Complaint Process Q&A

It is the responsibility of the Regulator to address concerns related to the practice of dietetics in Nova Scotia. If you have a concern regarding a dietitian or nutritionist, please review this information to determine whether filing a complaint with the Regulator is the best way to address your concern, and to ensure that you have the information you need to begin this process.

Overview of the Complaints Process

What types of concerns can the Regulator address?
The Regulator has the authority to address complaints about:

- Poor or inappropriate practice which does not meet the dietetics standards of practice or violates ethical principles;
- Inappropriate conduct which reflects poorly on the profession;
- Dietitians who have a health condition which may impair their ability to practise safely; or
- Other concerns which may create a risk to the safety of the public.

The Regulator can only address concerns about individuals who are currently registered as a dietitian or nutritionist or were registered at the time of the incident in question. We cannot address concerns about other healthcare professionals. We also generally do not address complaints that relate primarily to concerns about a workplace, a healthcare facility, or the healthcare system.

What other ways can I address my concerns?
If you are comfortable doing so, you can discuss your concern with the dietitian before filing a complaint. This may resolve the issue. However, we understand that because of the nature of dietetic practice, this may not be practical in all circumstances.

In some situations, it may be best to first raise a concern with a dietitian's employer. You may consider this approach where the employer can address the issue directly and where public safety is not at risk. Depending on the nature of the concern, this may resolve the matter in a fair and efficient manner. However, if any of the following are true, you should consider submitting a complaint directly to the Regulator:

- It is not appropriate to report a concern to the employer for any reason;
- You have reported a concern to the employer but have not received a response within a reasonable time; or
- You think the dietitian may be endangering public safety.

When do I submit a complaint?
Although there is no specific time limit to file a complaint, it is more difficult to investigate incidents which occurred a long time ago. Also, in very serious cases, we may need to act quickly to restrict a dietitian's practice until an investigation is complete. However, it is appropriate to take time to

consider your concerns, review this information, and seek any additional details which you may need prior to filing a complaint.

Can I file a complaint for someone else?
Anyone may file a complaint about the care provided by a dietitian, including family members, friends, employers, other healthcare providers, and members of the public. If you are not the patient who received care, you may not be entitled to details about that individual's health or other personal information.

Who will know I made a complaint?
While there are confidentiality protections in the complaints process, the dietitian the complaint is about will receive a copy of the complaint so they can respond to the concerns. It is generally not possible to remain "anonymous" in the complaint process. If you have a concern but do not wish to be identified as a complainant, please contact us to discuss potential alternatives to filing a complaint.

How long does the complaint process take?

While we try to deal with complaints quickly, it usually takes time to complete the process. The amount of time required depends on a number of factors, including the availability of information and the complexity of the issues. It is often in the public interest to take additional time to obtain relevant information in order to ensure that important factors are not overlooked.

Some complaints may be closed within three months. However, if a complaint is complicated or involves serious issues, it may take a year or longer to resolve.

If you would like an update during the complaints process, please email registrar@nsrd.ca.

After a Complaint is Submitted

Once a complaint is filed, Regulator staff will review it to confirm that we have all of the required information. Once this step is complete, we will send you a letter acknowledging your complaint and providing additional detail regarding the complaint process, generally within 5-10 business days.

The dietitian will also receive correspondence notifying them of the complaint and explaining the next steps within this timeframe.

If we determine that we cannot process the complaint for any reason (*e.g.,* the person you are complaining about is not registered with the Regulator, the complaint relates to an issue we are unable to address, *etc.*), we will advise you of this and potential alternatives you may have to address your issue as soon as possible.

What action can the Regulator take prior to investigating a complaint?
After a complaint is received, and prior to taking further investigative steps, the Regulator may consider whether one of the options available under the Regulated Health Professions Act is appropriate before proceeding with an investigation. These options include:

- **Dismissing** the complaint if the matter is not within the Regulator's authority, it will not be possible to prove the complaint allegations, the reason for filing the complaint was not consistent with the purpose of the complaint process (*i.e.,* public protection), the alleged conduct is in fact consistent with expected professional requirements, or proceeding with the complaint would otherwise not be in the public interest. When a complaint is dismissed, the Regulator may also provide written advice to an affected party.
- **Informally resolving** the complaint where doing so is in the public interest. When considering this option, the Regulator will assess whether the dietitian is willing and able to learn from and address the issues raised in the complaint. While "informal" in that it need not involve a Committee process (described below), a resolution can be rigorous and tailored to the specific circumstances of the complaint. It can include a number of requirements, including education, treatment, monitoring, reflective exercises, and practice limitations.
- Referring the matter to another form of **dispute resolution**, which may include, for example, mediation.
- Authorizing the **resignation** of the dietitian's registration and/or licence. A dietitian who wishes to resign from the Regulator may only do so with the Regulator's permission; it is not possible to resign simply to avoid the consequences of the complaints process.
- Referring the matter to the **Fitness to Practise** process. This option may be available where it appears that the dietitian is experiencing a health condition which is impacting on their ability to practise safely. Both the Regulator and the dietitian must agree to this option. Further detail regarding this process is described below ("Concerns about the Health of a Dietitian").

