



NOVA SCOTIA COLLEGE OF  
**Dietitians** AND  
**Nutritionists**

# **COMPLAINTS POLICY MANUAL**

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## Introduction

The mandate of the Nova Scotia College of Dietitians and Nutritionists (“NSCDN” or the “College”) is to:

- (a) serve and protect the public interest;
- (b) preserve the integrity of the profession; and
- (c) maintain public confidence in the ability of the profession to regulate itself.<sup>1</sup>

NSCDN achieves this mandate by regulating the practice of dietetics, in part, through the various processes set out in the *Dietitians Act*, the Regulations, By-laws, and policies.

The process of receiving, investigating, and disposing or resolving a complaint is referred to in this manual as the **Professional Conduct Process**, and it is one of the key regulatory processes through which the College’s public interest mandate is met.

The Professional Conduct Process consists of two stages:

- the investigative stage, overseen by the Registrar and the Complaints Committee; and
- the hearing stage, overseen by the Professional Conduct Committee.

Depending on the nature of the complaint, a complaint may be resolved by the Registrar or the Complaints Committee at the investigative stage. More serious matters that warrant a hearing may be referred by the Complaints Committee to the Professional Conduct Committee.

This policy manual focuses on the processes and procedures of the Registrar and the Complaints Committee.

The key duties and responsibilities of the Registrar and the Complaints Committee are to:

- investigate, consider, and evaluate the merit of complaints of professional misconduct, conduct unbecoming, incompetence or incapacity regarding the conduct or actions of current or past members of the College;
- investigate and dispose of a complaint in a fair, objective, thorough and timely way, and
- determine the appropriate course of action with respect to complaints, in accordance with the *Act*, Regulations, By-laws, and these Policies.

Prior to or following a preliminary investigation, the Registrar may do any one of the following:

- dismiss the complaint;
- informally resolve the complaint if the Registrar considers that the complaint may be satisfactorily resolved consistent with the objects of the College;

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<sup>1</sup> Section 4 of the *Dietitians Act*.

- authorize the resignation of the respondent;
- if the respondent and the Registrar agree, refer the matter to the Fitness to Practise Committee; or
- refer the matter to the Complaints Committee.<sup>2</sup>

If the Registrar refers the complaint to the Complaints Committee, the Complaints Committee may investigate the complaint. In accordance with the processes set out in the Regulations, the Complaints Committee may:

- dismiss the complaint;
- informally resolve the complaint;
- caution the respondent;
- refer the respondent for a competence assessment;
- refer the matter to the Fitness to Practise Committee;
- with the respondent's consent, impose a reprimand;
- with the respondent's consent, impose conditions or restrictions; or
- refer the matter to the Professional Conduct Committee.

In addition, the Complaints Committee has a role to play with resolving matters through Settlement Proposals.

Each of these roles will be discussed further in this manual.

In addition to the content of the *Act*, Regulations, By-Laws, and these Policies, all persons involved at the investigative stage of a complaint are subject to common law requirements requiring them to adhere to fundamental principles of **procedural fairness**.

There are various requirements of procedural fairness during the investigation of a complaint, which include providing the respondent to a complaint with enough information to respond to the complaint, and which require the Registrar and the Complaints Committee at all times to follow the requirements of the *Act*, Regulations, By-Laws, and these Policies.

In everything it does, the Registrar and the Complaints Committee must act **fairly, objectively, and impartially**. The Registrar and the Committee members must be free from actual bias, and any reasonable apprehension of bias. Potential members of a Complaints Committee panel must declare any conflicts of interest prior to serving on a panel.

Recognizing that the Complaints Committee is an investigative body, **it does not make findings of fact or findings of credibility**. It can, however, weigh all the information it receives to

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<sup>2</sup> Section 34 of the Dietitians Regulations.

determine the likelihood of establishing professional misconduct, incompetence, conduct unbecoming, or incapacity.

Courts may review decisions of the Registrar or Complaints Committee in circumstances where parties believe the principles of procedural fairness have not been followed. As a result, the procedural rules enumerated in these Policies are designed to ensure the Registrar and the Complaints Committee operate fairly and consistently. This will ensure the purpose of the College is met, and assist in maintaining public confidence in the Professional Conduct Process.

## **Interpretation**

Throughout these Policies, the following words and abbreviations have the following meanings:

**"Act"** means the *Dietitians Act*, SNS 2009, c 2;

**"College"** means the Nova Scotia College of Dietitians and Nutritionists;

**"Board"** means the Board of the College;

**"incapacity"** means the status whereby a member has or had a medical, physical, mental or emotional condition, disorder or addiction that renders or rendered the member unable to practise with competence or that endangers or may have endangered the health or safety of clients;

**"incompetence"** means the status whereby a respondent, at the time of the subject-matter of a complaint, suffered from a medical, physical, mental or emotional condition, disorder or addiction that rendered the respondent unable to practise with reasonable skill or judgement or that may have endangered the health or safety of patients;

**"professional misconduct"** "professional misconduct" includes such conduct or acts relevant to the profession that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional and, without limiting the generality of the foregoing, may include

- (i) failing to maintain the standards for the practice of dietetics,
- (ii) failing to uphold the code of ethics adopted by the College,
- (iii) abusing a person verbally, physically, emotionally or sexually,
- (iv) misappropriating personal property, drugs or other property belonging to a patient or to the employer of a member of the College,
- (v) wrongfully abandoning a patient,
- (vi) neglecting to provide care to a patient,
- (vii) failing to exercise appropriate discretion in respect of the disclosure of confidential information,
- (viii) falsifying records,

- (ix) inappropriately using the professional status of dietitian for personal gain,
- (x) promoting for personal gain any drug, device, treatment, procedure, product or service that is unnecessary, ineffective or unsafe,
- (xi) publishing, or causing to be published, any advertisement that is false, fraudulent, deceptive or misleading,
- (xii) engaging or assisting in fraud, misrepresentation, deception or concealment of a material fact when applying for or securing registration or a licence or taking any examination provided for in this Act, including using fraudulently procured credentials, and
- (xiii) taking or using any of the designations set out in Section 21 of the Act or describing the person's activities as "dietetics" or "nutrition therapy" in any advertisement or publication, including business cards, websites or signage, unless the referenced activity falls within the practice of dietetics;

Except where the context otherwise requires, terms used in these policies that are defined in the *Act* have the same meaning as outlined in the *Act*.

