of any member, the Chief, a Deputy Chief or an Assistant Chief, and such form will state in clear language that, except for the purpose of the administration of this Procedure or criminal investigations, CNPS, CNPS personnel, complaints committees, arbitrators, any outside police agency, the CNRPA president and any other person involved in the administration of this Procedure will make every effort to ensure the confidentiality of
 - (a) all documents produced in the administration of this Procedure;
 - (b) any statement or other evidence obtained in the administration of this Procedure;
 - (c) the results of this Procedure; and
 - (d) any other information or documents relating to or arising from the investigation of complaints under this Procedure.

- (2) The Chief or his or her designate shall maintain a website or webpage containing links to
 - (a) this Procedure;
 - (b) the Act;
 - (c) the Code of Ethics;
 - (d) the prescribed complaint form;
 - (e) the manner by which complainants are to direct complaints under this Procedure; and

- (f) any other information about CNPS or this Procedure that the Chief or his or her designate considers appropriate.

How complaints are made

- 4. (1) A complainant may make a complaint regarding the conduct of any member, the Chief, a Deputy Chief or an Assistant Chief.
- (2) All complaints shall be made to the Chief.
- (3) Complainants may make complaints to the Chief using the prescribed complaint form, but the Chief shall accept complaints in any form, so long as they are made in writing.
- (4) A complainant may make a complaint through an agent whom he or she designates to act on his or her behalf, and, if so authorized by the complainant, the agent may take all actions that a complainant may take under this Procedure.

Complaint where investigation already underway

- 5. (1) Nothing in this Procedure shall limit the discretion of the Chief to initiate an investigation into the conduct of a member or impose disciplinary action regarding that conduct.
- (2) Where a complaint relates to a matter that is already under consideration or investigation, the complainant shall have the same rights under this Procedure as if the complainant had initiated the investigation.
- (3) For the purpose of any complaint referred to in subsection (2), the application of this Procedure shall commence at the stage of this Procedure that best accords with the stage of the pre-existing investigation as determined by the Chief or his or her designate.

Screening of complaint by the Chief

- 6. (1) Upon receiving a complaint, the Chief or his or her designate shall review the complaint and all information furnished by the complainant.
- (2) Within 14 days of receiving a complaint, or as soon as is practicable, the Chief or his or her designate shall determine whether the complaint is
 - (a) a standard complaint pursuant to Part II;
 - (b) a criminal allegation pursuant to Part III; or
 - (c) an allegation against the Chief, a Deputy Chief or an Assistant Chief pursuant to Part IV.

- (3) In coming to a decision under subsection (2), the Chief or his or her designate shall consider all information received with the complaint and any further available information that is relevant to the complaint.
- (4) Within 14 days of receiving a complaint, or as soon as is practicable, the Chief or his or her designate shall provide notice of the decision in subsection (2) to the complainant and the respondent in writing.
- (5) Where the complaint is classified under paragraph (2)(b) as a criminal allegation the Chief or his or her designate shall provide notice to the complainant only to the effect that the complaint has been received and is being dealt with, and the Chief or his or her designate shall provide or not provide notice to the respondent at his or her discretion.

PART II: STANDARD COMPLAINTS

Standard complaints

- 7. Any complaint that is not a criminal allegation under Part III or an allegation against the Chief, a Deputy Chief or an Assistant Chief under Part IV is a standard complaint under this Part.

Investigations of a standard complaint

- 8. Within 14 days of determining under paragraph 6(2)(a) [*screening of complaint by the Chief*] that a complaint is a standard complaint, or as soon as is practicable, the Chief or his or her designate shall
 - (a) refer the matter to a complaints committee, whose members he or she shall appoint; and
 - (b) direct to the members of the complaints committee all information that he or she considered in making the determination.

Investigation by complaints committee

- 9.
 - (1) Where a complaint has been referred to it by the Chief or his or her designate, the complaints committee shall conduct an investigation.
 - (2) During the investigation under subsection (1), the Chief or his or her designate shall assist the complaints committee in requesting and obtaining evidence or information from the complainant, respondent or any other party, and the complaints committee and/or the Chief or his or her designate shall make clear to all people from whom evidence or information is sought that, except for the purpose of the administration of the CNPS complaints process or criminal investigations, CNPS, CNPS personnel, the complaints committee, the arbitrator, any outside police agency, the CNRPA president

and any other person involved in the administration of this Procedure will make every effort to ensure the confidentiality of

- (a) all documents produced in the administration of this Procedure;
- (b) any statement or other evidence obtained in the administration of this Procedure;
- (c) the results of this Procedure; and
- (d) any other information or documents relating to or arising from the investigation of complaints under this Procedure.

