



**A Comparison of Professional Conduct Processes of
Canadian Forestry Professional Associations**

March, 2010



Acknowledgements

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Introduction

The Forestry Professions Act was passed in April, 2006 creating the Association of Saskatchewan Forest Professionals (ASFP). The Association has many responsibilities, including ensuring accountability to the public that its members conduct their work in a professional manner. Typical to most legislation, only the general framework for a professional conduct committee is described.

Society values the importance of professional self-regulation in which professionals are responsible and accountable for meeting their professional obligations. The Supreme Court of Canada has concluded that it is difficult to overstate the importance in our society of the proper regulation of our learned professions. The primary purpose of the establishment of self-governing (regulating) professions is the protection of the public. Through legislation, provincial governments grant professions the privilege of self-regulation. This legislation empowers the professional organizations to self-regulate, and with it the responsibility to fulfill its mandate to the public¹.

Government involvement is minimal in professional self-regulation and usually takes the form of government appointed public representatives to the councils and/or committees of these organizations. Public participation is a crucial component of effective professional self-regulation and ensures that the public interest is addressed.

In a review of professional associations across Canada, it was noted that “the downfall of one individual is said to diminish all members of the profession².”

Early in 2009, ASFP council appointed chairs to both the Professional Conduct Committee and a Discipline Committee, providing them with the delegation to form committees and to develop policy and procedures for their respective committees. Committees were formed and approved by Council later in 2009. Both committees decided that cross jurisdictional reviews of other professional forestry associations would provide important background information and the opportunity to learn from other jurisdictions. This report focuses in on the complaint and investigation process, but in order to provide context does include overview information on the hearing and discipline process.

1.0 Approach

Purpose:

To compare professional conduct policies and procedures currently established by other forestry professional’s associations. There are several objectives for this research, including:

¹ Saskatchewan Registered Nurse Association. 2007. SRNA Position Statement – Professional Self-Regulation

² Casey, J.T. The Regulation of Professions in Canada. (Carswell, Toronto, 1994). 1 v. looseleaf. 2005 –Release 2.

- Compare and contrast policies and procedures that might be suitable for adoption or modification for use by the ASFP;
- Ensure that professional conduct policies and procedures develop by the ASFP are within the general norms of the forestry profession in Canada. An important issue is labour mobility agreements between provinces for Forestry Professionals to become established across Canada; and
- Educational reference tool for the Professional Conduct Committee, the ASFP council and its members while establishing policy in this regard.

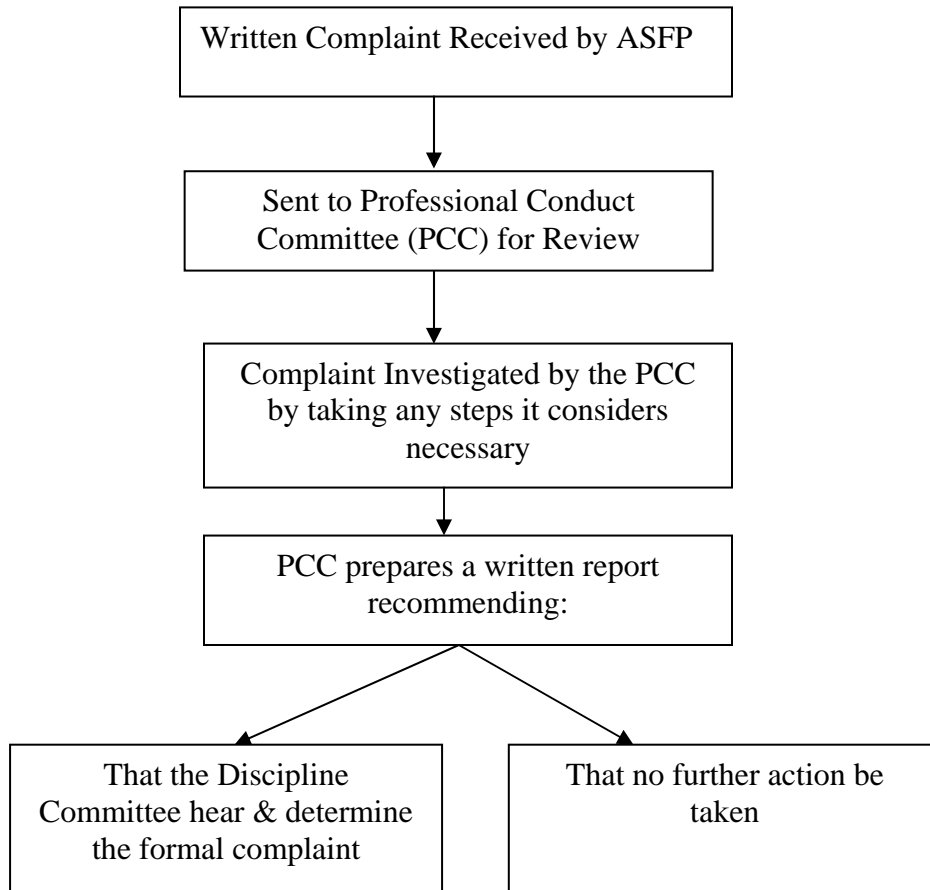
2.0 Current Legislative Requirements of the ASFP

Presently, sections 24-38 of the Forestry Professions Act address professional conduct and discipline for the association. A flowchart of the current regulatory requirements is presented in Figure 1. The Act highlights the following sections:

- 24-25: Definitions of both professional incompetence and misconduct;
- 26: Authority to establish a professional conduct committee (requires a minimum of three members);
- 27: Investigation Process (see Figure 1);
- 28: Discipline Committee;
- 29: Discipline Hearing;
- 30: Disciplinary Powers;
- 31: Criminal Conviction's
- 32: Duty to Report;
- 33: Suspension;
- 34: Appeal to Council;
- 35: Appeal to Court;
- 36: Effect of Appeal;
- 37: Effect of Expulsion or Suspension; and
- 38: Reinstatement.

Sections 85-90 of the ASFP bylaws discuss the mechanics of the Professional Conduct Committee, much of which is similar to that presented from the Forestry Professions Act above. Section 88 of the Bylaws state that subject to subsection 15(2) of the Act, the Professional Conduct Committee shall set standards of professional conduct, competency, proficiency of members and also undertake the review, investigation and disposition of complaints against members of the Association.

Figure 1. Investigative Process of the Professional Conduct Committee.



3.0 Selection of Provincial Associations:

The committee decided a suitable range of provinces to be included in the jurisdictional review which included the following: British Columbia, Alberta, Ontario, and Quebec. New Brunswick was considered, but due to turnover in the committee, capacity did not exist to complete the review. The committee also reviewed a recent publication of the Law Reform Commission of Saskatchewan³ which reviewed procedures and governing legislation of 50 self-governing professions in Saskatchewan, including The Forestry Professions Act.

³ Law Reform Commission of Saskatchewan. 2007. Handbook on Professional Discipline Procedures.

