

Investigations Committee:

Policy on Interim Orders

NAME OF POLICY	Policy on Interim Orders : Suspension, restrictions or conditions		
APPLICABLE SECTIONS OF THE ACT, BY-LAWS AND REGULATIONS and/or PURPOSE	CPATA Act s. 37.1(1) – (3), By-laws Part 1, 2(1) and (2)		
RESPONSIBILITY	Investigations Committee		
APPROVED BY	EFFECTIVE	REVIEWED	REVISED
Investigations Committee	2023-11-16	Date	Date

1. Background

Section 37.1 of the Act confers on the Investigations Committee the authority to impose a suspension, restrictions or conditions on a license if it is satisfied it is necessary for the protection of the public, prior to completing an investigation of a licensee’s conduct.

2. Purpose

The purpose of this policy and procedure is to assist the Investigations Committee in identifying and balancing all relevant interests and engaging in a fair process when making decisions under this section in the public interest. Any decision to impose a suspension, restrictions or conditions on a license, with or without hearing from the licensee, and prior to completion of an investigation, should only be considered in cases where:

- there is a serious issue to be adjudicated,
- there is a risk of irreparable harm (to the public and/or to the reputation of the College) if an interim order is not made, and
- the balance of convenience (weighing the public interest against the licensee’s private interests) supports an interim order.

Further, there should be no other reasonable alternatives to achieving protection of the public short of an interim order.ⁱ

3. Authority

CPATA Act

s. 37.1(1) The Investigations Committee may take any of the following actions in respect of a licensee who is under investigation if it is satisfied that it is necessary for the protection of the public:

- (a) Impose conditions on a license of the licensee;
- (b) Impose restrictions on the licensee's entitlement to represent persons under section 27 or 30;
- (c) Suspend a license of the licensee.

Before the Committee considers taking action under this section, an investigation must have been commenced, either on the basis of an external complaint or instigation of an investigation by the Committee.

Notice

s. 37(2) The Investigations Committee must notify the licensee in writing of any action taken in respect of the licensee and must inform them of their right to make an application for a review by the Discipline Committee at any time, or, if the decision was made on an ex parte basis, to request that the Investigations Committee consider further submissions under (3).

Reconsideration by Investigations Committee after ex parte decision

(3) On receiving notice of an ex parte decision under (2), a licensee may submit a written request to the Investigations Committee asking them to consider new or additional information for the purposes of requesting a variation of their decision to suspend or restrict the licensee's license.

(4) Should any new information be submitted to the Committee under (3), it will be provided to the Registrar, who may make further written submissions to the Committee, and a copy will be disclosed to the licensee.

(5) If a request is made under (3), the Committee will act expeditiously to review the new information, any additional submissions from the College, and may either vary or uphold its original decision based solely on the written submissions, and/or based on oral submissions at a subsequent hearing of the matter by the Committee under s. 37(1).

(6) If the Committee decides to uphold its original decision under (5), a licensee may request a review of the decision by the Discipline Committee.

Action is provisional

- s. 37(3) Any action taken under subsection (1) is provisional and ceases to have effect if
- (a) the Discipline Committee makes a decision under subsection 37.2(2) that amends or revokes the action;
 - (b) the Investigations Committee dismisses the matter under subsection 49(1);
 - (c) the Investigations Committee withdraws the application under section 50;
 - (d) the Discipline Committee exercises its powers under section 56; or
 - (e) the Discipline Committee renders a decision under section 57.

4. Public interest considerations

Under s. 63, the Investigations Committee may make rules respecting the practice and procedure before them, and rules for carrying out their work and for the management of their internal affairs. The power of the Investigations Committee under s. 37.1 (1) may therefore be exercised with or without hearing from the licensee.

When considering whether to exercise its authority under s. 37(1), the Committee may consider the following:

i. Level of risk

- i. the nature of the alleged misconduct or incompetence, and the potential seriousness of the harm that can result from it;
- ii. whether the personal or practice circumstances of the licensee is indicative of risk;
- iii. the level of risk to client interests;
- iv. whether the conduct is repetitive and ongoing or isolated;
- v. whether the conduct occurred during the course of practice;
- vi. if proven, the range of likely disciplinary outcome;
- vii. any relevant history of prior complaints and/or disciplinary findings;
and
- viii. the degree of cooperation of the licensee with the investigation.

ii. Evidence – the nature of the factual evidence against the licenseeⁱⁱ

iii. Ability to effectively regulate – will the ability of the College to effectively regulate the IP profession in the public interest be reasonably likely to be harmed if the licensee is permitted to continue to practice without restrictions, conditions or a suspension, pending completion of the investigation and/or adjudication of the matter?

iv. Alternatives – whether current or potential restrictions on the licensee’s practice (e.g., undertakings, assessments, monitoring or supervision) are adequate to protect the

public, and if so, whether here is legislative authority for the Committee to require these.

- v. **Proportionality** – would a decision to impose restrictions, conditions or a suspension be reasonable under all circumstances, taking into account the risks to the public if the license was not restricted, under conditions or suspended?
- vi. **Consistency** – would a decision to impose restrictions, conditions or suspension be consistent with previous decisions in similar circumstances, if any?

5. Procedure

5.1 The authority of the Investigations Committee under this Section may be exercised with or without oral or written submissions from the licensee.

Ex parte proceedings

5.2 Where, in the opinion of the Investigations Committee, it is necessary in the public interest to make a decision under s. 37(1) without notice to or hearing from the licensee, the Committee must, after making such a decision, provide notice and a copy of the written decision with reasons to the licensee as soon as possible.

5.3 A licensee who receives notice under 5.2 may request in writing that the Committee consider new information for purposes of reconsidering a decision made under s. 37(1).

5.4 When a request is received under 5.3, the Investigations Committee will, as soon as reasonably possible:

- (i) Provide an opportunity for the licensee to make written submissions; and/or
- (ii) Provide an opportunity for the licensee to meet with members of the Committee to make oral submissions; and
- (iii) Provide an opportunity for the College to make written and/or oral submissions, as the case may be.

5.5 When the Committee decides to hear oral submissions from the parties, the licensee has the right to:

- (i) be represented by counsel, at the licensee's expense;
- (ii) disclosure of the nature of the concerns with the licensee's conduct; and
- (iii) an opportunity to present a response to the evidence before the Committee and to make submissions.

- 5.6 After considering the additional submissions under 5.4, and 5.5 if applicable, the Committee may confirm, vary or terminate a decision to suspend, restrict or set conditions on the licensee's license.
- 5.7 As soon as reasonably possible following the consideration of submissions under 5.4 and/or 5.5, the Committee will prepare a notice and a written decision with reasons for a decision made under 5.6.

Appeal of decision

- 5.8 Under s. 37(2) and By-laws 87(1) – (3), a licensee may file with the Discipline Committee an appeal of a decision of the Investigations Committee made under this section.

ⁱ [*RJR-MacDonald Inc. v. Canada \(Attorney General\)*, \[1994\] 1 S.C.R. 311, 111 D.L.R. \(4th\) 385](#)

ⁱⁱ [*Dua v. College of Veterinarians of Ontario*, 2021 ONSC 6917](#)