If the Regulator chooses one of these options, the person who made the complaint and the dietitian will be notified of this outcome in writing. If there is a dismissal at this stage, the person who made the complaint will be advised of their right to have that decision reviewed by the Complaints Committee.

If none of these options are appropriate or available at this stage, the Regulator will **begin an investigation** of the complaint.

What happens during an investigation?
The purpose of an investigation is to gather additional information about the complaint. The investigator, who may be Regulator staff or an external consultant, will attempt to obtain relevant information in a neutral and unbiased manner.

You may feel uneasy about participating in an investigation; however, cooperating with the process is important. The legislation which applies to the investigation process gives the investigator the power to require individuals and organizations to provide relevant information upon request.

If you are the person who filed the complaint (the "complainant"), it is likely that the investigator will contact you to clarify the information you provided in the complaint, which may include interviewing you.

If you are the dietitian who the complaint is about (the "respondent"), please consider the following:

- You have a legal obligation to cooperate with the investigation and respond to communications promptly and honestly.
- You will be expected to provide us with a written response to the complaint, which will give you an opportunity to provide your perspective on the issues under investigation.
- You should submit any information requested of you by the deadline provided.
- You have a right to be represented by a union representative, legal counsel, or another representative, at your own expense. You may wish to consult with your professional liability insurer about obtaining legal representation. The Regulator represents the public interest, not the interests of individual Dietetics. Therefore, while we can provide you with general information about the complaints process, we cannot provide you with advice about how to proceed.
- In some circumstances, you may be asked for consent to participate in the following additional steps during an investigation:
    - A health assessment by a qualified healthcare professional;
    - A review or audit of your practice by a qualified reviewer; and/or
    - A competence assessment by a qualified assessor.
- The investigator may pursue other matters of potential concern which arise while investigating a complaint.

The investigator will determine what additional investigative steps are required, including interviewing individuals who have relevant information and obtaining health records or other documentation.

Once the investigator has obtained the relevant information, the dietitian will be provided with an investigation report and will be invited to respond to it prior to the Regulator making a decision about the next steps. Because the investigation may include confidential information about third parties, the person who made the complaint will not receive a copy of the investigation report; however, they will be advised of the decision made in the next step.

What happens after an investigation?

At the conclusion of the investigation, the Regulator will determine how to proceed based on what is in the public interest. We consider a number of factors, including whether the information obtained supports the complaint, the seriousness of the issues raised, and whether the dietitian has acknowledged any elements of the complaint. At this stage, the Regulator again has several

options, the details of which are explained above ("*What action can the Regulator take prior to investigating a complaint*"):

- Dismiss the complaint (which may include written advice);
- Informally resolve the complaint;
- Refer the matter to another form of dispute resolution;
- Authorize the resignation of the dietitian's registration and/or licence; or
- Refer the matter to the Fitness to Practise process. Further detail regarding this process is described below ("Concerns about the Health of a Dietitian").

If the Regulator chooses one of these options, the person who made the complaint and the dietitian will be notified of this outcome in writing. If there is a dismissal at this stage, the person who made the complaint will be advised of their right to have that decision reviewed by the Complaints Committee.

If none of these options are appropriate or available at this stage, the Regulator will refer the complaint to the **Complaints Committee**.

What is the role of the Complaints Committee?

If the Regulator determines that the complaint requires further review and action, it may refer the matter to the Complaints Committee. When a complaint is referred to the Complaints Committee, a panel is appointed which usually includes two dietetic representatives and one public representative. The panel will carefully review the investigation results. They will decide whether additional information is required to make a decision, which may include:

- Further witness interviews, documents, or responses; and/or
- Requiring the dietitian to participate in a health assessment, practice review/audit, or competence assessment.

Unless the Committee dismisses the complaint, it will invite the dietitian to attend a Committee meeting to answer questions and make comments if they wish. The Committee may also invite other people to appear before it. Complaints Committee meetings are not open to the public.