British Columbia

The Association of BC Forest Professionals (ABCFFP) was established in 1947 and has about 5,300 members with the “Right to Practice” legislation, which has been in place for many decades. The codified approach of the Forest Practices Code, which often outlines requirements of forest professionals, has now been replaced with a results-based management approach. This shift has created new challenges for the association and its members

Alberta

In this province, the College of Alberta Professional Foresters (CAPF) of about 650 members was established in 1985 with voluntary registration and protection of title. In 2000, changes included mandatory registration with protection of title, and continuing competence program requirements.

Ontario

Originally established in legislation in 1957 this association has about 1000 members. In 2000, the 1957 legislation was replaced with the Professionals Forester Act, 2000. The new act requires that practitioners of professional forestry in Ontario to be licensed and established with the Ontario Professional Foresters Association (OPFA) as the regulatory body. One of the ways the association fulfills this objective is to develop and enforce professional ethics and standards of practice. Individuals must be members of the association in order to engage in the practice of professional forestry. As licensed professionals, members can be disciplined under The Professional Foresters Act, 2000 for violating standards of conduct prescribed by the Act, the regulations and by-laws.

Quebec

The Ordre des Ingenieurs Forestiers du Quebec (OIFQ) was established in 1921 and has 2,200 members working with a variety of organizations in all regions of Quebec. It sees the quality of services rendered by its members to the population, control of admission to practice a regular professional inspection, continuous training and implementation of a disciplinary process. The mission of the Order is to ensure the quality of services rendered by the Quebec public forest engineers, individually and collectively; and to promote continuous improvement of the expertise of professional foresters.

4.0 Methods

A standard list of questions was prepared by the committee to be used to assess the status of professional conduct committees assigned by professional forestry associations within various Canadian jurisdictions. Each researcher would complete the questionnaire using information available from each association’s website or other literature obtained. Follow-up interview were then held with either the Registrar or professional conduct committee to obtain more information on their processes. Key elements from the

questionnaire were then placed in a comparison table for review, which is provided in the appendix.

5.0 Results

Committee members reviewed literature and conducted interviews with various Canadian forestry professional associations and assembled the results of information reviewed in a comprehensive table allowing side by side comparisons. Where further detail is warranted, it is provided later in this section.

Table 1. Comparison of Canadian Forestry Professional’s Association’s Professional Conduct Policies & Procedures

Information Reviewed	British Columbia	Alberta	Ontario	Quebec
Association Name	Association of BC Forest Professionals	College of Alberta Professional Foresters (CAPF)	Ontario Professional Foresters Association	OIFQ – Ordre des ingenieurs forestiers du Quebec
Nature of the Association	Integrated – Registered Professional Foresters and Registered Professional Forest Technologists Right to practice.	Independent Associations <ul style="list-style-type: none"> ➤Licensing regime with mandatory registration provisions for practitioners who are eligible to register and practicing on provincial crown lands. ➤One Act (Regulated Forestry Profession Act) ➤Two separate regulatory Colleges, one for foresters and one for forest technologists. ➤Common scope of practice and professional signoffs. 	Currently only for RPFs. The Professional Foresters Act 2000 requires that practitioners of professional forestry in Ontario must be licensed. It has moved from a right to title now to right to practice.	RPF only. The Professional Code (1974) requires that all forest engineers in Quebec must be licensed (right to practice). This legislation isn’t only for forestry professionals but applies to 45 professional associations and dictates statutory committees each professional association must have to operate (http://www.opq.gouv.qc.ca)
Committee Name (s)	1. Complaints Resolution Committee (CRC); and the 2. Standing Investigation Committee (SIC).	<ul style="list-style-type: none"> ➤ There is no committee as such. <p>There is a Complaints Director (CD) and a Hearings Director (HD) appointed by governing Council. The CD does not sit on the Council and is an RPF selected from the general membership. If unprofessional</p>	Complaints Committee	The Professional Inspection Committee ensures the quality of professional services rendered by its members In french = Comite

Information Reviewed	British Columbia	Alberta	Ontario	Quebec
		<p>conduct is evident, after an investigation, the CD will ask the HD to call a Hearing Tribunal (HT). If the complaint is trivial or vexatious or there is no evidence of unprofessional conduct, the CD can dismiss it.</p> <ul style="list-style-type: none"> ➤ The CD, with the consent of both the complainant and investigated person (IP), can settle a valid complaint via alternative complaint resolution or amongst the parties versus always going to an HT. ➤ The complainant has an appeal level to the HD if a complaint is dismissed by CD; the HD must organize a Complaint Review Committee (CRC) to review the appeal. The IP has an appeal on HT decision/tribunal order to the governing Council. The HD must organize a CRC to review any ACR decision. An RPF off the Membership List must be involved in any ACR process. Our ACR process will turn to AB Arbitration and Mediation Society to allow both the complainant and IP to mutually agree on a trained mediator. 		<p>d'inspection professionnelle (CIP)</p> <p><u>Office of the Syndic</u> The Syndic of the association's main function is to monitor the practice of forestry engineer from the perspective of public protection. The Syndic is appointed by the Board of Directors from among the members of the Order. Its role is to investigate the conduct of forest engineers suspected of having committed a breach of the Professional Code of Professional Engineers Act or forestry regulations adopted pursuant to those laws, including the code of ethics of forest engineers. Anyone who is dissatisfied with services received from a forest engineer or has doubts about the quality of its services can contact the Syndic to</p>

Information Reviewed	British Columbia	Alberta	Ontario	Quebec
				<p>request an investigation into the conduct of that member.</p> <p><u>The Disciplinary Board</u> receives any complaint against a forest engineer made by the Syndic or a person directly from the public with the secretary of the Disciplinary Board. The disciplinary board is a tribunal consisting of a lawyer appointed by the Office des professions du Québec who acts as chairman and two members of the association.</p> <p><u>The Appeal Panel</u> reviews complaints. This committee acts as an advisory body whose function is to give an opinion about the decision of the Syndic not to lodge a complaint.</p>
Committee Chair (s)	CRC – Bronwen Beedle SIC - Bryan Fraser	➤ CAFP – Complaints Director is Chris Luhtala	Dave Puttock, RPF	Professional Inspection Committee -