### Policy #1: Receipt of Letter of Complaint

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Receipt of Letter of Complaint			
<b>APPLICABLE LEGISLATION</b>	<i>Dietitians Act</i> , sections 37, 43(3), and 46 Dietitians Regulations, section 32			
Consented to by the Board	Effective	Reviewed	Revised	Pages 5-6

A complaint may be initiated by any body corporate, the Registrar, a committee of the College, or any other person. In order to be accepted by the College, a complaint must indicate possible professional misconduct, conduct unbecoming the profession, incompetence, or incapacity of a registrant of the College.

A complaint may be submitted to the College in writing or electronically and must identify the name of the complainant and the respondent. The College cannot accept an anonymous complaint. The reason the College is unable to receive an anonymous complaint is because a member is entitled to know the identity of the individual complaining against them.

If a complainant is unable to submit a complaint in writing, they may describe the complaint verbally to College staff, who will reduce the matter to writing and ask for confirmation of its accuracy from the complainant. Once provided, the confirmation should be documented by staff.

#### Procedure:

1. Upon receipt of a complaint, the Registrar, or delegate, shall:
  - (a) validate the registration database to ensure the member complained of is a member or former member of the College;
  - (b) confirm whether the College has jurisdiction over the matter. The College's jurisdiction extends to matters regarding the conduct, actions, competence, character, fitness, health or ability of a member, former member, Professional Corporation or the employees thereof; and
  - (c) review the complaint to consider whether immediate referral to the Chair of the Complaints Committee is needed to determine whether any interim action needs to be taken in accordance with **Policy #13: Interim Suspension or Restrictions or Conditions**.
2. On receiving or initiating a complaint, the Registrar must send a copy of the complaint to the respondent. Note: the address, phone number of the complainant and names of

other members complained against, if any, shall be redacted. The Registrar shall also send a cover letter to the respondent. The cover letter shall:

- (a) inform the member a complaint has been received;
  - (b) unless the Registrar dismisses the complaint at first instance in accordance with **Policy #2: Dismissal of Complaint by Registrar**, request the member provide a written response to the complaint within 10 business days (this timeframe may be abridged or extended as needed);
  - (c) enclose relevant sections of the *Act*, Regulations, By-Laws, and these Policies;
  - (d) advise that the member has the right to legal counsel, at their own expense; and
  - (e) advise the member that the complaint is confidential.
3. Unless the Registrar dismisses the complaint at first instance in accordance with **Policy #2: Dismissal of Complaint by Registrar**, the Registrar must send a letter to the complainant. The letter shall:
- (a) acknowledge receipt of the complaint;
  - (b) advise that the College will provide updates respecting the status of the matter; and
  - (c) advise that the complaint is confidential.
4. Where the College and the complainant agree, a complaint may be withdrawn. See **Policy #15: Withdrawal of Complaint**.



## Policy #2: Dismissal of Complaint by Registrar

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Dismissal of Complaint by Registrar			
<b>APPLICABLE LEGISLATION</b>	Dietitians Regulations, sections 33, 34			
Consented to by the Board	Effective	Reviewed	Revised	Pages 7-8

Prior to or following a preliminary investigation, the Registrar may dismiss the complaint if any of the following apply:

- (a) the complaint is outside the jurisdiction of the College;
- (b) the complaint cannot be substantiated;
- (c) the complaint is frivolous or vexatious;
- (d) the complaint constitutes an abuse of process;
- (e) the complaint does not allege facts that, if proven, would constitute professional misconduct, conduct unbecoming, incompetence or incapacity, or would merit a counsel, a caution or both;
- (f) the processing of the complaint is not in the public interest.

The Registrar must issue a written decision with reasons when dismissing a complaint. The Registrar must send a copy of the decision to the complainant and the respondent.

The Registrar must advise the complainant and the respondent that the complainant may submit a written request to the Registrar for review of the dismissal by an Independent Review Committee.

When dismissing a complaint, the Registrar may provide written advice relevant to the complaint that is of a non-disciplinary nature to any of the following persons:

- (a) the complainant;
- (b) the respondent;
- (c) any person affected by the complaint.

The Registrar must provide a copy of any written advice provided to the respondent.

### Policy #3: Registrar's Preliminary Investigation

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Registrar's Preliminary Investigation			
<b>APPLICABLE LEGISLATION</b>	Dietitians Regulations, section 33			
Consented to by the Board	Effective	Reviewed	Revised	Pages 9-10

1. Unless a complaint is dismissed by the Registrar at first instance, the Registrar may direct a preliminary investigation of the complaint.
2. The Registrar may appoint an investigator to conduct the investigation.
3. The Registrar or the investigator may request additional written or oral explanation from the complainant, the respondent, or a third party.
4. The Registrar or the investigator may, **with the respondent's consent**, arrange for the respondent to do 1 or more of the following during a preliminary investigation:
  - (a) if the Registrar or investigator has reasonable or probable grounds to believe that the respondent has an issue of incapacity, submit to physical or mental examinations by a qualified person or persons designated by the Registrar, and authorize the reports from the examinations to be given to the Registrar;
  - (b) submit to a review or audit of the respondent's practice by a qualified person or persons designated by the Registrar, and authorize a copy of the review or audit to be given to the Registrar;
  - (c) complete a competence assessment or other assessment or examination to determine whether the respondent is competent to practise, and authorize the assessment or examination report to be given to the Registrar;
  - (d) produce any records kept about the respondent's practice that the Registrar or investigator consider appropriate.
5. Expenses incurred to take any action under paragraph 4 of this Policy must initially be paid by the College, but may be awarded as costs against the respondent under any of the following circumstances:

