

# OSPG Guidance: Regulatory Body Complaints and Discipline Process

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# OSPG

Office of the Superintendent  
of Professional Governance



## Version Control History

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1.0	2021-03-15	Initial version	Paul Craven, Superintendent
1.1	2023-07-28	Change in terminology	Kate Haines, Superintendent



## OSPG Guidance: Regulatory Body Complaints and Discipline Process

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## Overview

### Purpose:

This document provides guidance to inform the development of the bylaws, policies and procedures of the Regulatory Bodies.

### Policy Intent:

The intent of this guidance is to provide a framework is to assist regulatory bodies with drafting bylaws and preparing policies related to their discipline process (from intake to investigation and disposition) as they transition to the *Professional Governance Act* (PGA). Further, the objective is that each regulatory body will have a consistent, evidence-based process that is transparent and responsive. This proposed framework is not intended to negate current processes that are functionally operational and working well; rather it is an opportunity to improve and update discipline processes and procedures to ensure they align with the PGA as it is implemented.

### Policy Direction:

Purpose of the discipline process:

- Protect the safety, health and welfare of the public, including the protection of the environment and the promotion of health and safety in the workplace.
- Ensure professional and competent practice

### Relevant Standards of Good Regulation:

The OSPG Standards of Good Regulation set out standards and criteria that will be considered when assessing regulatory body performance in the future. Standards 16 – 20 below reflect OSPG expectations regarding the complaints and discipline process, which include the following:

- Anyone can raise a concern about a registrant related to incompetence, professional misconduct, conduct unbecoming a registrant, or a breach of the PGA, its regulations or the regulatory body's bylaws;
- The regulatory body's complaints and discipline process is transparent, objective, impartial, fair, and allows for thorough, evidence-based and proportionate responses to complaints;
- The regulatory body ensures all decisions are made in accordance with its processes, and are consistent with statutory objectives, the regulatory body's standards, and relevant caselaw;
- The regulatory body prioritizes cases to protect the public and takes appropriate action; and,
- All parties to a complaint are kept updated on the progress of their cases and can participate effectively in the process as appropriate.



## Background and Authority

The complaints and discipline process is a primary function of a professional regulatory body and is a responsibility outlined in s.22(2)(f)(h) and (i) of the Professional Governance Act (PGA).

Sections 65 – 81 of the *Professional Governance Act* (PGA) outline the authorities available to regulatory bodies under the PGA in respect of complaints and discipline regarding registrants (<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/18047>). The two figures included in this section provide an outline of the complaints and discipline process. The first provides a basic overview of the process highlighting key milestones under the PGA while the second provides a comprehensive and in-depth summary at each stage.

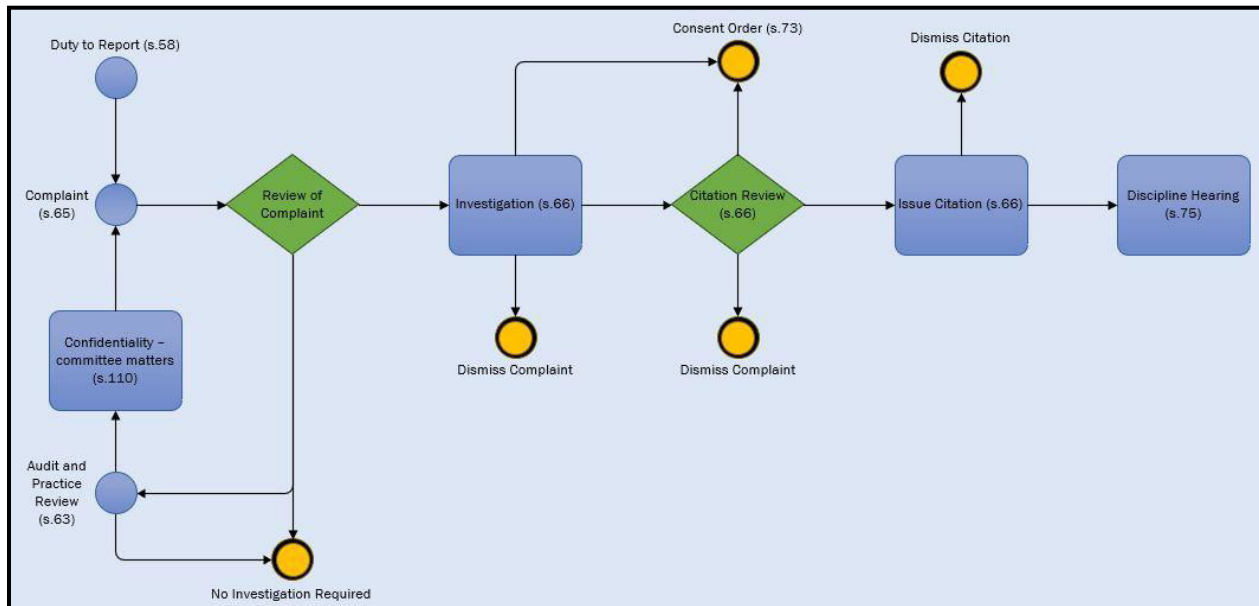


Figure 1: Simplified Complaints and Discipline process under the Professional Governance Act.