Information Reviewed	British Columbia	Alberta	Ontario	Quebec
		<p>-Hearings Director is Stephen Wills</p> <ul style="list-style-type: none"> ➤ CAPFT- Registrar is Barbara de Groot <p>-Complaints Director is Norm Begin</p>		<p>Yvette Jean, ing. f</p> <p>Syndic - Yves Barrette, ing. f</p> <p>Disciplinary Board – Jean-Guy Légaré, lawyer</p>
Contact Information	Travis Trerise - Registrar	<ul style="list-style-type: none"> ➤ Registrar-Doug Krystofiak <p>After discussion with Doug it was decided not to pursue the College of Forest Professional Technologists as they operate as separate incorporations but meet the same Act</p>	Tony Jennings, Registrar	<p>Éric Provost, ing. f Inspector and Director of Continuing Education</p> <p>Suzanne Bareil, ing. f Secretary and Director of Professional Affairs</p>
How long has committee existed	Unsure	<ul style="list-style-type: none"> ➤ Since 2002 ➤ Under the old Act (Forestry Profession Act) they used to have a discipline committee but now just CD and HD; along with CRCs and HTs that are struck as needed (refer to Sections 12 through 17 of Act). ➤ They always have legal counsel sit in and counsel CD/Registrar on any formal written complaint/decision. Legal Counsel is also involved in any HT, representing the College and ensuring proper procedures are followed in terms of investigation, evidence, HT, decision, etc. CD can appoint an RPF as an investigator who will 	Since 2001	<p>The association was founded in 1921. With the adoption of the provincial legislation in 1973 (Professional Code) it became the OIFQ as we know it now.</p> <p>Statutory committees have been in place for over 35 years.</p> <p>The old Professional Code required hearings and decisions of the</p>

Information Reviewed	British Columbia	Alberta	Ontario	Quebec
		<p>speak to complainant and IP and put together a report...usually an expert in the nature of the complaint matter.</p> <p>➤ Often the Competence Committee and Registration Committee (both Standing Committees in the Bylaws) work closely with Registrar/Council/CD to address specific complaints.</p>		<p>Disciplinary Board were private. Since 1988 all hearings and decisions have been made public.</p>
<p>Terms of Reference for Committee</p>		<p>No specific committee. They do have a procedures manual that they are still working on with flowcharts of the discipline process. This is more of an internal document.</p>	<p>The committee will ensure the maintenance of a high standard of professional practice by members of the Association and protect the public interest by:</p> <ul style="list-style-type: none"> • investigating complaints of misconduct, unskilled practice or incapacity against members and former members of the Association, received from within or outside the Association; • referring cases investigated to the Discipline Committee for disciplinary or remedial action; and • referring cases investigated to the Registrar for action. 	<p>The professional inspection committee aims to achieve four key objectives:</p> <ul style="list-style-type: none"> • Promoting service excellence by improving the quality of professional practice; • Educate forest engineers in their duties, obligations and responsibilities towards society; • Encourage members to know and comply with laws, regulations and standards governing the practice; and <p>Promote the improvement of knowledge through ongoing training.</p>

Information Reviewed	British Columbia	Alberta	Ontario	Quebec
a) Membership	CRC – currently 7 members, requires no less than 5, quorum at 3 SIC - currently 12 members, requires no less than 9, quorum at 5	<ul style="list-style-type: none"> ➤ “Membership List” must be a minimum of 4 RPFs ➤ “List of PMs” contains enough PMs to serve both Colleges (like to maintain at around 4-6. They are presently recruiting more as several 6-year terms have come to an end recently). 	Currently 10 members. Can have up to 10 – 2 of which are public Council members who have been appointed by the Crown. (1 must be & 1 RPF Councillor). They are currently going to increase this to 14 members to ensure more committee members are available to process complaints and reduce the exposure of conflict to members. Due to the large size of the province, not all members have attended each meeting.	Composed of 5 members appointed by the Board of Directors among members registered with the OIFQ for at least 10 years. The President is designated by the Board and the secretary of the OIFQ acts as secretary for the committee (r.9, art. 2.03) One inspector (full-time position with the OIFQ) is also working with the committee. This person is also responsible for the continuing education.
b) Meetings	CRC – Generally 1 per month, or as needed SIC – At the requires of the “Chair, no less than 1 per year	<ul style="list-style-type: none"> ➤ Written complaint received and Registrar gets legal counsel and CD involved. CD decides how complaint will be handled [refer to Part 4 of Act; specifically Sections 45 for CD options and also Section 1(gg) for definition of unprofessional conduct. 	They would like to start meeting more regularly, perhaps every quarter or more, if necessary	Quorum consists of 3 members. Dates and locations determined by the professional conduct committee or the president The OIFQ secretary acts as the professional conduct committee secretary. Usually 4-5 meetings per year.
c) Duties	CRC – Set in Bylaw 14, good diagram for complaints resolution process describes the	<ul style="list-style-type: none"> ➤ As described in question 3 above. 	The committee meets to review and investigate complaints received by the registrar.	<ul style="list-style-type: none"> • The committee monitors the practice of members by implementing a

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	<p>process well (see Appendix A) SIC – Described in Sect. 24(1,2,3) of Foresters Act & Bylaw 14</p> <p><u>CRC</u> For each complaint referred to them by the registrar, the CRC will consider the manner in which the complaint should be resolved. The CRC will then refer the matter back to the registrar with their recommendations. Without limiting the generality of the foregoing, this may include recommendations to pursue alternative complaint resolution (ACR), to pursue an investigation or to issue a citation.</p> <p><u>SIC</u> For each complaint referred to them by the registrar, the SIC will meet to review the complaint and select an investigating committee (IC).</p>		<p>These may be made by,</p> <ol style="list-style-type: none"> a. a member of the public; b. a member of the Association; c. the Registrar; d. the Minister. 	<p>yearly professional inspection, proceeding including verification of their records relating to such practice</p> <ul style="list-style-type: none"> • Investigating the professional competence of any member designated by the Board, committee or a committee member; • Develop mechanisms to disseminate the Act and the regulations of the Order members and awareness of their professional responsibility, including by promoting the signing of the forest engineer. <p>COMPLAINT PROCESS A special investigation will be launched if the committee has serious reasons to believe a member is exhibiting signs of malpractice or incompetence.</p>

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<p>Reference to Flow Chart of Association's Process</p>	<p>See Figure 2</p>	<ul style="list-style-type: none"> ➤ They are still working on this and updating it. The file has become corrupted with changeover of staff and original flowcharts were done by someone in gov't with different software. ➤ Written out in part 4 of the attached link http://www.qp.alberta.ca/574.cfm?page=R13.cfm&leg_type=Acts&isbncln=0779703464 	<p>See Figure 3-4</p>	<p>Available in French upon request.</p>
<p>Role of Registrar</p>	<p>Acts as staff liaison on both committees There is a policy regarding the role of the registrar regarding consultation & interaction with both the CRC & SIC</p>	<ul style="list-style-type: none"> ➤ Always takes a “neutral” stance and does not want to come across as taking sides (in terms of IP or Complainant) and only spells out the process of lodging a formal complaint as per the Act and informs the complainant about the College's Code of Ethics and definitions of unprofessional conduct. ➤ It is not up to the Registrar to take sides as he/she does not necessarily hear “both sides of the story” as he/she only talks to the complainant (i.e., IP is not contacted so is unable to defend or refute what the complainant is saying). ➤ Registrar keeps complaint confidential from general membership but does advise/involve CD and legal counsel immediately. Only informs Council of IP's name so they do not talk to the IP about the 	<ul style="list-style-type: none"> ➤ The registrar accepts the complaints and conducts the initial screening. ➤ The Registrar shall provide the complainant and the person complained against with a copy of the written decision made by the Complaints Committee and its reasons for the decision, if any. ➤ To liaise with legal counsel, as necessary 	<ul style="list-style-type: none"> ➤ Acts as the secretary on both professional inspection committee and disciplinary board. ➤ Is also Director of the Professional Affairs of the OIFQ. As such she offers training sessions to members and university students on professional responsibility, duties and obligations of forest engineers