- (a) if a finding is made against the respondent at a Professional Conduct Committee hearing;
  - (b) as part of the terms of a consensual reprimand, conditions or restrictions;
  - (c) as part of an informal resolution of the complaint;
  - (d) by consent.
6. Unless the complaint is dismissed by the Registrar, the Registrar or the investigator shall send any preliminary investigation reports prepared by the Registrar or the investigator to the respondent. The Registrar or investigator shall provide the respondent with an opportunity to respond to the preliminary investigation report.
  7. Unless the complaint is dismissed by the Registrar, the Registrar or the investigator shall send any relevant, reports, assessments, or documents produced or gathered in the course of the investigation to the respondent. The Registrar or investigator shall provide the respondent with an opportunity to respond to the information.
  8. Neither the Registrar nor the investigator shall disclose any information or documentation that is subject to solicitor-client privilege or deliberative secrecy.

### Policy #4: Resolution by Registrar

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Resolution by Registrar			
<b>APPLICABLE LEGISLATION</b>	Dietitians Regulations, section 34			
Consented to by the Board	Effective	Reviewed	Revised	Pages 11-12

Taking into account the results of a preliminary investigation, if any, and any response(s) from the respondent and complainant, the Registrar must do 1 or more of the following:

- (a) **dismiss** the complaint and notify the complainant and the respondent of the dismissal if the Registrar decides that any of the following apply:
  - (i) the complaint is outside the jurisdiction of the College;
  - (ii) the complaint cannot be substantiated;
  - (iii) the complaint is frivolous or vexatious;
  - (iv) the complaint constitutes an abuse of process;
  - (v) the complaint does not allege facts that, if proven, would constitute professional misconduct, conduct unbecoming, incompetence or incapacity, or would merit a counsel, a caution or both;
  - (vi) the processing of the complaint is not in the public interest;<sup>3</sup>
- (b) **informally resolve** the complaint if the Registrar considers that the complaint may be satisfactorily resolved consistent with the objects of the College;<sup>4</sup>
- (c) authorize the **resignation** of the respondent;<sup>5</sup>

<sup>3</sup> A complainant may request the Independent Review Committee to review a Registrar's decision to dismiss a complaint.

<sup>4</sup> An informal resolution does not require the consent of the complainant.

<sup>5</sup> Authorizing a member to resign when facing a complaint should only occur in exceptional circumstances. Typically, it is not considered in the public interest to allow a member to resign their way out of potential discipline.

(d) if the respondent and the Registrar agree, refer the matter to the **Fitness to Practise Committee**;<sup>6</sup>

(e) refer the matter to the Complaints Committee.

The Registrar must issue a written decision with reasons to the complainant and respondent when any of the above actions are taken.

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<sup>6</sup> A referral to the Fitness to Practise Committee is appropriate when an independent assessor determines that the member's conduct is causally connected to an incapacity.

### Policy #5: Independent Review Committee

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Independent Review Committee			
<b>APPLICABLE LEGISLATION</b>	Dietitians Regulations, sections 35 to 38			
Consented to by the Board	Effective	Reviewed	Revised	Pages 13-14

Within 30 days after a complainant is notified of a Registrar's dismissal of a complaint, the complainant may submit a written request to the Registrar for review of the dismissal by an Independent Review Committee.

Upon receipt of a request for review, the Registrar must send the request to the respondent and the Chair of the Complaints Committee.

The Chair of the Complaints Committee must appoint an Independent Review Committee to review the Registrar's decision to dismiss the complaint.

An Independent Review Committee consists of the following, none of whom are members of the Board:

- (a) 1 public representative;
- (b) 2 members of the Complaints Committee.

A quorum of an Independent Review Committee consists of the 3 persons appointed by the Chair of the Complaints Committee.

After reviewing a complaint, any other material considered by the Registrar and the Registrar's decision, an Independent Review Committee may do any of the following:

- (a) confirm the dismissal of some or all of the complaint;
- (b) overturn the dismissal of some or all of the complaint and do 1 or both of the following:
  - (i) order an investigation of any aspects of the complaint that have not been dismissed,
  - (ii) refer the matter to be considered by the Complaints Committee.

An Independent Review Committee must render its decision in writing, with reasons, and must provide a copy of the decision to all of the following within a reasonable time:

- (a) the Registrar;
- (b) the complainant;
- (c) the respondent.

A decision of the Independent Review Committee is final.



## Policy #6: Complaints Committee

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Complaints Committee			
<b>APPLICABLE LEGISLATION</b>	<i>Dietitians Act</i> , section 35			
Consented to by the Board	Effective	Reviewed	Revised	Pages 15-16

### Composition

In accordance with the *Act*, the Board shall appoint a Complaints Committee composed of members and public representatives.

No person who is a member of the Profession Conduct Committee shall be a member of the Complaints Committee.

### Chair

The Chair and Vice-Chair of the Complaints Committee are appointed by the Board.

The Vice-Chair shall act as Chair in the absence of the Chair.

### Panel

Upon referral of a complaint to the Complaints Committee, the Chair of the Complaints Committee shall appoint a panel of not fewer than three persons from the Complaints Committee, one of whom is a public representative, to act as the Complaints Committee panel for purpose of the professional conduct process.

The Chair of the Complaints Committee may sit on the panel and shall act as the Chair of the panel in this event.

Where the Chair of the Complaints Committee is not appointed to the panel, the Chair of the Complaints Committee shall appoint a chair for such panel.

A majority of the panel, regardless of whether such persons are members or public representatives, constitute a quorum of the Complaints Committee.

