

Yukon Registered Nurses Association



Professional Conduct Review Complaints and Discipline Policy

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YRNA Professional Conduct Review Program Complaints and Discipline Policy

1.0 Introduction

The purpose of YRNA Professional Conduct Review program is to ensure that the statutory duty to protect the public interest is fulfilled. The Complaints and Discipline Policy provides alternative processes for resolving complaints within the statutory framework of the Registered Nurses Profession Act.

1.1 Philosophy

YRNA believes that the appropriate and timely handling of complaints is fundamental to the role the Association plays in maintaining professional standards and public accountability. As a self-regulating profession, registered nurses have earned the right and taken the responsibility of dealing with complaints and the discipline of members if deemed to be necessary. YRNA is committed to a fair and open process that offers options for the resolution of a complaint. The philosophy of discipline is one of corrective action, taking into consideration the interests of the public, the Association and the individual nurse member.

2.0 Complaints and Discipline Process Flow Chart

(See Appendix 1: Complaints and Discipline Flowchart)

3.0 Definitions

"**Act**" means the Registered Nurses Profession Act, S.Y. 1992 c.11 and amendments there to.

"**ADR**" means alternative dispute resolution and includes all means of dispute resolution outside of the court system. The process of alternative dispute resolution implemented by YRNA is that of Consensual Complaint Resolution.

"**Agreement to Enter into Consensual Complaint Resolution**" is the written agreement signed by the parties and the Mediator/facilitator identifying the terms and conditions within which the mediated resolution of the complaint will proceed.

"**Annual Certificate**" (also referred to as "license" or "registration") means a certificate issued pursuant to the Act.

"**Association**" is defined under the Act as meaning the Yukon Registered Nurses Association (YRNA).

"**Complaint**" is a written document received by YRNA stating a complainant's concern about the practice of a member of YRNA and requesting the intervention of the Association. It must be signed by the complainant. In cases where the complainant is unable to provide written or signed complaint, due to literacy, language or physical barriers, the Executive Director will provide assistance to the complainant, and/or make a decision on an appropriate format for the complaint to be accepted. *(Act reference section 24. (3))*

"**Complainant**" is the person or persons making the complaint against a member of the Association.

"**Complaints Committee**" means the Committee appointed pursuant to section 24. (1) of the Act. The Committee membership includes two registered nurse members and a public representative appointed by the Board. *(YRNA Bylaws reference 26(1))*

"**Consensual Complaint Resolution (CCR)**" is a voluntary process of using an intermediary to bring together a professional and the profession's regulating agency, and on occasion the

complainant, to develop through negotiation and consensus a solution to the issues contained in the complaint.

"Days" means days including Saturdays and Sundays and business or statutory holidays. If time limits expire on a Saturday, Sunday, business holiday or statutory holiday, the date of expiry is considered to be the following normal working day that is not a holiday as per the Yukon Interpretation Act.

"Discipline Committee" means the Committee appointed pursuant to section 28. (1) of the Act. The membership of the Committee shall be three persons, at least two of whom must be registered nurses, appointed by the Board. (*YRNA Bylaws reference 27(1)*)

"Inquiry" means the process required by the Act for the disposition of a complaint by the Discipline Committee. Once initiated, the Discipline Committee has all of the rights, powers and privileges of a board of inquiry appointed pursuant to the Public Inquiries Act. (*Act reference sections 29. and 30.*)

"Memorandum of Agreement" is the written agreement formulated as a result of the Consensual Complaint Resolution process that will provide the basis for implementing the commitments made by the parties. It may be concluded with or without the assistance of a lawyer. All parties and the Mediator/Facilitator sign the Agreement.

"Nursing" means the application of professional nursing knowledge or services for compensation for the purposes as defined in the Registered Nurses Profession Act.

"Party or Parties" include the Complainant, Respondent, YRNA (represented by the Chairperson, Complaints Committee or designate) and all other individuals or agencies that are deemed to have an interest in the process and have been accepted by the Complaints Committee as parties to the complaint.

"Register" means the register established pursuant to the Act.

"Registered Nurse" means a person whose name appears on the register.

"Respondent" is the member of the Association against whom the complaint has been laid.

"Written Decision" is the document prepared by the Complaints and/or Discipline Committee which includes a written report of the decision made and the reasons for the decision.

4.0 Objectives

The objectives of this policy include, but are not limited to the following:

- To provide policy guidance for YRNA professional conduct review based on the Registered Nurses Profession Act (Yukon).
- To provide policy guidance for the Complaints Committee, including a mechanism for handling complaints of professional misconduct received by YRNA.
- To provide a policy framework for the use of Consensual Complaint Resolution as a complementary option to the statutorily prescribed complaints and discipline process. The option maintains the profession's role in protecting public interest, allows for direct participation by the Respondent and the Association, and promotes responsive solutions to complaints.
- To provide policy guidance for the Discipline Committee, including the operation of the administrative tribunal.
- To establish guidelines and minimum standards for the appointment of Investigating Officers and mediators.