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		<p>case, as Council is an appeal level to the IP should the matter go to a formal HT. Registrar does not get into particulars of complaint or share any details.</p> <ul style="list-style-type: none"> ➤ Registrar also often counsels members/public on Code of Ethics interpretations. 		
<p>Other Relevant Information</p>	<p>The process seems quite onerous & having two separate committees keeps various processes separate, but makes things more complicated.</p>	<ul style="list-style-type: none"> ➤ Absolute confidentiality ➤ Involving legal counsel throughout the process as the lawyer is usually well versed in legal proceedings, other professional misconduct cases, etc. Ensuring the timelines are adhered to and there is no technicalities that can be used in a Court of Appeal to quash the end result ➤ See the interview guide document 	<p>The Complaints Committee shall use its best efforts to dispose of a complaint within 120 days of it being filed with the Registrar, although failing to do so does not affect the validity of the decision or direction of the Committee.</p>	<p>The professional inspection committee, its members and the inspector have investigative powers and undertake the Annual Professional Inspection Program</p>
<p>Level of Confidentiality</p>	<p>Confidentiality is protected through Sect. 26 of the Act. While undertaking an investigation, you cannot disclose information about the person in question.</p>	<ul style="list-style-type: none"> ➤ It is kept confidential amongst Registrar, Legal Counsel and CD until it goes to investigation, then IP may be informed....see Sections 50 and 56 of the Act. 	<p>Absolute. It is kept confidential amongst Registrar, Legal Counsel and CD. Report may be released by complainant or Respondent. See below.</p>	<p>Professional surveys, interviews, personal communications, reports, etc. resulting from the Annual Professional Inspection Program are all confidential.</p> <p>The inspector is sworn to secrecy with regards to inspected members names, interview dates, locations, etc. unless the inspected member consent and/or</p>

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				<p>freely talks about it to others.</p> <p>The written reports are confidential but shared with the professional inspection for recommendations. The reports are also shared with inspected members. Hearings and decisions made by the disciplinary board are made public and available on the OIFQ's website.</p> <p>The Office of the Syndic maintains absolute confidentiality throughout the process – different contacts and separate entrance than the OIFQ headquarters.</p>
<p>What do the various Associations have to offer the ASFP in this regard?</p>	<ul style="list-style-type: none"> • Both committees ensure that the ABCFPs members are accountable to the association & the public in BC. • They offer mediation as an option to settlement. • Elements of the process can be used to ensure that it does not get too complicated. 		<p>Absolute confidentiality is maintained throughout the process.</p> <p>Section 56 of the Act states: "Every person engaged in the administration of this Act, including an investigator appointed under section 48,</p>	<ul style="list-style-type: none"> • An annual professional inspection program to ensure members are competent; • Mediation is used as an option for settlement; • Professional reference binder developed and distributed to all

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	<ul style="list-style-type: none"> • It has been applied and tested in BC • They maintain a complaints record on-line 		<p>shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties and shall not communicate any of those matters to any other person except:</p> <ul style="list-style-type: none"> • in connection with the administration of this Act, the regulations, and the by-laws or any proceeding under this Act or the by-laws; • to his or her counsel; • with the consent of the person to whom the information relates; • to the extent that the information is available to the public under this Act; or to prevent or report the commission of a crime. 	<p>members;</p> <ul style="list-style-type: none"> • Continuing education of members for improved client service; • Committees have been in operations for 35 years; • A tried and tested process to ensure public protection, which can be used as a selling argument by forestry professionals; and • Decisions of the discipline committee are public and available online
<p>What do they feel are the strengths of their process?</p>	<ul style="list-style-type: none"> • That it is well defined • Administratively fair (cases are made clear) • It has been tried & tested for some time • They see the process as open & transparent 	<ul style="list-style-type: none"> • As compared to their old Act; <ul style="list-style-type: none"> ○ The alternative complaints resolution(ACR) process is more cost effective and efficient. It allows the Complaints director to look for mediation opportunities vs. involving the expense of lawyers immediately. ○ The new Act is much better defined - i.e. the Complaints directors' role is clear 	<p>The OPFA is willing to assist the ASFP as necessary in designing their process. They are also part of a larger provincial “right to practice” group in Ont. (40 different ”regulatory Colleges”) and collaborate on common issues.</p>	<p>Compared to other associations the OIFQ conduct numerous inspections of their members annually through their annual professional inspection program. The inspector dedicates half a day per site visit where</p>

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		<p>including the options and latitude that is available to them. (See part 4 of the act or the jurisdictional review document)</p> <ul style="list-style-type: none"> - This definition leads to more thorough investigations o There is an option for the Alberta Ombudsman office to become involved with the complainant if required for process related issues like the appeal process. This is seen as a added level of protection for the public 	<p>They also plan to offer investigations training this winter and are willing to have some of our committee members participate in an on-line course. Registration fees will apply.</p>	<p>other associations only spend 1-2 hours per visit.</p> <p>The inspector approaches each interview/visit with members as an opportunity to share and exchange knowledge of forestry and personal experiences and influence their work in a positive manner.</p>
<p>What do they feel are the weaknesses of their process?</p>	<ul style="list-style-type: none"> •That it involves the complainant before you can go to resolution. It is adversarial in nature – it goes between the association & the member •Takes a long time to resolve •Committee’s are volunteer-driven •The process is not efficient & expensive 	<ul style="list-style-type: none"> • A couple of things that they are concerned with are: <ul style="list-style-type: none"> o How decisions will be publicized. How do they keep names confidential when required to do so from a privacy perspective? o There is no clarity for the ACR process as it has not been tested to date. 	<ul style="list-style-type: none"> ➤ Sometimes things become bottlenecked through the Registrar. ➤ Most complainants don’t understand the process ➤ Some people won’t put a complaint forward because they feel they will have to “carry the case”. They tend to think about it as a civil court process. 	<p>Very onerous system that can take a long time to resolve - Not all inquiries are investigated, heard and closed within the same year.</p> <p>The OIFQ is moving towards a professional inspection program based more on certification auditing. A working group has been established to start working on survey questions and process, etc. The OIFQ is hoping to spend more time with each member under inspection</p>