### Responsibilities

Each member of the Complaints Committee shall:

1. be familiar with and adhere to the relevant sections of the *Act*, the Regulations, and these policies governing the investigation process;
2. review orientation materials provided and partake in an orientation session;  
and
3. participate in Complaints Committee meetings as required.

### **Term of Appointment**

Terms of appointment to the Complaints Committee may not exceed 2 years.

Members are eligible for reappointment by the Board.

Where a proceeding is commenced before the Complaints Committee and the term of office of any person sitting on the Complaints Committee expires, that person may remain part of the Committee until the proceeding is concluded

### **Conflict of Interest**

Prior to considering a particular complaint, the Registrar shall provide the members of the Complaints Committee panel with the names of the complainant, the respondent, and any other known witnesses, so that panel members may determine issues of conflict of interest or bias. Potential members of a Complaints Committee panel must declare any conflicts of interest prior to serving on a panel.

A conflict of interest may be real, potential or perceived in nature. Any Committee member who believes a conflict of interest may exist must discuss the matter with the Chair of the Committee. If the Chair of the Complaints Committee, with or without consultation with legal counsel for the College, determines there is a conflict of interest or a reasonable apprehension of bias, the Complaints Committee member must be recused for that matter.

A conflict of interest refers to a situation in which personal, occupational or financial considerations may affect or appear to affect the objectivity or fairness of decisions related to the Complaints Committee's activities.

**Policy #7: Right to Representation and Disclosure**

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Right to Representation and Disclosure			
<b>APPLICABLE LEGISLATION</b>	<i>Dietitians Act</i> , section 43(3)			
Consented to by the Board	Effective	Reviewed	Revised	Page 17

In a proceeding before a Complaints Committee panel, a respondent has the right to:

- (a) be represented by legal counsel;
- (b) disclosure of the complaint, any written reports of the investigator provided to the panel and, any other documents produced or received by the panel; and
- (c) a reasonable opportunity to present a response and make submissions.

For clarity, the respondent is not entitled to information or documents that are subject to solicitor-client privilege or deliberative secrecy.

### Policy #8: Powers of a Complaints Committee panel

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Powers of a Complaints Committee panel			
<b>APPLICABLE LEGISLATION</b>	<i>Dietitians Act</i> , section 38 Dietitians Regulations, sections 39 and 42			
Consented to by the Board	Effective	Reviewed	Revised	Pages 18-19

1. A Complaints Committee panel may:
  - (a) conduct some or all of the investigation;
  - (b) provide direction with regard to the investigation;
  - (c) appoint an investigator to conduct or to further an investigation of a complaint that is referred to the panel;
  - (d) request additional written or oral explanation from the complainant, the respondent, or a third party;
  - (e) receive additional information if the information is relevant to the matters before it;
  - (f) request an interview with the complainant, the respondent, or a third party;
  - (g) investigate any matter relating to the respondent, in addition to the complaint, that arises in the course of the investigation that may constitute any of the following:
    - i. professional misconduct;
    - ii. conduct unbecoming the profession;
    - iii. incompetence;
    - iv. incapacity;
  - (h) set its own procedure for meetings.
2. A Complaints Committee panel may **require** the respondent to do 1 or more of the following:

- (a) if the panel has reasonable and probable grounds to believe that the respondent has an issue of incapacity, refer the matter to the Fitness to Practise Committee;
  - (b) submit to a review of the respondent's practice by a qualified person or persons designated by the panel and authorize a copy of the review to be given to the panel;
  - (c) complete a competence assessment or other assessment or examination the panel directs to determine whether the respondent is competent to practise and authorize the assessment or examination report to be given to the panel;
  - (d) produce any records or documents kept about the respondent's practice.
3. Expenses incurred to take any action under paragraph 2 of this Policy must initially be paid by the College, but may be awarded as costs against the respondent under any of the following circumstances:
- (a) if a finding is made against the respondent at a Professional Conduct Committee hearing;
  - (b) as part of the terms of a consensual reprimand, conditions or restrictions;
  - (c) by consent.
9. The Complaints Committee panel or the investigator may issue a subpoena or Notice to Produce requiring the attendance of a person and/or the production of documents or records pursuant to **Policy # 14: Subpoena/Notice to Produce**.
10. Unless the complaint is dismissed by the Complaints Committee panel, the panel or the investigator shall send any preliminary investigation reports to the respondent. The panel or investigator shall provide the respondent with an opportunity to respond to the preliminary investigation report.
11. Unless the complaint is dismissed by the Complaints Committee panel, the panel or the investigator shall send any relevant reports, assessments, or documents produced or gathered in the course of the investigation to the respondent. The panel or investigator shall provide the respondent with an opportunity to respond to the information.
12. Neither the Complaints Committee panel nor the investigator shall disclose any information or documentation that is subject to solicitor-client privilege or deliberative secrecy.

### Policy #9: Interviews

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Interviews			
<b>APPLICABLE LEGISLATION</b>	Dietitians Regulations, section 39(2)(b)			
Consented to by the Board	Effective	Reviewed	Revised	Page 20

A Complaints Committee panel or an investigator may require the complainant, respondent, or a third party who may have information relevant to the investigation, to attend an interview.

Where the Complaints Committee panel or investigator decides to request an interview, the panel or investigator will:

1. contact the individual to arrange a convenient date and time for the interview;
2. conduct the interview using the most appropriate means (e.g. face-to-face, videoconference, or teleconference, etc.);
3. provide the individual with an overview of the Professional Conduct Process and advise that:
  - a transcript of the interview will be prepared and provided to the respondent and the panel;
  - if the complaint is referred to the Professional Conduct Committee:
    - the interview transcript, in part or in full, may become part of the public record;
    - the witness may be called to testify at the hearing. If so, they may be interviewed by the College's legal counsel prior to the hearing; and
4. provide the witness with an opportunity to ask questions and clarify information; and
5. conduct interviews in such format as considered appropriate by the panel or investigator.

See **Appendix A: Interview Policy Techniques**.