Hearing

- (3) Over the course of the investigation in subsection (1), the Deputy Chief, Assistant Chief or Inspector who is a member of the complaints committee shall conduct a hearing with the assistance of the other members of the complaints committee, unless the preliminary determination in subsection (6) is in favour of the dismissal of the complaint, in which case a hearing is permitted but not required.
- (4) At least 3 days before the hearing under subsection (3) is to commence, the complaints committee shall give the respondent written notice of the hearing, along with all documentary and recorded oral evidence that the complaints committee has obtained over the course of its investigation under subsection (1).
- (5) At the hearing under subsection (3) the respondent may, through the presiding Deputy Chief, Assistant Chief or Inspector, ask questions of attending witnesses.

Recommendation of complaints committee

- (6) Within 14 days of the completion of a hearing under subsection (3), or, if no hearing is completed, within 14 days after the completion of an investigation under subsection (1), the complaints committee shall prepare a report that sets out
 - (a) a summary of the complaint;
 - (b) the findings of the investigation and of the hearing if one has occurred; and
 - (c) a summary of any recommendations that the complaints committee makes with respect to the disposition of the complaint
 and shall provide the report to the Chief or his or her designate.
- (7) For greater clarity, in making a recommendation under subsection (6), the complaints committee may not make any recommendation other than in favour of the dismissal of the complaint unless a hearing has taken place under subsection (3).

- (8) In making a recommendation under subsection (6), the complaints committee may recommend the dismissal of the complaint where
- (a) a complaint regarding the same incident has already been made to the Chief and has been dealt with;
 - (b) the complaint does not concern the conduct of a member;
 - (c) the complaint is trivial, frivolous, vexatious or made in bad faith;
 - (d) the complaint is not supported by the evidence;
 - (e) the allegations that form the basis of the complaint do not constitute misconduct;
 - (f) the complaint has been made over one year after the alleged incident and there is no reasonable explanation for the delay in making the complaint;
 - (g) the complaint could be more appropriately dealt with under another act or law, unless it is a complaint under Part III [*criminal allegations*]; or
 - (h) there are other considerations that, in the opinion of the complaints committee, justify the dismissal of the complaint.
- (9) In making a recommendation under subsection (6), the complaints committee shall in no case take into account the disciplinary record of the respondent from before 5 years preceding the alleged incident that is the subject of the complaint.

Preliminary determination of Chief

- (10) Within 14 days of receiving the report of the complaints committee under subsection (6), the Chief or his or her designate shall take into consideration the findings and recommendations set out in the report of the complaints committee in subsection (6) and make a preliminary determination with respect to the disposition of the complaint, provided that, after having considered the findings and recommendations set out in the report of the complaints committee in subsection (6) the Chief or his or her designate may depart from the recommendations and preliminarily decide on any action with respect to the disposition of the complaint that he or she deems necessary for the protection of the public and the integrity of CNPS, subject to subsections (11) and (12).
- (11) In making a preliminary determination under subsection (10), the Chief or his or her designate may not decide on any determination other than dismissal of the complaint unless a hearing has taken place under subsection (3) or this subsection, and if no hearing has taken place under subsection (3) and the Chief or his or her designate considers such a hearing to be necessary, the Chief or his or her designate may order that one be conducted by the complaints committee and that the complaints committee provide him or her with a report based on the hearing.

- (12) In making a preliminary determination under subsection (10), the Chief or his or her designate may dismiss the complaint where
- (a) a complaint regarding the same incident has already been made to the Chief and has been dealt with;
 - (b) the complaint does not concern the conduct of a member;
 - (c) the complaint is trivial, frivolous, vexatious or made in bad faith;
 - (d) the complaint is not supported by the evidence;
 - (e) the allegations that form the basis of the complaint do not constitute misconduct;
 - (f) the complaint has been made over one year after the alleged incident and there is no reasonable explanation for the delay in making the complaint;
 - (g) the complaint could be more appropriately dealt with under another act or law, unless it is a complaint under Part III [criminal allegation]; or
 - (h) there are other considerations that, in the opinion of the Chief or his or her designate, justify the dismissal of the complaint.
- (13) In making a preliminary determination under subsection (10), the Chief or his or her designate shall in no case take into account the disciplinary record of the respondent from before 5 years preceding the date of the complaint.