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				and cover both office and field work related duties. Their annual inspection program currently only allows time for office visit. So in the cases where OIFQ members spend majority of their time in the field, their files and/or documents are almost non-existent, the office visits don't reveal much.
<p>a) How many complaints have come to their association/year over the past five years?</p> <p>b) How many have been serious in nature?</p>	<p>a) A range of 2-12/year</p> <p>b) They are all treated as serious, but some in the last two years are of great concern. They involve a bridge collapse & a landslide.</p>	<p>➤ They have had 5 formal complaints since their inception in 1985.</p> <p>○ 2 of these have gone to hearing. One resulted in a guilty decision and one resulted in an innocent decision.</p> <p>➤ There have been no complaints brought forward under the new Act which came into effect in 2002.</p> <p>CAFPT has had one complaint which was resolved without a hearing.</p>	<p>They have had about 12 complaints over the past 5 years. However, two did not qualify as complaints. None have been serious enough to go on to the discipline committee.</p>	<p>In 2008-2009, thirty-six (36) enquiries were made to the Office of the Syndic. Out of 36, fourteen (14) were dropped (no complaints filed to the Disciplinary Board).</p> <p>Conflict of interest was the source of the majority of the inquiries received for the same period.</p>
<p>How many complaints have resulted in disciplinary</p>	<p>This varies, but ranges from 10-40%, with an average of 33%.</p>	<p>See above</p>	<p>The OPFA has used other means, such as warnings, and have not had to pursue disciplinary actions. The complaint must pass three tests</p>	<p>A total of thirty-two disciplinary decisions have been made since 1989.</p>

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measures?			in order to move onto the discipline committee.	
How do they use legal counsel in their process?	They are only used as necessary in the process. Currently, the ABCFP budgets a certain amount for legal counsel & sometimes need to dip into contingency funds. They used to have a lawyer on staff, but was quite expensive.	See part 4 of the act	The OPFA retains the services of a law firm which practicing in the field of professional regulation. They invite an attorney to their committee meetings and will use them as necessary. They also have permission to republish some of the Lawyers' newsletters as an article in the OPFA newsletter.	OIFQ has its own lawyer to represent the interests of the public not its members. A lawyer is the chair of the Disciplinary Board. The Office of the Syndic also uses the services of an attorney. The legal defense expenses are incurred by the members.
Have their committee's had much interaction with the Canadian Federation of Professional Forester Association?	<ul style="list-style-type: none"> • Their registrar has been the main contact with the CFPFA • The subject has not been discussed very often at the national level • They'd like to see a better integration of a national code of ethics at some point 	<ul style="list-style-type: none"> • No interaction as it relates specifically to professional conduct • An opportunity would be to develop a common code of ethics across Canada. This should result in a more effective process for dealing with transfers 	<ul style="list-style-type: none"> • Their registrar has been the main contact with the CFPFA • The subject has not been discussed very often at the national level • They'd like to see a better integration of a national code of ethics at some point 	
Other Info?		<ul style="list-style-type: none"> ➤ Public members are appointed by the crown ➤ They maintain 2 lists <ul style="list-style-type: none"> ○ Public non members ○ A RPF membership list they can draw on for complaints and hearing tribunals 	Tony sent a powerpoint presentation prepared by one of the lawyers which was used for orientation of the complaints committee	

Figure 2 – Complaints Resolution Process used by the ABCFP.

Complaints Resolution Process

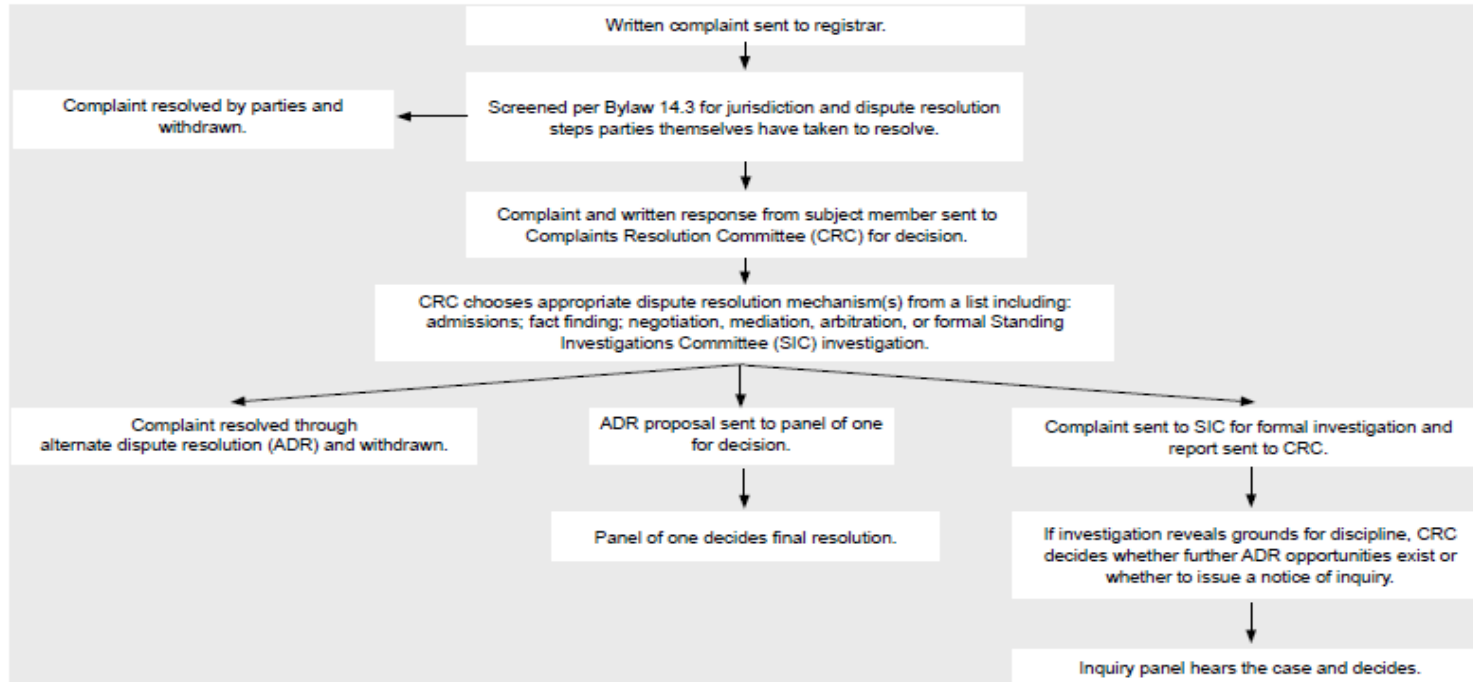


Figure 3 – Complaints Resolution Process used by the OPFA (Stage 1).