### Policy #10: Recording of Interviews

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Recording of Interviews			
<b>APPLICABLE LEGISLATION</b>				
Consented to by the Board	Effective	Reviewed	Revised	Pages 21-22

The Complaints Committee panel or investigator shall inform the witness well in advance that the interview will be recorded.

The Complaints Committee panel or investigator must inform the witness at the beginning of the interview that a transcription of the recording will be provided to the respondent and the panel and may form part of the public record if the matter is referred to a hearing.

Prior to the interview, the panel or investigator should inform themselves with the necessary technology being used to record the interview.

At the beginning of the interview, the panel or investigator must:

- advise the witness that the interview is being recorded. Covert recordings are unacceptable;
- obtain the witness's consent to record the interview; and
- provide an introduction by identifying:
  - the date, time and location of the interview;
  - the individuals present; and
  - the purpose of the interview.

Any person entering the interview after the interview has started shall be invited by the interviewer to identify themselves for the purpose of the recording and state the reason for entering the interview.

When a break is taken, the interviewer should announce the fact that a break is to be taken, the reason for it, and the time. The recording is to be stopped during the break.

At the conclusion of the interview, the interviewer should announce the time the interview is stopped.

It is best practice for the interviewer to take at least some notes throughout the interview. Notes can serve as a backup and can be used to keep track of follow-up questions during the interview.

The panel or investigator shall provide the respondent with copies of transcripts and any relevant documents obtained during the investigation and invite the respondent to respond in writing.

If the respondent provides information which, in the opinion of the panel or investigator, requires a response from the complainant or other witnesses in order to complete the investigation, the panel or investigator may provide such information to the complainant or other witnesses and then invite a response from the complainant or other witnesses.



**Policy #11: Roles of Participants at a Complaints Committee Meeting**

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Roles of Participants at a Complaints Committee Meeting			
<b>APPLICABLE LEGISLATION</b>				
Consented to by the Board	Effective	Reviewed	Revised	Page 23

The Registrar and the College’s legal counsel may attend meetings of the Complaints Committee panel in advisory roles, at the invitation of the panel. The Registrar and legal counsel may answer questions from the panel about information obtained during the investigation and to otherwise act as a resource to ensure the requirements of the *Act*, the Regulations, By-Laws, and these Policies are followed, and that the matter is investigated in accordance with rules of procedural fairness.

The Registrar and the College’s legal counsel may be present during deliberations of the panel. The College’s legal counsel is permitted to advise the panel and respond to legal issues raised during the Professional Conduct Process. **Neither the Registrar nor legal counsel shall become a decision maker. The decision-making authority belongs exclusively to the panel.**

The panel may consult with the Registrar and/or the College’s legal counsel at any stage of an investigation and are encouraged to do so prior to finalizing any decisions.

The Registrar may consult with the College’s legal counsel at any stage of the investigative process.

Legal counsel or a support person for the respondent, complainant, or other witness may attend the meetings of panel when such persons are being interviewed.

**Policy #12: Note Taking and Retention**

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Note Taking and Retention			
<b>APPLICABLE LEGISLATION</b>				
Consented to by the Board	Effective	Reviewed	Revised	Page 24

Notes taken by the Registrar, the members of the Complaints Committee panel, and the investigator are to be retained until such time as notification is received that all relevant steps in the Professional Conduct Process are complete.

It is possible that notes taken may be subject to disclosure, so care must be taken to ensure notes are accurate and fair.

### Policy #13: Interim Suspension or Restrictions or Conditions

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Interim Suspension or Restrictions or Conditions			
<b>APPLICABLE LEGISLATION</b>	<i>Dietitians Act</i> , section 44			
Consented to by the Board	Effective	Reviewed	Revised	Pages 25-27

1. Where, upon initial review of the matter, the Registrar determines that a matter may require interim action, the Registrar shall **immediately** refer the matter to the Chair of the Complaints Committee for expedited review and consideration. The Registrar does not need to provide notice to the respondent or complainant prior to referring the matter to the Complaints Committee.
2. The Chair shall **immediately** convene a Complaints Committee panel.
3. The panel must consider whether the information before it constitutes a risk of harm such that interim action is necessary to protect the public during the investigation process. The interests of the respondent are secondary, although nonetheless important, when determining whether interim action is required.
4. Interim action is an extraordinary measure to protect the public and should be invoked sparingly. For interim action to be necessary for the protection of the public, the panel must be satisfied that there is a real risk to the public, clients, colleagues, and/or the profession if an order is not made. It is not enough for the panel to consider that interim action is merely desirable.
5. The Complaints Committee panel may, without meeting with respondent:
  - (a) immediately suspend a respondent's licence;
  - (b) immediately impose restrictions or conditions on a respondent's licence; or
  - (c) where a person does not hold a current licence, suspend the ability of the person to obtain a licence.
6. In deciding whether to invoke a suspension or impose restrictions or conditions, the following factors may be considered together with such other information as the panel deems relevant:
  - (a) the source of the information;

- (b) the nature of the conduct alleged against the respondent;
  - (c) whether the conduct of the respondent exposes or likely exposes the public to harm or injury;
  - (d) how recently the alleged conduct occurred;
  - (e) whether the conduct was repeated or isolated;
  - (f) whether the conduct continued after the respondent was aware that they were being investigated; and
  - (g) whether current or proposed restrictions or conditions on the respondent's practice.
7. Immediately following a decision to impose an interim suspension or restrictions or conditions, the panel must provide the respondent and complainant of notice in writing of its decision, with reasons.
8. The panel shall determine whether any aspects of its decision should be provided to other affected individuals, other dietetic regulating bodies, any past, present or intended employers of the respondent, and/or the public.
9. The panel must advise the respondent of their opportunity to request a meeting with the panel regarding the decision.
10. Where the respondent requests to meet with the panel, the pane shall:
- (a) advise the respondent that they are entitled to attend the meeting with legal counsel;
  - (b) provide the respondent with disclosure of the complaint, any written investigation reports and any other document produced or received by the panel, except for information or documents that are document to solicitor-client privilege or deliberative secrecy;
  - (c) provide an opportunity for the respondent to meet with the panel within ten days of the written request; and
  - (d) provide the respondent with a reasonable opportunity to present a response and make submissions.
11. After meeting with the respondent, the panel may confirm, vary, or terminate the interim suspension or restrictions or conditions. The panel must provide a written decision to the respondent and complainant.
12. Subject to a determination pursuant to clause 11, an interim suspension or restrictions or conditions continue in force pending or following the completion of an investigation and lasting until the suspension, restrictions or conditions are lifted, superseded or annulled by the Complaints Committee panel or the Professional Conduct Committee, as the case may be.