When the Complaints Committee is satisfied that it has reviewed all of the relevant information that it needs, it will make one of the following decisions:

- Dismiss the complaint (which may include guidance);
- Informally resolve the complaint;
- Refer the matter to another form of dispute resolution;
- Caution the dietitian (where the Committee determines that the dietitian may have breached the expected professional requirements, but in circumstances where a more serious sanction is not warranted, considering all the circumstances);
- Reprimand the dietitian, with their consent (where the Committee determines that the dietitian may have breached the expected professional requirements in circumstances where a more serious sanction is warranted);

- Impose conditions or restrictions on the dietitian's registration or licence, with their consent (where the Committee determines that the dietitian may have breached the expected professional requirements in circumstances where a more serious sanction is warranted, and specific remedial action [*e.g.,* education or treatment] or practice limitations is required to protect the public);
- Refer the matter to the Fitness to Practise process, where the dietitian and the Regulator agree. Further detail regarding this process is described below ("Concerns about the Health of a Dietitian").

If none of these options are appropriate or available at this stage (because a more formal process is necessary), the Complaints Committee will refer the complaint to the Professional Conduct Committee.

The Complaints Committee will provide reasons for their decision in writing. The written decision will be provided to the dietitian, and the person who made the complaint will also receive a summary or copy of the decision.

In certain circumstances, information about the decision may also be shared with other individuals. If the outcome is a more serious sanction (with the consent of the dietitian), a summary of the outcome will be published on the Regulator's website.

Complaints Committee decisions are final and there is no internal review or appeal process. If you wish to consider legal options, you may wish to seek legal advice.

What is the role of the Professional Conduct Committee?
Complaints may be referred to the Professional Conduct Committee when the allegations are serious or when a more formal hearing process is required to consider the evidence.

The Professional Conduct Committee's procedure is more formal than the Complaints Committee and is similar to an administrative tribunal or court. If a complaint is referred to the Professional Conduct Committee, a dietitian is encouraged to retain legal counsel at their own expense, if they have not already done so earlier in the process.

The Professional Conduct Committee will address a complaint in one of two ways:

- **Settlement Agreement**: When the facts and/or outcome are agreed upon by the Regulator and the dietitian, an agreement may be presented to the Committee, which may accept or reject the agreement.
- **Hearing**: If there is no Settlement Agreement, the complaint will proceed to a hearing. A hearing is similar to a trial, where witnesses may be called to give evidence and documents are submitted. Hearings are generally open to the public.

At the conclusion of its process, the Professional Conduct Committee may make one of the following decisions:

- Determine that the allegations have not been proven; or
- Determine that the allegations have been proven, and:

- Revoke the dietitian's registration and/or licence;
- Authorize the dietitian to resign their registration;
- Suspend the dietitian's licence for a period of time and/or until certain conditions have been met;
- Impose conditions or restrictions on the dietitian's registration or licence;
- Reprimand the dietitian;
- Direct the dietitian to complete additional educational or training requirements;
- Direct the dietitian to obtain medical treatment or counselling;
- Impose a fine (in certain circumstances); and/or
- Make another order that the Committee determines is appropriate under the circumstances.

The Professional Conduct Committee may also order that the dietitian pay some of the Regulator's costs in resolving the matter.

The Professional Conduct Committee will provide reasons for their decision in writing. In most cases, the written decision will be provided to the dietitian, and the person who made the complaint may also receive a summary or copy of the decision. A copy of the decision or a summary of the decision may also be published on the Regulator's website.

There is no internal review or appeal process for Professional Conduct Committee decisions. These decisions may only be appealed on the basis of certain legal issues to the Nova Scotia Court of Appeal. If you wish to consider legal options, you may wish to seek legal advice.

What if there is an urgent public safety concern?

At any point after a complaint is received and until the matter is resolved, the Regulator will assess whether it is necessary to temporarily intervene in the dietitian's practice. If intervention is necessary to protect the public, certain measures may be implemented to either prevent the dietitian from continuing to practise, or to impose conditions, limitations or restrictions on their practice while the matter is under investigation. The dietitian may voluntarily agree to these measures (an "Undertaking"), or where warranted, they can be imposed by the Complaints Committee.

This type of intervention is considered extraordinary and is considered in situations where it is required in the public interest based on factors such as the seriousness of the allegations and the likelihood and consequences of alleged actions being repeated. These measures are temporary and only remain in effect until there is a final decision in the matter or it is determined that the intervention is no longer required. This type of intervention does not mean that the allegations against the dietitian have been proven.

Concerns about the Health of a Dietitian

Complaints or reports relating to a physical or mental health condition which affects a dietitian's ability to practise safely ("capacity") may be referred to the non-disciplinary Fitness to Practise process. The Fitness to Practise process may be initiated because of a complaint or a report from an employer, colleague or member of the public; because of information received during another process; or because the dietitian self-reported a capacity issue to the Regulator. The goal of the Fitness to Practise process is to support dietitians to return to practice once it is safe to do so. Participation in the Fitness to Practise process is voluntary.

The dietitian must meet certain eligibility criteria to participate in the Fitness to Practise process, including confirmation that a health concern has impacted on their professional practice, often based on an assessment by a qualified healthcare professional.