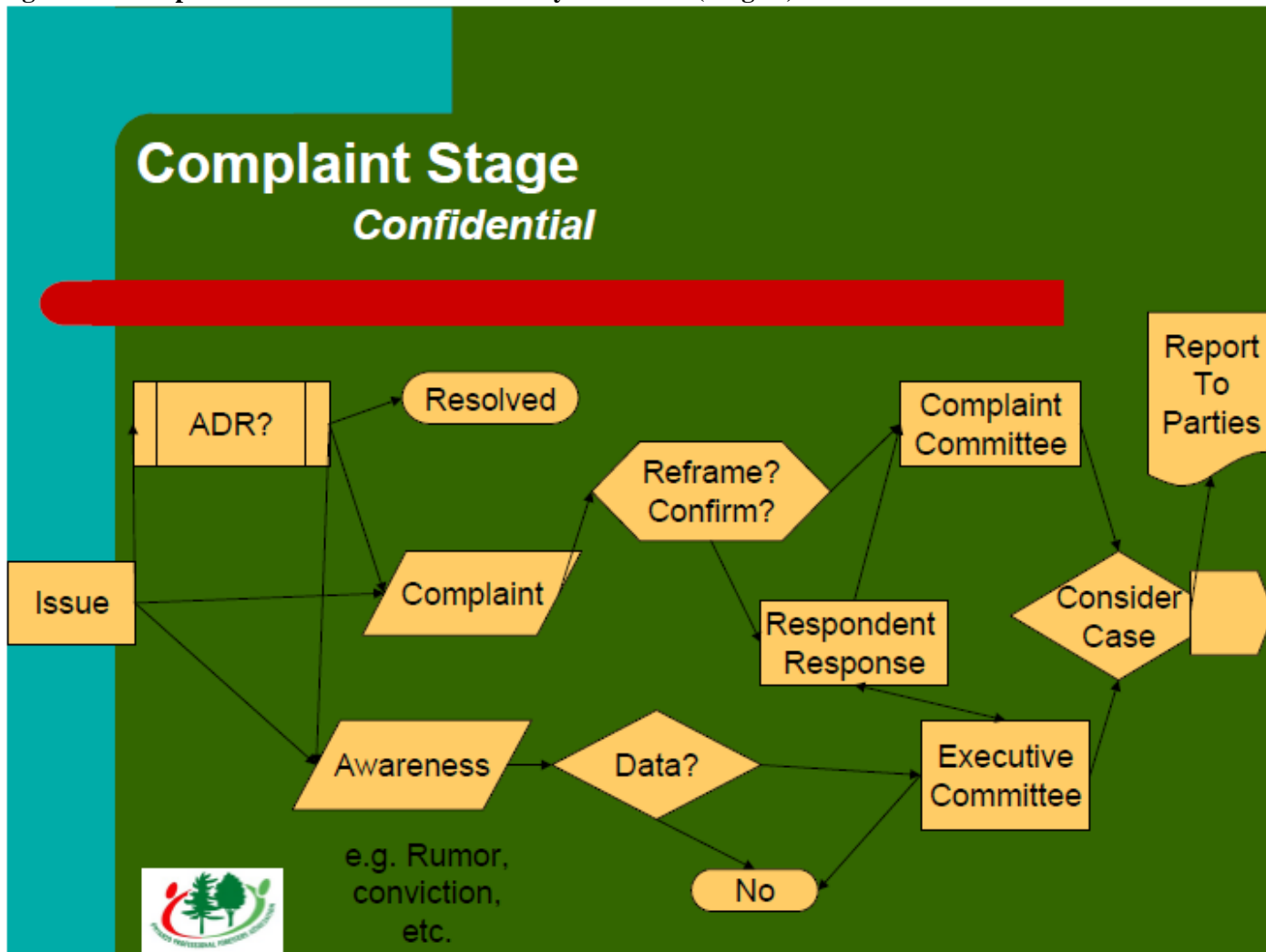
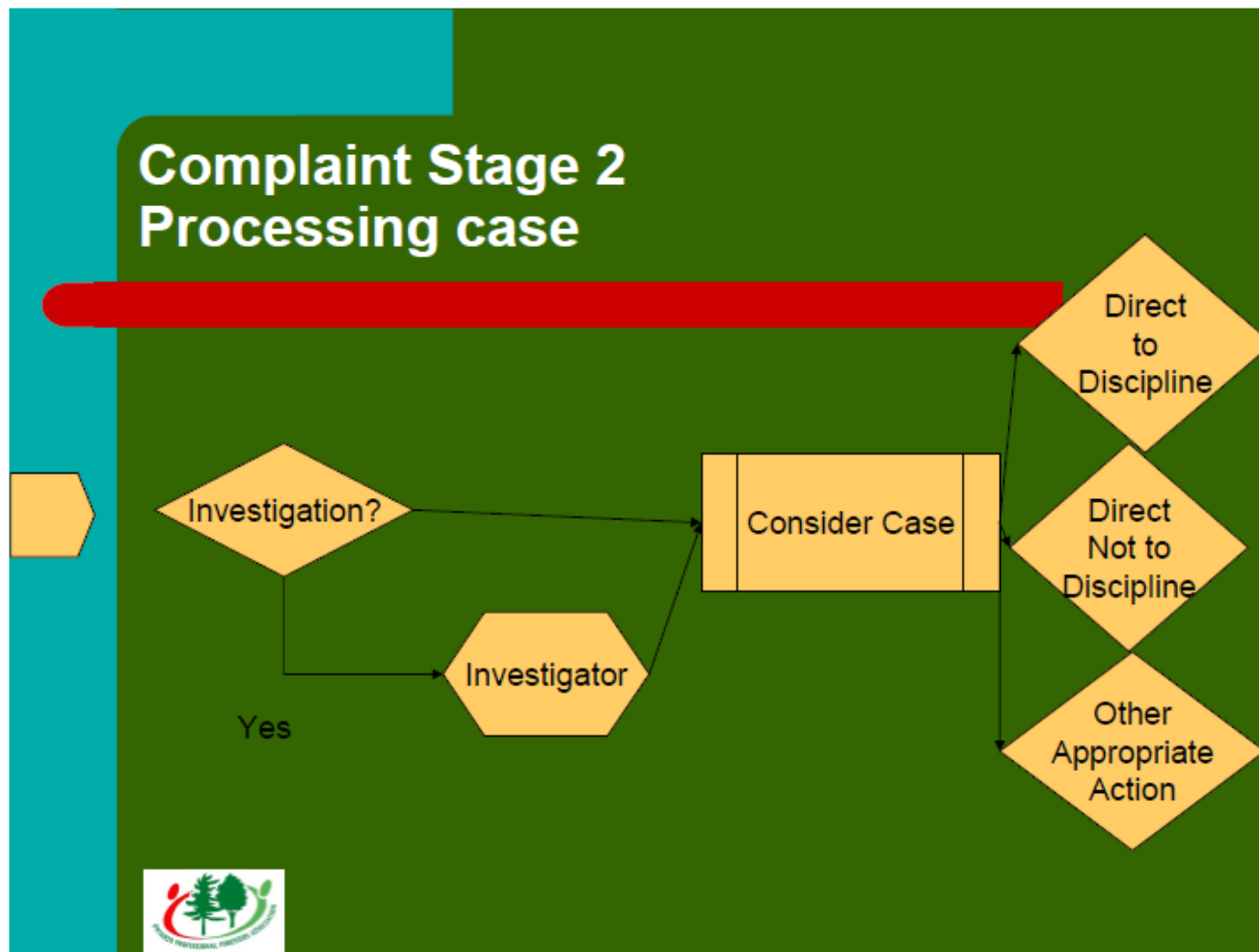


Figure 4. Complaints Resolution Process used by the OPFA (Stage 2).