13. Due to the extraordinary nature and consequence of interim action, the panel may wish to consult the College's legal counsel prior to imposing an interim suspension or restrictions or conditions.
14. Where the panel imposes interim action, it must prioritize and expedite its investigation of the matter.

**Policy #14: Subpoena/Notice to Produce**

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Subpoena/Notice to Produce			
<b>APPLICABLE LEGISLATION</b>	<i>Dietitians Act</i> , section 38			
Consented to by the Board	Effective	Reviewed	Revised	Page 28

Where necessary, a Complaints Committee panel or an investigator appointed by a panel may issue a Subpoena or Notice to Produce requiring the attendance of a person and/or the production of documents or records.

Where it is reasonably believed that a person or document is necessary for the proper conduct of an investigation, the Chair of the panel, the investigator, or the College's legal counsel shall prepare and arrange for service of a Subpoena or Notice to Produce.

Where the person objects to attending or producing some or all of the documents enumerated in the Subpoena, the panel may refer the matter to the Supreme Court of Nova Scotia for further direction.

### Policy #15: Withdrawal of Complaint

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Withdrawal of Complaint			
<b>APPLICABLE LEGISLATION</b>	<i>Dietitians Act, section 37(2)</i>			
Consented to by the Board	Effective	Reviewed	Revised	Page 29

A complaint may be withdrawn if the College and complainant agree to the withdrawal and the withdrawal is consistent with the objects of the College.

Upon receipt of a request from the complainant for withdrawal of the complaint, the College will review the matter to determine whether the withdrawal of the complaint is in the best interest of the public and the profession. In the event the complaint is withdrawn, a letter confirming withdrawal and reasons for the withdrawal will be forwarded to the complainant and respondent. In the event the complaint is not withdrawn, the complaint shall follow the established process.

Information regarding a withdrawn complaint will be recorded on the respondent's Professional Conduct History.

The withdrawal of a complaint is not a disciplinary finding.

**Policy #16: Disposition of Complaint by Complaints Committee Panel**

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Disposition of Complaint by Complaints Committee Panel			
<b>APPLICABLE LEGISLATION</b>	Dietitians Regulations, sections 41 and 42			
Consented to by the Board	Effective	Reviewed	Revised	Pages 30-32

1. A Complaints Committee panel, prior to or following a preliminary investigation, may **dismiss** the complaint, if it decides that any of the following apply:
  - (a) the complaint is not within the jurisdiction of the College;
  - (b) the complaint cannot be substantiated;
  - (c) the complaint is frivolous or vexatious;
  - (d) the complaint constitutes an abuse of process;
  - (e) the complaint does not allege facts that, if proven, would constitute professional misconduct, conduct unbecoming, incompetence or incapacity, or would merit a caution;
  - (f) processing the complaint is not in the public interest.
  
2. When dismissing a complaint, the Complaints Committee panel may provide written advice relevant to the complaint that is of a non-disciplinary nature to any of the following persons:
  - (a) the complainant;
  - (b) the respondent;
  - (c) any person affected by the complaint.
  
3. The Complaints Committee panel must provide a copy of any written advice provided to the respondent.
  
4. **If the complaint is not dismissed, the Complaints Committee panel must give the respondent a reasonable opportunity to appear before the panel before it disposes of a complaint, and may request or require other persons to appear before it.**



5. After providing the respondent an opportunity to appear before it, the Complaints Committee panel must do 1 or more of the following

- (a) **dismiss** the complaint;
- (b) if considered useful by the panel, provide **written advice** relevant to the complaint that is of a non-disciplinary nature to 1 or more of the following persons:
  - (i) the complainant;
  - (ii) the respondent;
  - (iii) any other person affected by the complaint;

The Registrar must provide a copy of any written advice provided to the respondent.

- (c) **informally resolve** the complaint;
- (d) **caution** the respondent;
- (e) refer the respondent to the Registrar for a **competence assessment** as determined by the Registrar, and require the respondent to pay for any costs arising from the assessment;
- (f) if the panel believes the matter involves an issue of incapacity and should be addressed through the fitness to practise process, refer the matter to the **Fitness to Practise Committee**;
- (g) **make a determination** that there is sufficient evidence that, if proven,
  - (i) would constitute professional misconduct, conduct unbecoming, incompetence or incapacity, and
  - (ii) would warrant imposing a licensing sanction.

6. If the Complaints Committee panel makes a determination pursuant to paragraph 5(g) of this Policy, the panel must do 1 of the following:

- (a) with the respondent's consent, order 1 or both of the following:
  - (i) that the respondent receive a **reprimand** and that the reprimand be communicated to the respondent, the complainant, and any other person as the panel considers appropriate,
  - (ii) that **conditions or restrictions**, or both, be imposed on the respondent's licence; or
- (b) refer the matter or matters for a hearing by the **Professional Conduct Committee**, and, if the panel considers it appropriate, direct the Registrar on

behalf of the College to attempt to negotiate a settlement proposal in accordance with section 44 of the Regulations.

7. A decision of the Complaints Committee is final.

A “**counsel**” means a determination that a member may have breached the standards of professional ethics or practice expected of members in circumstances that do not constitute professional misconduct, conduct unbecoming the profession, incompetence or incapacity, and a caution is not considered to be a licensing sanction.