Section 65(1) of the PGA outlines that a person may make a complaint to a regulatory body, the board or an officer about a registrant that is engaged in the regulated practice in an **incompetent manner** or **guilty of professional misconduct, conduct unbecoming of a registrant** or a **breach of the PGA or the regulatory body’s bylaws**.



**Incompetence** under the PGA in relation to the performance of duties undertaken while engaged in a regulated practice includes:

- A lack of competence or fitness to engage in the regulated practice, or
- An incapacity or impairment that prevents a registrant from engaging in the regulated practice with reasonable skill, competence and safety to the public.

**Professional Misconduct** under the PGA is as follows:

- Misconduct by a registrant as a professional, relating to the performance of duties while engaged in a regulated practice, including a failure to comply with, or a breach of, this Act, the regulations or the bylaws.

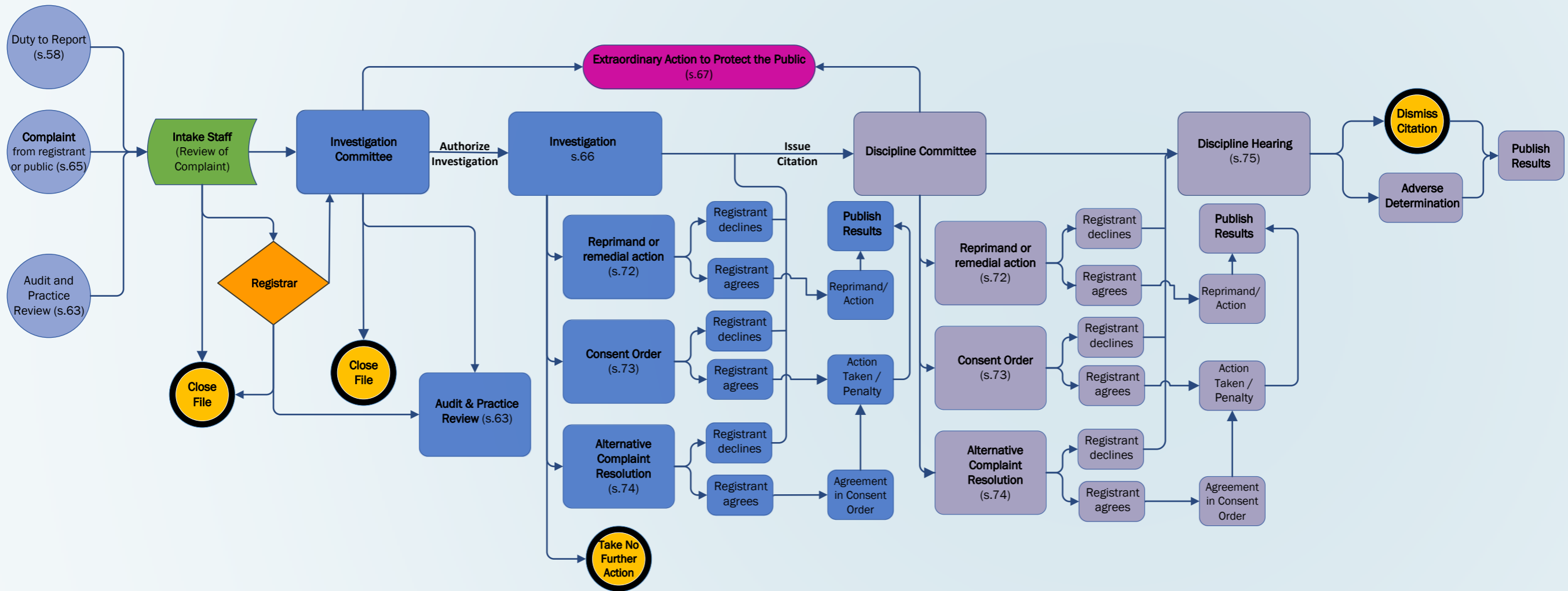
**Conduct unbecoming of a registrant** under the PGA is defined as conduct of a registrant that:

- Brings the regulatory body or its registrants into disrepute
- Undermines the standards, methods or principles that are the foundation of the profession, or
- Undermines the principle of holding paramount the safety, health and welfare of the public, including the protection of the environment and the promotion of health and safety in the workplace in the manner that reflects the stewardship of a given profession by each regulatory body.