Additional Information

British Columbia

Complaints Resolution Committee

For each complaint referred to them by the registrar, the CRC will consider the manner in which the complaint should be resolved. The CRC will then refer the matter back to the registrar with their recommendations. Without limiting the generality of the foregoing, this may include recommendations to pursue alternative complaint resolution (ACR), to pursue an investigation or to issue a citation⁴.

- If an investigation takes place, the registrar will send the investigation report to the CRC. After receiving an investigation report from the registrar and the comments on this report if any from the subject member, the CRC will recommend to the registrar whether the matter should be subject of a discipline hearing under Section 27 of the *Foresters Act*.
- The CRC shall have regard to the public interest in the practice of professional forestry at all times and may consider without limitation such further factors as:
 - a) The relative severity of the matter;
 - b) The novelty of the issue;
 - c) Whether the issues raised are of general importance to the profession as a whole;
 - d) The need to develop consistent practices in the area under consideration;
 - e) Whether the matter can be resolved through alternative complaint resolution (ACR) proceedings; and
 - f) The likelihood of success in obtaining or finding a breach of the *Foresters Act*, Bylaws, or Code of Ethics.
- Working with the registrar, the CRC has a general oversight function for the complaint resolution procedures of the ABCFP and may report back to council on the working effectiveness of the process and procedures.
- The CRC may draft its own processes/procedures and decision making criteria but these are required to be approved by council.
- Except in extra-ordinary circumstances referred to under the heading “Reference to Council” below, the CRC will not report details of any individual cases to council.

⁴ ABCPF. 2009. Terms of Reference – Complaints Resolution Committee.

SIC

For each complaint referred to them by the registrar, the SIC will meet to review the complaint and select an investigating committee (IC).

- An IC will generally have two members but it may have more or less at the discretion of the SIC depending upon the complexity of the case at hand.
- An IC may also include member and non-member technical experts as required to complete its work.
- The IC will investigate the complaint after the association informs the subject member of its decision to investigate the case.
- Investigations by an IC will follow the bylaws and any further processes/procedures and decision making criteria approved by council.
- Upon completion of investigation, the IC will complete its report according to the report format(s) approved by the SIC. Changes to report format must be approved by the SIC chair.
- In its report, the IC will make a recommendation on whether it believes grounds exist for a disciplinary hearing.
- Once the report is complete, the IC will forward it to the chair of the SIC and then to the registrar.
- The SIC shall at all times have regard to the public interest in the practice of professional forestry.
- Working with the registrar, the SIC has a general oversight function for the complaint investigation procedures of the ABCFP and may report back to council on the working effectiveness of the process and procedures.

Ontario

The OPFA has a complaints committee who's role is to consider and investigate complaints regarding the conduct or actions of a member. The following bullets summarize details of the complaints committee procedural requirements:

- A “concern” may be raised, which might result in some simple Alternative Dispute Resolution (ADR) – which could involve a “Have you discussed it?” approach to a field visit with both, possibly with a respected practitioner, who is a member of the Association;

- Step 2 would confirm that the “format” requirement is met. The registrar will help a complainant be clear and try to ensure they understand the process. They will also see if they are amenable to ADR;
- On the advice of Council, there is a 2a. The registrar will now try to restate the complaint in terms of their law and “rules” so it is as precise & specific about the nature of it as possible; the complainant must agree with the re-wording (there is a list of 50 things that constitute misconduct- which are being alleged);
- The registrar sends the complaint to the respondent who has 30 days plus extensions if warranted. If the complainant has been willing, ADR will be proposed as a first step. So far, there has been none after a complaint has been filed;
- Both the complaint and response go to the Complaints Committee/panel in advance of meeting;
- Complaints Committee meet usually face to face, but could be by conference call if Chair agrees that it is sufficiently straight forward;
- Panel considers first if jurisdiction criteria are met:
 - Within jurisdiction: professional misconduct, unskilled practice or incapacity on the part of a member;
 - Is not frivolous, vexatious or an abuse of process;
 (Note: Panel must consider if these are met; may not consider if either is not met)
- If criteria are met, Committee considers matter:
 - May adjourn meeting to a later date if they take one of the following actions:
 - may request more information;
 - if response raises new information, may ask registrar to refer back to Complainant for any further input (30 days again);
 - May ask the registrar to get executive approval to appoint investigator(s);
- At the meeting or once all the information is in hand, the panel (continues or same panel meets again) decides:
 - Would warrant possible discipline if proven;
 - Sufficient appropriate evidence to allow disciplinary “prosecution” is or is likely to be available;
- Panel then decides:
 - To direct the matter to be referred, in whole or in part, to the Discipline Committee;
 - To direct that the matter not be referred under clause (a); or
 - To take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act, the regulations or the by-laws;
 - (e.g. warning or accepting as sufficient, an undertaking from ADR).
 - Have also asked Registrar to get Council to change/clarify policy (without breaking confidentiality);
- Panel writes report, usually after meeting:
 - Drafted by one person;

- Agreed to by each panel member.
- Report is confidential. It is sent by the registrar to each the complainant and the respondent, who need not keep it confidential.

Quebec

Annual Professional Inspection Program

The professional inspection committee, its members and the inspector have investigative powers. This is implemented through the OIFQ's annual professional inspection program. The committee acts as watchdog for the practice of forestry profession by determining the annual professional inspection program – details of this program are published in the OIFQ's newsletter following approval by the council.

Approximately 50 professional foresters are subject to an inspection. The professional conduct committee establishes the rules and process for program delivery.

The selection of members is based on:

- a. Active membership only (unemployed and retired members not subject to inspections)
- b. Location (5 regions chosen per year)
- c. Any members inspected within the past 5 years not considered

The list of members to be inspected annually is computer-generated. All selected members will receive a professional inspection survey as well as request to provide details on continued education/training. All documents will be reviewed by the inspector. Unless a conflict of interests arises another member of the professional conduct committee will investigate.

From those 50 selected, approximately 25 members will be interviewed directly by the inspector. Those interviews are conducted in the workplace and are held in strict confidentiality. No questions are asked to coworkers. The members cannot refuse to cooperate with the inspector.

The inspector will usually discuss the following topics with the members: professional responsibility, code of ethics, legislation and regulations pertinent to the practice of forestry, guidelines for practice, continued education and quality control. The inspector will also review files, books and databases.

Findings are compiled in inspection reports. The inspector can recommend completion of course or refresher training (where inspected member lacked training, skills or knowledge in specific field). He can also recommend suspension or expulsion of members in cases of more serious offenses. All reports are submitted to the professional conduct committee for review.

Finally, individual reports are shared with the inspected members, who can in turn contest the evaluation to the professional conduct committee.