A “**reprimand**” is a licensing sanction and is subject to publication. It is an appropriate disposition where the panel determines that the facts alleged, if proven, constitute professional misconduct, conduct unbecoming, incompetence or incapacity, but does not warrant a hearing. The panel may only impose a reprimand with the respondent’s consent.

Respondents sometimes seek recourse from the courts through a process called judicial review. Courts seldom interfere with decisions of Complaints Committee panels, but when they do, it is because a panel has failed to follow the requirements of its governing legislation, or has acted in a way considered to be procedurally unfair. **Another common reason that Courts involve themselves in decisions of Complaints Committee panels is due to insufficient reasons for its decisions.** See **Policy #17: Writing of Complaints Committee Decision** for additional guidance in writing reasons.

### Policy #17: Writing of Complaints Committee Decision

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Writing of Complaints Committee Decision			
<b>APPLICABLE LEGISLATION</b>				
Consented to by the Board	Effective	Reviewed	Revised	Pages 33-34

1. When a Complaints Committee panel renders a decision, it shall prepare written reasons for such decision and shall forward copies of such written decision to the respondent, the complainant, and such other persons as the panel deems appropriate.
2. The Chair of the Complaints Committee panel shall ensure that the written decision includes:
  - the names of the members of the panel;
  - if applicable, the names of the individuals who appeared before the panel (unless it determines that an individual's name should not be disclosed);
  - the names of the various people in attendance throughout the meetings of the panel;
  - a summary of the complaint;
  - a summary of the response and other information relevant to the response;
  - a summary of the information reviewed by the panel;
  - if an informal resolution has been accepted by the panel, the details of the informal resolution and the rationale for its acceptance;
  - if the complaint has been dismissed, the reasons for the dismissal;
  - if the matter has been resolved through a caution, guidance to the respondent with respect to the matter for which the caution has been rendered;
  - if a consent reprimand has been ordered, an indication of the specific conduct or action which have fallen below the accepted Standards of Practice or ethical duties set out in the Code of Ethics; an indication of why such breach amounts to professional misconduct, conduct unbecoming, incapacity, or incompetence; and the reasons why a consent reprimand is considered to be an appropriate disposition; and the direction for publication of the reprimand; and

- if the matter has been referred to the Professional Conduct Committee:
  - an enumeration of the specific conduct or actions of the respondent which the panel believes have fallen below the Standards of Practice or Code of Ethics;
  - an explanation for the panel's determination that there is sufficient evidence that, if proven would constitute any of the following:
    - (A) professional misconduct;
    - (B) conduct unbecoming;
    - (C) incompetence;
    - (D) incapacity; and
  - the rationale for why the matter warrants imposing a licensing sanction.
- 3. If a Complaints Committee panel believes the matter can be appropriately resolved through a reprimand or conditions or restrictions, the panel must include a section in its decision on a "without prejudice" basis advising the member that the panel is prepared to resolve the matter on a consensual basis and giving a deadline for the respondent to consent.
- 4. At the discretion of the Chair of the Complaints Committee panel, the College's legal counsel may assist in drafting the panel's decision.

### Policy #18: Settlement Proposal

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Settlement Proposal			
<b>APPLICABLE LEGISLATION</b>	<i>Dietitians Act</i> , section 50 Dietitians Regulations, sections 44 and 45			
Consented to by the Board	Effective	Reviewed	Revised	Pages 35-36

Where a Complaints Committee panel refers a matter to the Professional Conduct Committee, the College and the respondent may enter into a Settlement Proposal prior to the commencement of a hearing. The Complaints Committee panel has a role to play in reviewing the content of a Settlement Proposal.

A Settlement Proposal must include all of the following:

- (a) sufficient facts to provide context for the admissions of the respondent and the agreed disposition;
- (b) an admission or admissions by the respondent to 1 or more of the allegations set out in the notice of hearing;
- (c) the respondent's consent to a specified disposition, conditional on the acceptance of the Settlement Proposal by the Complaints Committee panel and the Professional Conduct Committee appointed in the matter;
- (d) an agreement on costs.

If both the College and the respondent agree to the terms of Settlement Proposal, the Registrar shall refer the Settlement Proposal to the Complaints Committee panel for its review.

The Complaints Committee panel may recommend that the Professional Conduct Committee accept a Settlement Proposal if it is satisfied that all of the following criteria are met:

- (a) the public is protected;
- (b) if the respondent is permitted to continue in practice, the conduct or its causes can be or have been successfully remedied or treated, and the respondent is likely to successfully pursue any remediation or treatment required;
- (c) settlement is in the best interests of the public and the profession.

If the Complaints Committee panel does not recommend that the Professional Conduct Committee accept a Settlement Proposal, the panel must do 1 of the following:

- (a) recommend changes to the Settlement Proposal that
  - (i) if agreed upon by the parties, will result in acceptance by the Complaints Committee panel, or
  - (ii) if not agreed upon by the parties, will result in rejection by the Complaints Committee panel;
- (b) reject the settlement proposal and refer the matter considered by the Complaints Committee panel to the Professional Conduct Committee appointed in the matter for a hearing.

**Policy #19: Complaints against College Staff and Board and Committee Members**

<b>SECTION</b>	Complaints Process			
<b>SUBSECTION</b>	Complaints against College Staff and Board and Committee Members			
<b>APPLICABLE LEGISLATION</b>				
Consented to by the Board	Effective	Reviewed	Revised	Pages 37-38

The College is committed to ensuring an unbiased examination of each and every complaint raised against a member of Board, the Registrar, other College staff, or any member of a regulatory committee.

*Complaints against the Registrar*

Where a complaint is received against the Registrar, the complaint shall be forwarded to the Chair of the Board, who shall determine whether the matter is an employment issue that should be dealt with as such, and/or whether the matter may have registration and/or licensing implications, in which case the matter shall be dealt with as part of the Professional Conduct Process under the *Act*, the Regulations, and these policies.