Section 65(2) allows the regulatory body to make bylaws governing the disposition of the complaint made under s.65(1).

Section 65(3) states that the registrar must advise the person who made a complaint under s.65(1) of the disposition of the complaint.

Figure 2: Detailed Complaints and Discipline Process under the *Professional Governance Act*





## Intake and Information Gathering Phase

### Objective

Receive and collect sufficient information for the Investigation Committee to determine whether to authorize an investigation.

### Overarching Principles

The following table provides the overarching principles as they relate to the intake and information phase of the investigations and discipline structure in the *Professional Governance Act* (PGA).

Principle	Intake and Information Gathering
<b>Transparency</b>	Description of the process is available to the public and prominent on the regulatory body’s website.
<b>Objectivity</b>	Decisions to investigate a concern are made consistently, following criteria/rules that apply.
<b>Impartiality</b>	Intake staff collect information from all parties about a concern but do not make decisions about a complaint.
<b>Fairness</b>	Anyone can raise a concern about a registrant (standard 16); intake staff show due diligence in collecting information to inform a decision about a complaint investigation.
<b>Timeliness</b>	Intake phase is tracked from beginning to end and measured against operational timeline target (not in bylaw) set by the regulatory body and transparent to the public.
<b>Proportionality</b>	The regulatory body prioritizes cases to protect the public interest and takes appropriate action (standard 19).

### Summary:

The intake and information gathering stage begins when the regulatory body receives information that may lead to a complaint against a registrant. This information may come in a variety of forms and from a variety of sources, including a complaint from the public, another registrant, an employer, or the regulatory body itself. Proceeding with a complaint does not require the existence of an individual complainant – if a complainant does exist, their identity may be required to be revealed only on a case-by-case basis. For example, the identity of a complainant may be necessary in scenarios where the regulatory body has taken on the file and becomes the complainant; disclosure is required when material information is evidence to the complaint itself. The registrant should have a full understanding and disclosure of the complaint.

All cases should be treated equally upon initial receipt and given consideration for risk of harm assessments. Outcome of the risk assessment should inform appropriate resource allocations going forward. Regulatory body staff responsible for intake will collect information from the complainant and





relevant parties (e.g. authorities having jurisdiction). After the review of information is complete, intake staff may send the case to the Registrar if their review does not identify a complaint within the regulatory body's jurisdiction to address, or if the complaint is deemed to be frivolous, vexatious or made in bad faith.

When sufficient factual information is available to outline a complaint, staff will in most cases, notify the respondent and seek a response. The respondent will be given a reasonable period of time to respond. In cases where extraordinary action to protect the public are being contemplated, notice may not be provided to the registrant.

Further information may be sought from the complainant, or other sources, before intake staff prepare a report outlining the complaint for the Investigation Committee, which will determine whether to authorize an investigation.

Certain cases may cause intake staff to determine that extraordinary measure to protect the public may be required. Section 67 of the PGA makes explicit reference to both the board and the Discipline Committee as the bodies that consider whether extraordinary action must be taken in a matter. However, the board has the broad power to delegate authority under the PGA to different committees. Accordingly, section 67 of the PGA does not prevent a board delegating the extraordinary action process to the Investigation Committee. In cases where extraordinary measure to protect the public is considered necessary, intake staff will provide the appropriate authority (board or committee making the decision whether to take action) with all available information for review.

At any time during this intake and information gathering stage, the Registrar may decide to close the matter because the complaint is, in the Registrar's opinion:

- beyond the jurisdiction of the regulatory body (does not concern a current or former registrant; does not on its face raise an issue of an incompetent manner or guilty of professional misconduct, conduct unbecoming of a registrant or a breach of the PGA or the regulatory body's bylaws); or
- frivolous, vexatious or made in bad faith.

Alternatively, the Registrar may refer the matter to the Audit and Practice Review Committee for their consideration under s.63.



## Regulatory Expectations: Intake and Information Gathering Phase

### Website

- A regulatory body's website must feature prominently the process to express a concern or complaint about a registrant and include a plain language explanation (including infographics) of the process from beginning to the end.

### Bylaws

- Bylaw should delegate authority to the Registrar to close the matter in limited circumstances as outlined in the summary above. The Registrar must inform the complainant of the disposition of the matter and provide a written rationale.