The Fitness to Practise process usually involves at least two stages. In the first stage, the dietitian will enter into an agreement to remedy their health condition by participating in specific treatment. Often during this stage, the dietitian agrees not to practise or, in some cases (with Fitness to Practise Committee approval) to restrict or limit their practice. This both protects the public until the health condition improves and allows the dietitian to focus on their wellness. Before entering the second stage, the Regulator will confirm that the dietitian has sufficiently recovered from their health condition such that they can practise safely with appropriate support.

At this stage, the dietitian agrees to comply with certain requirements which create supportive conditions for them to return to practise in a safe and controlled manner. This plan may include ongoing treatment, monitoring, limitations on working conditions, and retraining. The Fitness to Practise Committee (which includes both dietitian and public representatives) must approve this plan.

A failure to comply with the requirements at any stage of the Fitness to Practise process may result in additional conditions, a requirement to repeat an earlier stage, or removal from the process.

Because the Fitness to Practise process relates to the health of a dietitian, information shared with other individuals is limited in order to respect confidentiality.

In certain cases where a dietitian is experiencing a health issue which warrants intervention but has not necessarily resulted in an inability to practise safely, alternative measures such as an informal resolution may be appropriate.

Privacy and Confidentiality

The complaints process is confidential and anyone who receives or has knowledge of information because of their participation in this process must keep that information confidential except in very specific circumstances. This includes a person who makes a complaint, and the dietitian who the complaint is about.

Examples of the limited circumstances in which information may be disclosed include:

- If you are the dietitian the complaint is about: to your own legal counsel, union representative, or healthcare provider;
- If you are the person who made the complaint or are another type of participant in the complaints process (*e.g.,* a witness in the investigation): to your own legal counsel or healthcare provider, legal counsel for the Regulator, or legal counsel or another representative for the dietitian;
- If you are the dietitian the complaint is about, the person who filed the complaint, or a witness in an investigation, you may disclose only the fact that you are participating in the complaints process to your employer;
- With the consent of the person to whom the information relates; or
- As otherwise permitted or required by law.

It is important to understand that if you make a complaint, the dietitian will be provided with a copy of the complaint. They will also generally receive a copy of any relevant information obtained during the investigation of the complaint.

It may be necessary for the Regulator to disclose information during the complaints process. For example:

- Information may be shared with Regulator staff, legal counsel, agents, and committee members in order to administer the complaints process.
- Specific information may be provided to witnesses in order to conduct an investigation.
- Information may be shared with employers when necessary to manage professional practice issues.

Individuals who receive information in these circumstances are themselves required to use confidential information only for the purpose for which it was disclosed to them.

In certain circumstances, in order to address public safety issues or as required by law, the Regulator may disclose or publish information about a dietitian involved in the complaints process. Generally, such information will be limited to that which is required under the circumstances. Most complaints are resolved without publication.

As noted above, most Professional Conduct Committee hearings are open to the public.

Support During the Complaints Process

The mandate of the Regulator is to:

- Protect the public from harm;
- Serve and promote the public interest;
- Subject to the public interest, preserve the integrity of the dietetic profession; and
- Maintain public confidence in the ability of the Regulator to regulate the profession.

We do not represent or advocate for dietitians in the complaints process. We are also unable to act as advocates or representatives for any other participant in the complaints process, including the person who files a complaint. The principles of natural justice require us to conduct investigations and resolve complaints in a procedurally fair and unbiased manner.

We treat all participants in the complaints process with respect and expect the same in return.

If you have made a complaint or are considering doing so and you need support or information, please contact the Regulator. For example:

- You require assistance filing a complaint due to accessibility needs or a language barrier;
- You are unsure whether filing a complaint with the Regulator is the best way to address your concern;
- You are unsure whether what you experienced is acceptable dietetic practice; or
- You are unclear on any aspect of the complaints process.

You are not required to retain legal counsel if you file a complaint. However, if you wish to obtain legal advice, you may consult with a lawyer at your own cost. The Regulator will not be able to advise you on your legal rights or the availability of remedies in court.

If you are a dietitian who has received a complaint, you may contact the regulator to clarify any aspect of the complaints process or your professional responsibilities. Please note that Regulator staff cannot provide you with legal advice or provide specific guidance on how to respond to a complaint. All dietitians in Nova Scotia are required to carry individual professional liability insurance which provides defence costs in regulatory proceedings. Your insurer will be able to advise you whether and to what extent your policy will cover the cost of legal representation in the event of a complaint. Support may also be available through your union representative.

We recognize that the complaints process can be stressful for all participants. You are permitted to disclose your participation in the complaints process to your own healthcare provider to seek support, treatment and guidance.