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Planning, Case Management, Complaint Resolution Alternatives
"Time spent in recce is seldom wasted"

Where to start.....

- Be aware of your legislative requirements and authorities
- Know the jurisdictional boundaries and consider what is possible
- Determine what is required

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Planning, Case Management, Complaint Resolution Alternatives

- Triage - benefits of using non-professional staff
 - Trust, layperson language, reinforcement of review, multiple levels of review
- Standardization - forms and processes for common inquires and concerns
- External resources - investigators, experts, legal counsel

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Planning, Case Management, Complaint Resolution Alternatives
"Intake is Key"

1. Listen carefully to what the person is saying when they are presenting a problem. Don't interrupt until they are finished.
2. Express concern with the issue and use appropriate words to convey this.



Health Quality Council of Alberta

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Planning, **Case Management, Complaint Resolution Alternatives**

3. Indicate a **willingness to help** them resolve the issue.

4. **Deal with the problem.** Timely action shows complainants you are serious about the matter. It can also prevent a minor situation from snowballing.

CAUTION

**Do not respond so quickly or offhandedly that the complainant feels "brushed off."*

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5. **Avoid** unnecessary or inappropriate humour.

6. **Do not use blanket statements** like, "It's the law" or "We don't have jurisdiction."

7. Take the opportunity to **educate**.


8. Take **reasonable steps** to inform the complainant about your process and, as applicable, assist the complainant with the complaint.

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Planning, **Case Management, Complaint Resolution Alternatives**


- Statutory provisions - what options are available
- Philosophy / Place in complaints handling
- Informal (encourage a cooperative solution acceptable to all parties) vs. formal (mediated settlement)
- Assess the pros and cons and role of CRA's

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Transparency and Disclosure

- Self-regulation = fiduciary responsibility to the public
- Balance of privacy/procedural fairness vs. openness
- Maintains public and professional confidence
- Can serve as specific (disincentive and reduced ability for registrant to repeat behaviour) and general deterrent
- Disclosure: the least amount of information to accomplish the aim


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Transparency and Disclosure

During investigations:

- Keep parties apprized of role, scope, reasons, and engaged in the process
- Can investigate other matters if they arise
 - Must give investigated person a chance to respond


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Transparency and Disclosure

During investigations (cont.):

- Most regulatory legislation contains confidentiality provisions prohibiting disclosure during investigations
 - Exceptions may apply - e.g., other regulatory organizations
- Media may occur during complaint investigation
 - Have policies and a plan in place


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Transparency and Disclosure

Hearings:

- Notifying public of scheduled hearings
 - Consider the type of info to publish: when, where, who, allegations (generic vs. specific)
- Hearings usually open to the public
 - Closure of some or all typically only allowed if criteria is met and ruled upon by tribunal
- Obligation on regulator to communicate/publish decisions
- Annual report requirements

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Transparency and Disclosure

Consider.....

Surveying complainant and respondent

Using response/satisfaction rates in:

- Evaluating satisfaction with process
- Setting department priorities
- Developing communication strategies
- Reports to council

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Transparency and Disclosure

Zakhary v College of Physicians and Surgeons of Alberta, 2013 ABCA 336

Court of Appeal upheld CPSA decision to publish physician discipline decision information.

In part, the Court:

- Reconfirmed the importance of transparency,
- Indicated publication protects the public by providing information about unprofessional conduct, which allows the public to make informed choices, and
- Indicated that some punishments, including cautions and reprimands, without publication, cease to be punishments.

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Timeliness and Delays

Establish deadlines

- Understand and be mindful of required deadlines
- Procedural/administrative fairness (to all parties)

Organization

- Concurrent activity
- Informing parties

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Timeliness and Delays

There is a need to increase timeliness of complaint handling as the real/possible ramifications increase.

Wachtler v College of Physicians and Surgeons of Alberta, 2012 ABCA 145

- Is Court of Appeal setting higher expectations for professional regulatory organizations about delays?
- Why? Powers of regulators being checked.
- Difference between explained / unexplained delays

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Timeliness and Delays

Wachtler v College of Physicians and Surgeons of Alberta, 2012 ABCA 145

Some lessons learned:


- Contact/activity log
- Standstill agreements
- Status update letters
 - If no recent action, provide reasons
- Importance of concurrent activity

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Parallel Proceedings

- Who's investigating what?
 - Criminal, civil, conduct, employer
- Different proceedings have different powers and standards of review
 - Duty to cooperate; balance of probability
- Which approach is best for you?
 - To wait or not to wait?
- Consider public safety and interim measures
 - Standstill agreements

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Techniques of Investigation

Intake considerations:

- Sources - written, oral, electronic, own complaint
- Jurisdiction
- Legal sufficiency
 - Consider duty provide assistance and accommodation to complainant
- Establish a rapport, gather information


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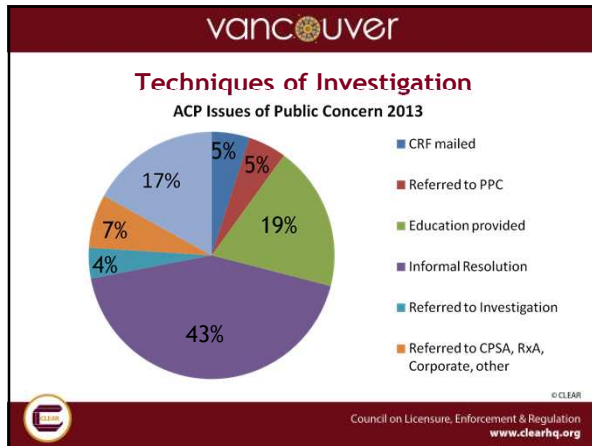
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Techniques of Investigation

Intake considerations (cont.):

- Clarify the true concern(s) of the complainant
- Identify what/how the complainant would like to see happen to resolve concern
- Potential opportunity to provide general info about registrant practice
- Provide info about the process and role of the various parties in the investigation

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Techniques of Investigation

Analysis:

- Apply complaint to regulatory standards/code of ethics
- Assess jurisdiction

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Techniques of Investigation

Decide on a course of action:


- Encourage communication between complainant and investigated person to resolve
- With the consent of complainant and investigated person, attempt to resolve
- Refer to formal mediation
- Get an expert's opinion
- Start investigation (interim measures)
- Dismiss if trivial/vexatious, insufficient evidence

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Techniques of Investigation
What factors lend weight to initiating a more formal complaints process? (e.g., a formal investigation)


- Receipt of a completed, written complaint
- Allegations, if true, would be considered “unprofessional conduct” under legislation
- Seriousness of the allegations
- Patient safety issues
- Governability issues
- Incapacity issues

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Techniques of Investigation

- Investigative planning
 - Role of investigator
 - 5W, develop questions
 - What evidence will be needed to support allegations
- Investigation - execution of plan
 - A stitch in time
 - Flexibility
 - Organizational procedures
 - Duty to cooperate

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Techniques of Investigation

In providing notice of complaint:

- Outline issue(s) to be responded to
- Tie the issues to potential areas of concern (elements of unprofessional conduct)
- Outline the information/documentation required in the response

Plan ahead and organize yourself for interviews


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Techniques of Investigation

Open and transparent (interviews)

- Ensure parties/witnesses understand the process
- Allow both parties to participate, gain cooperation in advance
- Be collaborative
- Educational and remedial (in most cases), both for the registrant and the complainant
- Establish rapport
- Assess non-verbal communications
- Obtain a complete statement (written in advance)

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Speaker Contact Information

James Krempien, Complaints Director
Alberta College of Pharmacists
780-990-0321
james.krempien@pharmacists.ab.ca

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