### Policies and Procedures

- The process for intake of concerns and prospective complaints should be flexible and not be overly prescriptive and should be set out in policy rather than bylaw. Forms or templates assist in the intake process and should be used but the fact they are not used would not invalidate a complaint.
- A principle-based policy should be established respecting the passage of time and how it affects complaints. Discretion would rest with the Investigation Committee to override in serious cases.
- Policies should provide that a complaint can be advanced in two key methods:
  - The complainant may choose to continue providing information after making initial contact with the regulatory body. In this scenario they will be the complainant on file.
  - If a complainant chooses to notify the regulatory body of a concern but does not wish to be formally involved in the process, the regulatory body will be the complainant if the concern is deemed a complaint. Intake staff may request additional information, if required, for report preparation to outline the complaint.
- Resources should be available to assist members of the public or registrants in identifying relevant information to determine whether there is a complaint. Similarly, a resource should be designated to assist registrants in providing information. Both resources could be in the form of materials, aids, or staff resources.
- Written policies and procedures should include:
  - An explanation of how the Registrar initiates a complaint on their own initiative
  - A process on how for fairly addressing new potential grounds for complaint that may be discovered while gathering information in respect of the originally identified concern.
  - An outline of the circumstances in which the regulatory body may choose not to disclose the complaint to the registrant.



## Regulatory Expectations: Intake and Information Gathering Phase

### Service Standards and Performance Indicators

- Written policies and procedures should outline a performance standard to ensure complainants/respondents are kept up to date on the process:
  - After a certain period, regardless of the activity on the file (i.e. in cases where lengthy periods of inactivity occur, communication is maintained advising both parties that the file is still in progress).
  - At key milestones in the process.
  - At the conclusion of the process.
- The regulatory body should include performance standards and keep track of performance in the following areas:
  - Timeliness
  - Transparency
  - Risk assessment
  - Reporting on Standards



## Investigation Phase

### Objective

Conduct a fair, timely, thorough, and transparent process to determine if an investigation will be conducted, if a citation will be issued, and/or if complaint file will be closed/dismissed.

### Overarching Principles

The following table provides the overarching principles as they relate to the investigation phase of the investigations and discipline structure in *Professional Governance Act (PGA)*.

Principle	Investigation
<b>Transparency</b>	For decisions where the Registrar or Investigation Committee dismiss a case, a written rationale is communicated to appropriate parties with a level of detail to aid in understanding.
<b>Objectivity</b>	Investigation decisions are made in a consistent manner by the Investigation Committee, competent staff, or contractors, following collection and use of evidence.
<b>Impartiality</b>	Investigation Committee members (including lay members) and staff/contractors are free from real and perceived conflicts of interest with complaint cases.
<b>Fairness</b>	All parties to a complaint are kept updated on the progress of the case and can participate effectively in the process where appropriate (standard 20). Investigations committee members act consistently with the rules that apply (procedural fairness).
<b>Timeliness</b>	Investigations are not constrained by timeline target but regular updates on status are provided to all parties to a complaint; delays in progress of complaints are identified and addressed. The investigation phase is tracked from beginning to end and measured against operational timeline target (not in bylaw) set by the regulatory body and transparent to the public.
<b>Proportionality</b>	Appropriate resources are allocated to investigations proportionate to the nature of the complaint.



## Summary:

The Investigation Committee becomes involved once a file has been assessed and sufficient information has been collected during the Intake stage.

The Investigation Committee determines if an investigation of the complaint will proceed. It does not determine if the allegation is true, only if the information provided is sufficient to proceed with an investigation and ultimately whether a citation should be issued. It considers what alternative measures within its powers are appropriate and oversees the investigation process as a whole. The Investigation Committee does not conduct the investigation itself.

Upon receiving a report prepared during the intake and information gathering stage, the Investigation Committee may authorize an investigation if they have reason to believe that the registrant may have been guilty of professional misconduct, conduct unbecoming a registrant or incompetent performance of duty.

Alternatively, the Investigation Committee can:

- Dismiss or close the file;
- Forgo an investigation and direct a citation to be issued;
- Propose a reprimand or remedial action by consent, consent order or alternative complaint resolution process (Details in next section of this guidance document).

Similar to the Registrar during the intake phase, the Investigation Committee may dismiss the complaint at this stage in the process if it found to be one of the following:

- Does not on its face raise an issue of an incompetent manner or guilty of professional misconduct, conduct unbecoming a registrant or a break of the PGA or the regulatory body's bylaws;
- Frivolous, vexatious, or made in bad faith.

Section 67 of the PGA makes explicit reference to both the board and the discipline committee as the bodies that consider whether extraordinary action must be taken in a matter. However, the board has the broad power to delegate authority under the PGA to different committees. Accordingly, section 67 of the PGA does not prevent a board delegating the extraordinary action process to the Investigation Committee. In cases where the Investigation Committee considers whether extraordinary action to protect the public is warranted, procedural fairness requirements should be adhered to (i.e. separation of the investigatory and decision functions should be followed).