Complaint Process

Upon receipt of a request or inquiry on its own, the Syndic conducts an investigation. He must regularly inform the person who made a request to investigate the progress thereof.

Decision of Syndic

Following its investigation, the Syndic may:

- decide to bring a complaint before the Disciplinary Board;
- decide to inform the professional inspection committee that he has reasonable grounds to believe that the practice or competence of a member of the association shall be audited or special inquiry into its jurisdiction;
- decide that there is no need to complain to the Disciplinary Board as there is no breach of the Professional Code, the Code of Conduct or other regulations of the Order. In this case, the Syndic must explain in writing to the complainant the reasons for its decision; or
- suggest non-disciplinary actions such as recommendations or warnings to the member concerned.

Mediation

At any time during an investigation, the Syndic may attempt reconciliation between the applicant and the investigation of forest engineer in question except in some cases provided by law. This procedure allows to reach an amicable settlement, in view of public protection, to correct the problem raised and avoid in the future repetition of the breach identified.

Complaint to the Disciplinary Board

The Disciplinary Board receives any complaint against a forest engineer made by the Syndic or a person directly by the public (private complaint) with the Secretary of the Disciplinary Board. The Discipline hearing is a tribunal consisting of a lawyer appointed by the Office des professions du Québec who acts as chairman and two OIFQ members. Hearings and decisions made by the Disciplinary Board are public. After hearing all parties, the Disciplinary Board shall decide on the guilt of the professional. If found guilty, the Disciplinary Board imposed including one or more of the following penalties on each count contained in the complaint:

- A reprimand;
- a temporary or permanent removal of member on the roster;
- a fine for each violation of at least \$ 1,000 and not more than \$ 12,500;
- revocation of license; and
- limitation or suspension of the right to engage in professional activities.

Moreover, a decision of the Disciplinary Board may include a recommendation to the Governing Council of the association to require the professional to successfully complete a course or refresher training.

The Appeal Panel

Any person dissatisfied with the Syndic's decision not to file a complaint before the Disciplinary Board may, within 30 days following the date of receipt of the Syndic's decision not to complain, seek the advice of the Appeal Panel. Within 90 days of receipt of the request, the Panel shall then receive the entire file. After reviewing the record, the Panel must review the complaint, in its opinion, make one or other of the following conclusions:

- conclude that there is no need to bring a complaint before the Disciplinary Board;
- suggest that the Syndic or assistant Syndic complete his inquiry and thereafter make a new decision in light of further investigation;
- conclude that there is cause to lodge a complaint with the Disciplinary Board; and
- the Panel may review complaints, moreover, suggest that the Syndic refer the matter to the Professional Inspection Committee.

Reconciliation and Arbitration of Accounts

When a customer has a dispute with a forester about the fees charged, he may avail himself of the reconciliation and arbitration of accounts of forest engineers. Initially, the customer makes a written request to the Syndic for reconciling the account.

Reconciliation is a negotiation between the client and the forest engineer, conducted by the Syndic to try to reach an agreement.

For the application for reconciliation, two situations may occur:

- The account has not been paid by the client in this case, the client may request conciliation as a forest engineer has not applied to court to recover the account; and
- The account was paid in whole or in part by the client in this case, the customer within 45 days from the date of receipt of the request for conciliation of the account.

If this first step fails, the client may request a second time, the board of arbitration of accounts of the dispute.

The client applies for arbitration by transmitting to the secretary of the Order a form provided for that purpose within 15 days of receiving the conciliation report which noted the lack of understanding. The client must accompany his application for arbitration a copy of the conciliation report. In its decision, the board may uphold or reduce the account in dispute, determine the reimbursement or payment to which a party may be entitled and rule on the amount the client acknowledges owing and that accompanied his application for arbitration.

6.0 Discussion

As this report reviewed information from four Canadian professional forestry associations, a number of key similarities exist across the nation. Of importance to all associations, Saskatchewan included, is that their governing legislation incorporates the “standard model” of disciplinary procedure which is a two-stage system. This system involves a process that when a complaint is received by an association, it is referred to a professional conduct committee. If the professional conduct committee concludes that misconduct or incompetence has occurred, the matter is then forwarded to the discipline committee for a formal hearing. It is important to note that the separation of investigation of complaints and determination of guilt is intended to avoid bias⁵.

The professional forestry associations reviewed also reflect that good practice demands that members of the professional conduct committee should not interact with members of the discipline committee about individual cases, nor make any information available prior to a hearing. An investigation is triggered by a complaint alleging professional misconduct or incompetence and it is the responsibility of the professional conduct committee to gather information of the alleged misconduct or incompetence. It should also be noted that Quebec’s association also takes the professional conduct to another level through their annual professional inspection program. This approach integrates the requirements of the continuing competency program into the discipline program.

The OPFA was the only association who had a 120 day target to dispose of a complaint after it was filed. The ABCFP expressed some frustration in some of their cases lasting over a year and sometimes the member who has a complaint lodged against them will not hear from the committee for some time, as the investigation is being conducted. The Manitoba Law Reform Commission recently concluded in a study with various professional organizations that most investigations can be completed in 90 days.

A good investigation should include interviewing the accused in order to gather information and hear the member’s side of the issues. Each association had developed or adopted various techniques to conduct an investigation once a complaint was received. Flowcharts provided by both the OPFA and ABCFP are a good visual means to understand processes in place and tools available to the association. It should be noted that most associations have appropriate tools available to assist in the dispute resolution which needs to take place once an investigation is started. These include, but are not limited to modern techniques such as: admissions; alternative dispute resolution; fact finding; negotiation; mediation; and arbitration.

These associations have been successful in resolving complaints against members in utilizing alternative dispute resolution and mediation and does not require the investigation to proceed to a hearing. An organization may decide to design a mediation program or to begin using mediation in a less formal way— trying the process in cases

⁵ Law Reform Commission of Saskatchewan. 2007. Handbook on Professional Discipline Procedures.

which appear suitable. The question of whether mediation is appropriate is one that has to be considered on a case-by-case basis. Some factors to consider are⁶:

1. Does an open conversation have the potential to repair a relationship or restore the confidence of the public (or a certain individual) in the profession?
2. Is it possible that an explanation, an apology, or commitments to future change will satisfy both the complainant and the public interest?
3. Has there been a breakdown in communication which has contributed to the problem?
4. Do the allegations include serious incapacity, incompetence, dishonesty or sexual abuse—or situations that might lead to the discovery of additional misconduct? (On most occasions, these situations will not be appropriate for mediation).

Since the ASFP professional conduct committee is currently faced with the challenge of developing policy on a process for the association, we believe that a vast amount of experience and wisdom exists across the nation and plan to draw from existing processes where practical. A target date of April, 2010 exists to present a draft policy and process at the AGM for consideration by council and the membership.

⁶ Law Reform Commission of Saskatchewan. 2007. Handbook on Professional Discipline Procedures.