If the matter is to be dealt with as part of the Professional Conduct Process, the Chair of the Board shall appoint an Acting Registrar for purposes of the administration of the complaint, who shall perform all functions otherwise assigned to the Registrar in the *Act* and these Policies, for purposes only of the complaint against the Registrar.

The Acting Registrar shall not be a current member of Board. Where the Chair of the Board believes that the complaint is of such a nature that the Registrar should not be involved in any aspect of the Registrar’s duties, the Chair of the Board (who may wish to consult with legal counsel) may place the Registrar on a paid leave of absence until the complaint has been resolved or take such other action as deemed appropriate.

*Complaints against other College staff*

Where a complaint is received against a member of the College staff (other than the Registrar), the Registrar shall determine whether the matter is an employment issue that should be dealt with as such, and/or whether the matter may have registration and/or licensing implications for the staff member if they are also a member of the College, in which case the matter shall be dealt with as part of the Professional Conduct Process under the *Act*, the Regulations, and these policies.

Where the member is a member of College staff (other than the Registrar), the member shall refrain from involvement in any aspect of the processing of the complaint. To the extent that the

member's duties as an employee of the College requires the member to normally be involved in the administration and processing of the complaint, the College shall appoint a replacement person to engage in such duties for purposes of the complaint against the member. Where the Registrar believes that the complaint is of such a nature that the College staff member should not be involved in any aspect of the Professional Conduct Process relating to other matters, the Registrar may reassign the College staff member to other duties unrelated to the Professional Conduct Process until the complaint has been resolved, or take such other action as deemed appropriate.

#### *Complaints against a member of the Board or a Committee*

Where a complaint is received against a member of Board or a Committee, the Registrar shall determine whether the complaint relates to the role of the member as a member of the Board or a Committee (in which event the matter shall be dealt with as part of the College's Code of Conduct), and/or whether the matter may have registration and/or licensing implications for the Board or Committee member, in which case the matter shall be dealt with as part of the Professional Conduct Process under the *Act* and these policies.

#### *General procedures*

Where a matter is referred to the Complaints Committee and the complaint involves a member of the Complaints Committee, the member shall not sit as a member of the Complaints Committee for any purpose or with respect to any other complaint during the time when a complaint is outstanding against the member.

Where a matter is referred to the Professional Conduct Committee and the complaint involves a member of the Professional Conduct Committee, the member shall not sit as a member of the Professional Conduct Committee for any purpose or with respect to any other complaint during the time when a complaint is outstanding against the member.

The member will not review the College's file with respect to the complaint, and will not access information other than through normal disclosure channels provided by the *Act* and these policies.



## **Appendix A: Interview Policy Techniques**

### **Witness Interview Tips and Techniques**

The central goal of a witness interview is to obtain a complete and accurate statement of the relevant information that the witness has.

Witness interviews are generally structured in 3 phases:

- introduction;
- gathering the information; and
- conclusion.

#### **Introduction**

The interviewer should start the interview by identifying oneself and the purpose of the interview. The purpose of the interview is to gather information to assist the Complaints Committee panel in the course of its investigation. The interviewer does not make findings of fact or assessments of credibility.

If the Complaints Committee panel has appointed an external investigator, the investigator should bring a copy of the appointment letter.

Discussing neutral topics for a few minutes prior to the start of the formal interview may help a witness relax and can build rapport. Before commencing the interview, the interviewer should ask if the witness has any questions about the interview process.

During the introductory stage, the interviewer must:

- explain the confidentiality of the process, as well as the limits of confidentiality;
- obtain permission before recording the interview; and
- explain to the witness how the information collected will be used, including possible disclosure.

This is also an opportunity for the interviewer to collect relevant information from the witness, including:

- the witnesses' legal name;
- the witnesses' home address, telephone number, and email address;
- the witnesses' occupation, education and work history; and
- the witnesses' work address, telephone number, and email address.

At this time, the interviewer should also confirm with the witness how the witness prefers to be contacted going forward in the investigation process.

If another person is present in the interview, their role should be ascertained at the very beginning. If the other person is a potential witness, they should be excused from the interview so that their recollection of events is not affected by the witness being interviewed. It is acceptable for a third party, such as a support person or legal counsel, to attend an interview; however, observers should be kept to a minimum in order to protect the confidentiality of the process.

Note that if a witness does not voluntarily comply with the panel's request for an interview, the panel may issue a subpoena.

It is critical that the interviewer maintain neutrality throughout the interview. An interviewer cannot take the side of a witness or be seen to take the side of a witness. The interviewer must refrain from offering their own opinion regarding the events in question.

### **Gathering the information**

The interviewer should begin the second stage of the interview by generally asking the witness to describe the events in question as they recall them. The interviewer may question gaps or inconsistencies for the sake of clarity as the witness recalls the details of the events.

The interviewer can proceed by systematically and chronologically reviewing the events with the witness. The interviewer should make detailed notes during this stage. It is appropriate for the interviewer to ask the witness whether there are any documents or other evidence related to each event discussed.

It is critical throughout the interview that the interviewer not suggest answers to the witness. The interviewer should ask open-ended questions that do not lead the witness. For example, "What did the dietitian say to the client at the end of the appointment?" is an appropriate open-ended question. "Did the dietitian call the client stupid at the end of the appointment?" is a leading question.

### **Conclusion**

In the final stage of the interview, the interviewer should ask the witness to allow the removal of any documents that might be relevant to the investigation.

The interviewer must confirm with the witness how the information collected in the interview may be used in the investigation and hearing process. The interviewer should determine the witness' willingness to assist the College in any further investigation or hearing.

This is also a final opportunity for the witness to ask the interviewer any questions about the process. The interviewer should leave their contact information and ask the witness to contact them if they think of anything further or have any additional questions.