If the Investigation Committee authorizes an investigation, they will provide notice to the registrant, and in most cases, issue a notice to the registrant to cooperate with the investigation by answering questions, producing files, records or other evidence in their control and provide explanations on request. The registrant must respond in a timely manner as set out in the notice.



The Investigation Committee also has the authority to require the registrant to appear before the Investigation Committee to discuss the registrant's conduct or competence.

If authorized, an investigation is conducted by inspectors appointed by the Investigation Committee (staff or contractors). Where practicable, the inspector should not be the individual who completed the intake of the case. Panels may be established to oversee steps of investigation process (e.g. conduct investigation or review requested files and documentation). Once the investigation has been initiated, the registrant must be notified in a timely manner. The inspector has powers related to inspecting the premises, records and regulated practice of the registrant. If required, a court order may be sought to obtain information from persons other than a registrant.

Following the completion of an investigation, an inspector provides a report to the Investigation Committee and they decide whether to close the file or issue a citation. When it is in the public interest, the Investigation Committee may proceed to citation if they have reasonable and probable grounds to believe that a registrant may be guilty of:

- professional misconduct,
- conduct unbecoming a registrant, or
- incompetent performance of duties undertaken while engaged in the registrant's regulated practice.

The scope of the investigation will be determined by the Investigation Committee. The method of the investigation will be defined by the inspector. If new matters are revealed during the course of the investigation, they should be brought to the attention of the Investigation Committee. Should the scope of the investigation alter, the registrant will be notified.

While it is not mandatory, if proceeding with a citation, the Investigation Committee should propose to the registrant terms of a consent order.

At any time during the investigation process, Alternative Complaint Resolution (ACR) is available, upon the agreement/decision of the registrant (details in the next section of this guidance document).

Once issued, a citation can be amended by the Investigation Committee. Once the discipline hearing has been established, the Discipline Panel may determine if an adjournment is required or any considerations that may affect the hearing itself. The Discipline Panel does not have the authority to amend citation.

Section 66 of the *Professional Governance Act* refers to the bylaws associated with investigations process in their entirety and is available in Appendix A.



## Regulatory Expectations: Investigation Phase

### Website

- A regulatory body's website must feature prominently the investigation process and include a plain language explanation (including infographics) of the process from beginning to the end.

### Bylaws

- Bylaws in respect of investigations should include:
  - Bylaws specifying nature and extent of the requirements that may be imposed on a registrant in a notice to cooperate, answer questions, produce documentation, or provide explanations relevant to an investigation
  - Bylaws governing the initiation or conduct of an appearance before the Investigation Committee to discuss the conduct or competence of a registrant (if used)
  - Bylaws (or policies) on how to handle or obtain information in the investigation
  - Bylaws (or policies) governing the issuance and rescission of citation
  - Bylaws related to the composition and appointment of investigation panels to oversee investigations (if used)

### Policies and Procedures

- Written policies and procedures should outline the investigation process, and should include:
  - How the regulatory body will conduct an investigation (e.g. steps associated with process including the risk assessment)
  - Who generally has authority to conduct investigations and how they are appointed (staff or officers of the regulatory body; appointed inspectors; or contractors retained for the investigation)
  - How costs/support related to the investigation will be defined and tracked for the purposes of seeking a cost order
- Regulatory bodies may implement an extraordinary action process that allows the board, the Investigation Committee, or the Discipline Committee to take action under section 67 of the PGA. When using and designing procedures for this authority and bylaws, regulatory bodies should ensure separation of the investigatory and decision functions (i.e. Investigation Committee may make the recommendation or decision if itself did not conduct the investigation that the decision is based on, rather it is based on the work of an inspector or officer).
- When the investigating authority issues a citation to a registrant, it should be accompanied by a proposed consent order. The citation and the matter are then assigned to an individual in the regulatory body to pursue the matter, in the name of the regulatory body, and to conduct any settlement discussions.



## Regulatory Expectations: Investigation Phase

### Service Standards and Performance Indicators

- Written policies and procedures should outline a performance standard to ensure complainants/respondents are kept up to date on the process:
  - After a certain period, regardless of the activity on the file (i.e. in cases where lengthy periods of inactivity occur, communication is maintained advising both parties that the file is still in progress).
  - At key milestones in the process.
  - At the conclusion of the process.
- The investigation phase should be tracked from beginning to end and measured against operational timeline target (not in bylaw) set by the regulatory body and transparent to the public
- Written guidelines in respect of registrant response time should identify the minimum for both simple and complex matters (e.g. 10 days, 20 days, 30 days).
- The regulatory body should include performance standards and keep track of performance in the following areas:
  - Timeliness
  - Transparency
  - Risk assessment
  - Reporting on Standards





## Resolution Before Discipline Hearing: Reprimand and Remedial Action by Consent, Consent Orders, and Alternative Complaint Resolution

### Objective

To establish a fair, thorough, timely and transparent process for the for the resolution of one or more matters before a discipline hearing is held.