Notice

10. (1) Immediately upon making a preliminary determination under subsection 9(10) [*preliminary determination of Chief*], the Chief or his or her designate shall provide notice of the preliminary determination to the complainant and the respondent in writing, and such notice shall include
- (a) the preliminary determination of the Chief or his or her designate under subsection 9(10); and
 - (b) in the case of the notice to the complainant, all required information about how the complainant may appeal the preliminary determination under Part VI [*appeals of investigation decisions*].

Appeal to the arbitrator

- (2) A complainant may, within 30 days of receiving notice under subsection (1), appeal the preliminary determination to the arbitrator under Part VI [*appeals of investigation decisions*] by providing written notice to the Chief or his or her designate, and such written notice shall include the complainant's reasons for appealing and preferred disposition of the complaint.

Determination to become final

- (3) Where the complainant does not provide written notice to the Chief or his or her designate under subsection (2) within 30 days of receiving notice under subsection (1), the preliminary determination of the Chief or his or her designate shall become final, and the Chief or his or her designate shall notify the respondent in writing, within a further 14 days, or as soon as is practicable.
- (4) Where the Chief or his or her designate makes a preliminary determination that no action is to be taken with regard to the complaint and the complainant does not provide written notice to the Chief or his or her designate under subsection (2) within 30 days, the Chief or his or her designate shall dismiss the complaint without further notice.

PART III: CRIMINAL ALLEGATIONS

- 11. A complaint is a criminal allegation where there are reasonable and probable grounds to believe that a member has committed an offence under any Canadian federal or provincial statute or United States federal or state statute punishable by imprisonment.

Referral of criminal allegation to outside police agency

- 12. (1) Within 14 days of making a determination under paragraph 6(2)(b) [*screening of complaint by Chief*] that a complaint is a criminal allegation, or as soon as is practicable, the Chief or his or her designate may refer the complaint to an outside police agency with jurisdiction to conduct the investigation.

Chief to provide information to outside police agency

- (2) Along with the referral of the complaint to an outside police agency under subsection (1), the Chief or his or her designate shall provide the outside police agency with copies of all information considered in making his or her determination under section 6(2)(b) [*screening of complaint by Chief*] that a complaint was a criminal allegation.

Disciplinary investigation

- 13. (1) The Chief or his or her designate shall refer the matter to a complaints committee to be dealt with under Part II [*standard complaints*]
 - (a) in the instance that the Chief or his or her designate decides under subsection 12(1) [*referral of criminal allegation to outside police agency*] to refer the matter to an outside police agency, within 14 days of the conclusion of the investigation of the outside police agency and any related criminal proceedings against the respondent, or as soon as is practicable; or

- (b) in the instance that the Chief or his or her designate decides under subsection 12(1) [*referral of criminal allegation by outside police agency*] not to refer the matter to an outside police agency, within 14 days of making that decision, or as soon as is practicable.
- (2) Upon referring the matter to a complaints committee to be dealt with under Part II [*standard complaints*] as set out in subsection (1), the Chief or his or her designate shall provide notice of the referral to the complainant and the respondent in writing.

PART IV: COMPLAINTS AGAINST THE CHIEF, A DEPUTY CHIEF OR AN ASSISTANT CHIEF

Referral of complaints against the Chief, a Deputy Chief or an Assistant Chief to arbitrator

- 14. The Chief or his or her designate shall refer all complaints against the Chief, a Deputy Chief or an Assistant Chief to an arbitrator to be selected by the Chief or his or her designate, or, in the instance of a complaint against the Chief, by the Chief Legal Officer of CN, within 14 days of the classification decision in paragraph 6(2)(c) [*screening of complaint by Chief*], or as soon as is practicable.

