

Investigations Committee: Guidelines on Conduct of Complaints Investigation

NAME OF POLICY	Guidelines on Conduct of Complaints Investigation		
APPLICABLE SECTIONS OF THE ACT, BY-LAWS AND REGULATIONS and/or PURPOSE	CPATA Act ss. 37 – 50; Regulations 12 – 15		
RESPONSIBILITY	Manager of Professional Responsibility		
APPROVED BY	EFFECTIVE	REVIEWED	REVISED
Investigations Committee	2022-11-24	2023-06-08	2023-06-08

Introduction

This summary sets out the authority of an Investigator, their relationship with the Investigations Committee, and highlights best practices for conduct of a complaint investigation.

An Investigator will be designated by the Investigations Committee under s. 42(1), and will conduct an investigation under the Committee's direction. An Investigator will report to CPATA Manager, Professional Responsibility (PR Manager) who will act as the liaison to the Committee.

The authority granted to an Investigator is described in s. 43.

An investigation report will be prepared for all investigations assigned by the Committee.

1. General Practices

An Investigator will ensure the key elements of the following investigation best practices are followed, which include but are not limited to:

1.1 Planning and Consultation:

- 1.1.1 Identify the scope and specific issues to be addressed by the investigation;
- 1.1.2 Follow the evidence objectively;
- 1.1.3 Reassess the evidence (or new evidence) on an ongoing basis.

1.2 Interviewing:

- 1.2.1 Named licensee;
- 1.2.2 Persons with relevant information.

1.3 Evidence Collection and Preservation:

- 1.3.1 CPATA's internal records about the licensee in question;
- 1.3.2 Witness statements;
- 1.3.3 Physical or documentary (files, records, notes, communications) with or without warrant;
- 1.3.4 Forensic (accounting / data) with or without warrant;
- 1.3.5 Recorded (audio/video) evidence;
- 1.3.6 Maintain security and chain of custody records (and adhere to CPATA's file retention and destruction policies).

1.4 Analysis of the evidence:

Investigators may consult forensic or subject matter experts (SMEs) as part of the investigation and analysis. An Investigator needs to obtain pre-approval from the PR Manager prior to incurring any costs in this or other regard.

1.5 Investigation Report (see below for details)

The Investigator will consult and remain in regular contact with PR Manager and provide updates as needed. Together, they will decide whether and when instructions and directions ought to be sought from the Committee.

The Investigator will inform the PR Manager whenever additional conduct issues or risk factors are identified during the investigation.

CPATA's work is conducted in a virtual environment. The Investigator is, therefore, expected to conduct investigations in that environment, including interviews.

The Investigator is expected to work in a secure environment and maintain confidentiality in the handling of all information and documents obtained through the course of an investigation. The Investigator is also expected to adhere to CPATA's policies respecting retention and destruction of materials and information.

At the end of an investigation, the Investigator is required to provide a complete copy of their investigation file to the Manager, PR, or ensure that all investigation materials and evidence have been properly identified and saved in the SharePoint file.

2. Investigations Process

2.1 Initial Steps

- Investigator to check conflicts before accepting retainer
- Once conflicts are cleared, Investigator will be retained by IC
- Investigator to do preliminary review of file material and prepare a draft [investigation plan](#)
- Investigator to review plan with PR Manager
- Plan to be approved by IC where a high risk has been identified or where the issues are complex, otherwise plan is approved by the Manager, PR
- Investigator will contact complainant and confirm:
 - the role of the Investigator
 - how the investigation process will proceed
 - the issues that will be addressed by the investigation
 - that all relevant information and supporting documentation regarding the complaint have been provided
- Investigator will provide periodic up-dates to the complainant and the Licensee

2.2 Requesting Answers and Documentation

- Investigator may require the complainant or licensee¹ to answer any inquiries or furnish any records or other thing relevant to the investigation (with a deadline to comply)
- Inquiries may be made in writing or by interview. All interviews performed by the Investigator will, with the consent of the individual, be audio recorded and transcribed, or, if consent is not given, recorded with detailed notes by the Investigator.
- Investigator is entitled to enter the Licensee's business premises at any reasonable time and require the production of any documents or thing that is relevant to the investigation and examine, copy or remove it. When removing a document or thing, the Investigator will issue a receipt for the document or thing to the any person who appears to be in control of the document or thing.
- If the Licensee's place of business is a dwelling house, the Investigator may only enter with the consent of the Licensee or with the authority of a warrant issued under s. 44.
- Investigator is entitled to receive privileged information unless it falls within the criteria of s. 43(2)(a), (b) and (c).
- Investigator will document and maintain a log of all documents or things gathered throughout the course of an investigation (i.e. a Record of Investigation). Where appropriate, original documents will be copied and promptly returned to the person who was in control of the document.
- All documents or things will be stored securely by Investigator and maintained in accordance with CPATA's policy for retention and destruction of materials and information

¹ Licensee includes business partner and any person employed by the same employer as the licensee

2.3 Refusal to cooperate, urgency, document in possession of a third party or privileged information under s. 43(2)(a), (b) and (c)

- In the event that:
 - a Licensee refuses or is likely to refuse to produce any document or thing that is relevant to the investigation; or
 - a Licensee refuses access to the Licensee's dwelling house that is the Licensee's place of business; or
 - the document or thing that is relevant to the investigation is in the possession of a third party; or
 - the document or thing that is relevant to the investigation meets the criteria of s. 43(2)(a), (b) or (c); or
 - the document or thing that is relevant to the investigation is in the possession of a lawyer or law firm

the Investigator will consult with the PR Manager to determine whether they should seek instructions from IC to apply for a warrant or an order as contemplated in ss. 44 to 48.

2.4 Review of evidence and drafting a report

- 2.4.1 Prior to completing the investigation, the Investigator will ensure the Licensee has been notified of the nature of the investigation, any additional allegations identified during the course of the investigation, and given at least thirty (30) days to make further written submissions regarding all allegations raised and evidence collected.
- 2.4.2 The Investigator will review the evidence and prepare a report for IC's consideration. The report will contain:
 - A summary of the investigation steps;
 - A summary of the evidence;
 - Analysis of the issues including identification of the relevant ethical Rules, sections of the Act or By-laws, and practice standards to be considered;
 - Copies of the complaint and all responses and submissions from the licensee; and
 - All documents including interview transcripts/notes.

2.5 Preparation of Record of Investigation

- 2.5.1 When requested by the Manager, PR in support of an Application by the IC to the Discipline Committee, the Investigator will prepare a complete Record of Investigation with Index.