### Overarching Principles

Principle	Resolution Before Discipline Hearing
<b>Transparency</b>	Rationales for decisions are communicated to appropriate parties with a level of detail to aid in understanding and posted publicly on the regulatory body's website.
<b>Objectivity</b>	Decisions are made by competent committee members to promote alternative complaint resolution based on available evidence and likelihood of success at hearing.
<b>Impartiality</b>	Committee members, including lay members, are free from conflicts of interest or perceived conflict of interest with the case
<b>Fairness</b>	All available and appropriate information is obtained and considered in the decision- making process.
<b>Timeliness</b>	Disposes of complaints in a timely manner
<b>Proportionality</b>	Alternative complaint resolution is used when it is sufficient to remediate misconduct.

### Summary:

Complaints can be addressed without the need to proceed to a discipline hearing (either before or after issuance of a citation). This can be accomplished in one of three ways under the PGA.

**Reprimand and Remedial Action by Consent (RRAC):** It is expected that in most cases<sup>1</sup>, the RRAC is initiated by the Investigation Committee at the conclusion of the investigation process and before a citation is issued. RRAC is designed to address matters that, in the view of the Investigation Committee, can be addressed by an undertaking by the registrant to not repeat the conduct and or take an educational course as specified by the audit and practice committee. The audit and practice review committee may construct a set list of educational courses that may be assigned to a registrant during RRAC. This would

<sup>1</sup> The discipline committee also has the authority under the PGA to make the request.



allow the conduct of the matter to remain with the Investigation Committee when RRAC is the desired resolution. This does not restrict the inclusion of the audit and practice review committee to advise on a file. This does not restrict the audit and practice review committee from assuming conduct of the file where appropriate.

If the registrant consents or agrees to the request, a written summary of the request must be sent to a complainant, if one exists, within 30 days. Publishing requirements for RRAC's are to be similar in bylaws to that of consent orders. The default principle is transparency with some exceptions under limited circumstances. Specific publication requirements for matters concluded through RRAC have been set out in the Information to be Publicly Available guidance document.

If the regulatory body and registrant are not able to agree on terms of a RRAC and no citation has been previously issued, the Investigation Committee may direct the registrar to issue a citation. If a citation was already been issued, the Discipline Committee will take conduct of the discipline process.

**Consent Order:** A consent order can be proposed by the investigation or Discipline Committee at any time before a discipline hearing. In most cases, this should be considered and offered at the conclusion of an investigation, but the Discipline Committee also can propose a consent order. While not strictly mandatory, it is anticipated that the Investigation Committee will offer a consent order in most cases.

If accepted by the registrant, the consent order is made public on the regulatory body website and noted in the register.

A consent order must contain the terms of the proposal, the necessary admissions by the respondent in relation to the matter, and the actions that must be taken, or penalties imposed in accordance with s.75.

A consent order has the same effect as an action or penalty that resulted from a formal discipline hearing. No further action can be taken with regard to matters agreed upon in a consent order. If a consent order is rejected, the discipline process must proceed as if the consent order proposal was never made. Please refer to the Information to be Publicly Available guidance document for consent order publication requirements.

**Alternative Complaint Resolution (ACR):** The regulatory body and the registrant can agree to commence an alternative dispute resolution process at any time during the investigation and discipline process. The decision to agree to the ACR will usually be agreed to by the committee having conduct of the matter; the Investigation Committee during the investigation phase and the Discipline Committee after the citation has been issued. If, during the intake process, a registrant admits fault and wishes to enter into ACR immediately, the investigation must still be authorised by the Investigation Committee. It can then be determined whether it is in the public interest to grant a request for ACR or proceed with the discipline process.



No further action may be taken with respect to matters agreed to under ACR.

In order to ensure the discipline process remains timely, the regulatory body may end the ACR process if an agreement cannot be reached in a reasonable amount of time. If ACR does not result in a resolution, the discipline process continues and the discipline panel conducting the hearing cannot consider information disclosed in the ACR process.

A resolution reached during the ACR is confirmed through a consent order.

## Regulatory Expectations: Resolution Before Discipline Hearing

### Website

- A regulatory body's website must feature prominently the process related to RRAC, ACR and consent orders, and include a plain language explanation (including infographics) of this component of the process from beginning to the end.