Arbitrator to investigate

- 15. Where a complaint is referred to him or her under section 14 [*referral of complaints against the Chief, a Deputy Chief or an Assistant Chief to arbitrator*] an arbitrator shall assume the role of the Chief under section 6 [*screening of complaint by Chief*], classify the complaint under paragraph 6(2)(a) or (b), and thereafter assume the role of the complaints committee and the Chief under Part II [*standard complaints*] or the Chief under Part III [*criminal allegations*], as the case may be, and shall conduct the investigation in accordance with those Parts.

Decision of Chief Legal Officer of CN

- 16. (1) No appeal shall be taken from the arbitrator's recommended disposition of a complaint under this Part.
- (2) Within 14 days of concluding an investigation in section 15 [*arbitrator to investigate*], or as soon as is practicable, the arbitrator shall provide his or her recommended disposition of the complaint, with written reasons, to the Chief Legal Officer of CN.
- (3) The Chief Legal Officer of CN shall decide on the final disposition of the complaint under this Part, and in so deciding shall not be bound by any of the recommendations of the arbitrator in subsection (2).
- (4) Within 14 days of making the determination under subsection (3), the Chief Legal Officer of CN shall provide written notice of his or her decision to the complainant and the respondent.

PART V: ARBITRATION ROSTER*Arbitration roster*

17. (1) The Chief Legal Officer of CN shall establish an arbitration roster.
- (2) The arbitration roster shall be composed of at least 4 members, of whom at least one shall be capable of working in both English and French.
- (3) No person shall be named to the arbitration roster who is not
- (a) a former judge of a provincial superior court or court of appeal;
 - (b) a former judge of the Federal Court or the Federal Court of Appeal;
 - (c) a former judge of the Supreme Court of Canada; or
 - (d) a senior member of a provincial or territorial bar of at least 20 years standing with experience as an arbitrator.
- (4) No person shall be named to the arbitration roster if he or she currently provides services to CN other than under this Procedure or has provided services to CN in the 6 months prior his or her appointment other than under this Procedure.

Selection of arbitrator

18. (1) In any instance under this Procedure requiring the selection of an arbitrator, the selection must be made by the Chief or his or her designate from the arbitration panel.
- (2) Notwithstanding subsection (1), in the instance of a complaint against the Chief, the arbitrator who is to deal with the complaint shall be selected by the Chief Legal Officer of CN.
- (3) The person selecting the arbitrator under subsections (1) or (2) shall consider
- (a) the language of the complainant and respondent;
 - (b) the location of the complainant, respondent and the events which are the subject of the complaint;
 - (c) the nature of the issues raised by the complaint; and
 - (d) the expertise and experience of the members of the arbitration roster.

PART VI: APPEALS OF INVESTIGATION DECISIONS*Action of arbitrator on appeal*

19. If a notice of appeal has been received by the Chief or his or her designate within the specified time period under subsection 10(2) [*appeal to the arbitrator*], the Chief or his or her designate shall select an arbitrator from the arbitration roster and provide notice to the complainant and the respondent of his or her selection within 30 days of receiving the notice, or as soon as is practicable.
20. The Chief or his or her designate shall, at the time of the arbitrator's appointment, direct to the arbitrator all of the information collected as part of the investigation, copies of any notes produced during the investigation, copies of any related notices provided to the complainant or respondent, a copy of the report of the complaints committee under subsection 9(6) [*recommendation of complaints committee*] and a copy of the notice provided by the Chief under subsection 10(1) [*notice*].
21. Within 60 days of receiving the materials in section 20, or as soon as is practicable, the arbitrator shall conduct an inquiry and determine whether the disposition of the complaint was unreasonable in all of the circumstances, having consideration to factors that include but are not limited to
 - (a) the adequacy of the investigation under review;
 - (b) the adequacy of the reasons given for the preliminary determination under review;
 - (c) the preliminary determination's balancing of risks to public safety, the integrity of CNPS and the interests of the respondent; and
 - (d) the support in the evidentiary record for the factual findings of the complaints committee or the Chief or his or her designate, as the case may be.
22. The arbitrator may, as part of the inquiry under section 21,
 - (a) request further information from an outside police agency that investigated the complaint, from a complaints committee that investigated the complaint or from the Chief or his or her designate;
 - (b) order the complaints committee to conduct further investigation and report back to the arbitrator in a form and by a date specified by the arbitrator, or conduct a first hearing under subsection 9(3) (which hearing the arbitrator may attend), in which case the arbitrator shall provide his or her report to the Chief or his or her designate under section 25 within 14 days of the termination of the hearing;