### Bylaws

- The regulatory body must make bylaws detailing the process, including who is party to agreements made at different stages of the process. The Investigation Committee will have conduct of the agreement at the investigation stage and the Discipline Committee will have conduct once a citation has been issued by the Investigation Committee.
- The regulatory body must make bylaws about the information that is to be made publicly available in respect of a consent order and RRAC as set out in the Information to be Publicly Available guidance document.

### Policies and Procedures

- Agreements made under s.72, 73 and 74 of the PGA should have clear provisions to determine progress of the registrant and should clearly describe requirements to maintain compliance.



### Regulatory Expectations: Resolution Before Discipline Hearing Service Standards and Performance Indicators

- Written policies and procedures should outline a performance standard to ensure complainants and respondents are kept up to date on the process:
  - At key milestones
  - At the conclusion
- The regulatory body must document the number and percentage of complaints received that are dealt with through RRAC, consent orders and ACR.
- The regulatory body must establish the following key performance indicators to assess the process as it relates to RRAC, consent orders and ACR:
  - Number and percentage of files resolved through consent orders
  - Number and percentage of files resolved through ACR
  - Number and percentage of files resolved through RRAC
  - Number of files that where RRAC, consent orders or ACR were proposed and rejected
  - Number of days from the initiation of RRAC, consent orders or ACR to completion



## Discipline Hearings

### Objective

Conduct fair, timely, thorough, and transparent hearings with respect to citations forwarded by the Investigation Committee and all other functions of the Discipline Committee.

### Overarching Principles

Principle	Discipline Hearings
<b>Transparency</b>	Reasons for decisions are communicated to appropriate parties with a level of detail to aid in understanding and posted publicly on the regulatory body's website.
<b>Objectivity</b>	Discipline decisions are made by competent Discipline Committee members following presentation of evidence by parties.
<b>Impartiality</b>	Discipline Committee members, including lay members, are free from conflicts of interest or perceived conflict of interest with the case
<b>Fairness</b>	All parties to a complaint are kept updated on the progress of the case and can participate effectively in the process where appropriate (standard 20); Discipline Committee members act consistently with the rules that apply (procedural fairness expectations at law)
<b>Timeliness</b>	Discipline hearings are not constrained by a timeline but regular updates on status are provided to all parties to a complaint. Delays in progress of complaints are identified and addressed. The discipline hearing phase is tracked from beginning to end and measured against operational timeline target (not in bylaw) set by the regulatory body and transparent to the public.
<b>Proportionality</b>	The discipline outcome is proportionate to the severity of the breach/misconduct and other relevant principles related to sanctions for professional misconduct, etc.

### Summary:

The Discipline Committee involvement in the process begins when the Investigation Committee issues and forwards a citation. After a citation is issued, the Discipline Committee establishes a panel which must include one lay member to conduct a hearing. The panel should issue a process order outlining the process, form and timing for hearing, including disclosure of the documents the regulatory body or the registrant will be relying on; witness statements; expert reports; process for an agreed statement of facts, etc. A hearing can be held in person or alternate means or wholly or partially through written submissions. It is important to note that if extraordinary action was taken in accordance with s.67 by members of the Discipline Committee, those same individuals may not be involved in the discipline hearing of the same matter.



The committee or panel may require the respondent to give evidence under oath at any time before or during the hearing. The panel may also require the respondent to produce further files, records or other information in the possession of the person that may not have been disclosed in the investigation stage.

The respondent and the regulatory body may use legal counsel in the discipline process and at hearings conducted by the discipline panel.

The discipline panel must give written reasons for a determination about the conduct or competence of the respondent and actions taken against them and, if applicable, must record in writing an order for costs.

After a decision is made in the discipline process, the regulatory body must publish adverse determinations in the form and manner outlined in bylaws. Specific publication requirements of adverse determinations at disciplinary hearings have been set out in the Information Publicly Available guidance document.

The Discipline Committee is also mandated to determine if extraordinary action to protect the public is required in any matter presented to the regulatory body.

## Regulatory Expectations: Discipline Hearings

### Website

- Websites of regulatory bodies must prominently feature the process at the discipline hearing stage of the complaints and discipline process. This must include a plain language explanation of the process from beginning to the end and must be supported by infographics.