- (c) examine witnesses in a closed proceeding; or
 - (d) seek or consider relevant information from any other source.
23. The arbitrator shall not recommend that any disciplinary measures be taken against a respondent unless a hearing under subsection 9(3) has taken place, either under the complaints committee's initial investigation, under an order of the Chief or his or her designate under subsection 9(11) or under an order of the arbitrator under paragraph 22(b).
24. The Chief or his or her designate shall provide all reasonable cooperation to the arbitrator to support his or her inquiry, including by providing assistance with the exercise of the arbitrator's powers under section 22.
25. If, following his or her inquiry, the arbitrator finds
- (a) that the disposition of the complaint was unreasonable, the arbitrator may recommend a new or modified disposition, and shall provide notice of his or her recommendations, with written reasons, to the Chief or his or her designate, and to the complainant and the respondent; or
 - (b) that the disposition of the complaint was not unreasonable, the arbitrator shall provide notice of his or her decision, with written reasons, to the Chief or his or her designate, and to the complainant and the respondent.

Response of Chief to recommendations of arbitrator

26. (1) Within 14 days of receiving the arbitrator's recommendations under section 25, the Chief or his or her designate shall decide whether he or she will adopt some or all of the recommendations of the arbitrator.
- (2) In making a decision under subsection (1), the Chief or his or her designate shall not order that any disciplinary measures be taken unless a hearing under subsection 9(3) has taken place, either under the initial investigation of the complaints committee, under an order of the Chief or his or her designate under subsection 9(11) or under an order of the arbitrator under paragraph 22(b).
- (3) The decision of the Chief or his or her designate under subsection (1) shall be the final determination for the purpose of Part II.
- (4) Immediately upon making the decision in subsection (1), or as soon as is practicable, the Chief or his or her designate shall provide notice of the decision to the arbitrator, the complainant and the respondent in writing.

PART VII: GENERAL

Filing of Procedure with Minister

27. This Procedure is to be filed with the Minister within 30 days of its adoption by the Chief, and any amendments to this Procedure are to be filed with the Minister within 30 days of their adoption.

No polygraph test

28. At no stage in the administration of this Procedure shall the respondent be required to take a polygraph test.

Confidentiality

29. All individuals involved in any step in this Procedure shall make clear to all those from whom evidence or information is sought that, except for the purpose of the administration of this Procedure and criminal investigations, CNPS, CNPS personnel, complaints committees, arbitrators, any outside police agency, the CNRPA president and any other person involved in the administration of this Procedure will make every effort to ensure the confidentiality of
- (a) all documents produced in the administration of this Procedure;
 - (b) any statement or other evidence obtained in the administration of this Procedure;
 - (c) the results of this Procedure; and
 - (d) any other information or documents relating to or arising from the investigation of complaints under this Procedure.
30. Except for the purpose of the administration of this Procedure and criminal investigations, CNPS, CNPS personnel, complaints committees, arbitrators, any outside police agency, the CNRPA president and any other person involved in the administration of this Procedure will make every effort to ensure the confidentiality of
- (a) all documents produced in the administration of this Procedure;
 - (b) any statement or other evidence obtained in the administration of this Procedure;
 - (c) the results of this Procedure; and
 - (d) any other information or documents relating to or arising from the investigation of complaints under this Procedure.

SCHEDULE A
CODE OF ETHICS

The Officers are considered to be a reliable source of help in times of need, persons worthy of trust and protectors of public order on Company property. They are expected to display high ethical standards at all times.

The following Code of Ethics are to be observed by all members of the Service:

- 1) Must demonstrate honesty in all that is said, done or reported in the performance of their duties.
- 2) Must make themselves fully aware of their responsibilities, their authority to act and the limitations on this authority.
- 3) Must apply and respect the law and Company regulations.
- 4) Must be seen to be impartial in dealing with the general public.
- 5) Must communicate and cooperate with other members of the CN Police Service, other employees of the Company and civil police services so as to provide protection as effectively as possible.
- 6) Must be alert and ready to offer assistance whenever a genuine need is observed.
- 7) Must respect the legal and civil rights of others at all times.
- 8) Must use only legal means to achieve desired objectives.
- 9) Should be calm and courteous, demonstrating the ability to serve with willingness and integrity.