## Regulatory Expectations: Discipline Hearings

### Bylaws

- Bylaws must be established related to the composition and appointment of panels.  
Requirements from OSPG are:
  - A hearing must always be conducted by a discipline panel
  - The panel must be at least 3 members
  - Members of the panel must be comprised of members of the Discipline Committee
  - The panel must include a lay member
  - Panel members must have access to legal advice
- Bylaws should provide for both oral hearings and hearings by way of written submissions:
  - Authority for panel to set either oral hearings or hearings by way of written submissions
  - Description of the manner and format of oral hearings and hearings by way of written submissions
  - Criteria for panel to set oral hearings or hearings by way of written submissions
    - Written hearings must include correspondence from all panel members and written proof of participation in any decision that needs to be documented and disclosed
    - All hearings must involve the entire panel
- The registrar must promptly update the online register and publish information on the website at the conclusion of a complaint as set out the Information to be Publicly Available guidance, and must also provide notification to the Superintendent.
- Bylaws and policies established in respect of s.81(3) (authority to recover costs related to an investigation and hearing) should include:
  - The factors that are considered when assessing costs
  - The maximum amount of costs that may be assessed within the limits of s.81(2)
  - The time allowed for payment of costs
  - The extension of time for payment of costs



### Regulatory Expectations: Discipline Hearings

#### Policies and Procedures

- Written policies and procedures should include:
  - How the regulatory body initiates a hearing
  - How the regulatory body will notify the respondent of updates or requests in the discipline hearing stage
  - The process for the Investigation Committee to amend the citation if new information affects the original citation, and the process to follow once amended (Adjournment of a hearing, notice to respondent, etc.)
  - Outline the circumstances in which the regulatory body may choose not to disclose information regarding the complaint
- General guidance must be made available to the discipline panel, the registrant, and the public in respect of potential adverse determinations by the Discipline Committee, as related to:
  - Reprimanding of the registrant
  - Possible sanctions and factors considered
  - Imposing a financial penalty on the respondent (Individual: <\$100,000; Firm: <\$250,000)
  - Imposing conditions on the respondent's practise and registration
  - Suspending the respondent's registration for a specified period of time and/or such time as it takes the respondent to comply with requirements
  - Cancelling the respondent's membership in the regulatory body
  - Requiring the respondent to complete a remedial program or appear before a committee established by the board to prove the respondent is competent
  - Distinguish between classes of registrants to include trainees in accordance with s.75(7)





### Regulatory Expectations: Discipline Hearings

#### Service Standards and Performance Indicators

- Written policies and procedures should outline a performance standard to ensure a complainant/respondent are kept up to date on the process:
  - After an extended period, regardless of the activity on the file
  - At key milestones in the process
  - At the conclusion of the process
- Clear key performance indicators must be established that outline:
  - The time it takes a matter to reach a discipline hearing after a citation is issued
  - The number of consent orders that are entered into after a citation is issued
  - The average time it takes to reach a final disposition once a citation is issued by way of:
    - Discipline Hearing
    - Consent Order
    - RRAC/ACR
  - The number of times of consent orders are altered after the initial offer to a respondent and whether that significantly increases the timeline



## Appendix A: Investigative Authorities Under Section 66 of the *Professional Governance Act*

66 (1) The board of a regulatory body may do the following:

- (a) authorize an investigation into the conduct or competence of a registrant, to be carried out by a committee of the regulatory body, an officer or employee of the regulatory body, or a contractor retained by the regulatory body for this purpose, if there is reason to believe that the registrant may have been guilty of
  - (i) professional misconduct,
  - (ii) conduct unbecoming a registrant, or
  - (iii) incompetent performance of duties undertaken while engaged in the registrant's regulated practice;
- (b) if there is reason to believe that a registrant whose conduct or competence is being investigated under this subsection possesses any information, record or thing that is relevant to the investigation, issue a written notice requiring the registrant to
  - (i) cooperate with the investigation,
  - (ii) answer questions,
  - (iii) produce files, records or other evidence in the registrant's possession or control,  
and
  - (iv) provide explanations on request;
- (c) if there is reason to believe that the conduct or competence of a registrant may warrant action under this subsection, issue a written notice requiring the registrant to appear before the board or the Investigation Committee to discuss the conduct or competence of the registrant;
- (d) issue a citation ordering a discipline hearing under section 75 [*discipline hearings*] to inquire into the conduct or competence of a registrant;
- (e) rescind a citation issued under paragraph (d).



(2) The board may make bylaws

(a) authorizing the board to

(i) summarily suspend or cancel the registration or membership of a registrant who has been convicted of an indictable offence, or

(ii) summarily reject the application of an applicant convicted of an indictable offence,

(b) governing the initiation or conduct of an investigation referred to in subsection (1) (a),

(c) specifying the nature and extent of the requirements that may be imposed on a registrant in a notice issued under subsection (1) (b),

(d) governing the initiation or conduct of an appearance before the board or the Investigation Committee under subsection (1) (c), and

(e) governing the issuance or rescission of a citation.