5.0 Principles

5.1 Public Interest

YRNA has been granted authority for self-governance through legislation. This authority gives the Association responsibility to regulate the nursing professional in the public interest. To act in the public interest is to consider the benefit and risk of action or non-action to the community-at-large rather than the benefit to an individual or profession. Nurses are expected to report nursing care which they believe to be inappropriate, unsafe or unprofessional.

5.2 Fairness

In the interests of natural justice, the professional body has a duty to act fairly. This means that throughout the management of the Professional Conduct Review Process, a regulating authority must follow an administrative process. This process must ensure that the steps through which a decision is made and the basis for that decision are legal and fair to all parties. Procedural fairness has been served when the following conditions have been met:

- The respondent has the right to know the case against him or her and the right to respond to the allegation(s) before a decision is made;
- The respondent has the right to a decision from an unbiased decision-maker;
- The respondent has the right to have the case decided by the individual(s) who hear(s) it.

5.3 Transparency

Transparency is the ability to be readily understood and accessed. Transparency includes the assurance that members of the public are able to easily understand and access the PCR process. The need for transparency must be balanced against the confidentiality requirements of the process.

5.4 Jurisdiction

The jurisdiction of YRNA is defined by the Registered Nurses Profession Act that defines the mandate of the professional body. Allegations about a member's professional practice and conduct must be measured against the Standards for Nursing Practice in the Yukon, the Code of Ethics and the mandate of the professional body. Information provided in the complaint, gathered through the investigation process and presented to the Committees must be clear and include factual details in order to ensure that the PCR process remains within the jurisdiction of the Association.

5.5 Administrative Efficiency

Administrative efficiency is the management of the conduct review processes with fairness, in the public interest, in a timely fashion and with consideration of the costs in both human and financial resources.

(See Appendix 2 for further information on the principles including rationale and examples.)

6.0 Prevention of Professional Conduct Problems

YRNA is committed to the prevention of professional conduct problems that may lead to a complaint. Prevention activities may include:

- Ensuring registered nurses and their employers are aware of professional and ethical standards governing the practice of registered nurses; this includes the promotion and distribution of the publication "Standards for Nursing Practice in the Yukon".
- Providing information and clarification to employers, members of the public and registered nurses on the Standards for Nursing Practice in the Yukon, the Code of Ethics and other relevant topics.
- Providing advice on the education of nurses to employers and other interested people.
- Providing training in the Professional Conduct Review process to those individuals with a role in the process.
- Encouraging employers to maintain active Employee Assistance Programs and nurses to seek assistance from available sources as required.
- Offering advice to nurses and employers in the development of preventative policies, procedures, Employee Assistance programs and effective performance management and conflict resolution mechanisms.
- Promoting good quality communication between nursing professionals and their patients or clients and employers.
- Provide professional support including access to nursing practice advice through YRNA.
- Providing information to employers of nurses on the role of YRNA in the complaints and discipline process, including the Consensual Complaint Resolution option.

7.0 Complaints and Discipline Committee Process

The Complaints and Discipline committees are set up under the act and the association bylaws to act independently to carry out specific roles and responsibilities within the PCR process.

7.1 Complaints Committee

If a complaint is received, the Chairperson of the Complaints Committee will be notified by the Executive Director or delegate once the initial assessment has been completed by the Executive Director (see section 8.2 of this policy for a description of the initial assessment). The Chairperson and the Executive Director will refer the complaint to the Complaints Committee for review and decision. According to the bylaws, the Complaints Committee shall include two registered nurse members (including the Chair) and a public representative.

7.2 Discipline Committee

If a complaint is referred to the Discipline Committee by the Complaints Committee, the Chair will convene a meeting. The Discipline Committee shall be three members (including the Chair), at least two of whom must be registered nurse members. The public representative is strongly recommended but legally optional at the Discipline Committee stage of the process. It is recommended that one public representative be appointed in order to be assured of transparency. If the Discipline Committee is larger than the minimum established, a panel of three members may be appointed by the Committee to hear the complaint.

Suggested qualifications of Discipline Committee members include:

- Available to participate in the committee work and not on the Complaints Committee.
- An active practicing member of YRNA or an appointed public representative.
- Where possible, will have completed appropriate YRNA Administrative Tribunal training or alternative approved by the Executive Director.
- Willingness to complete a refresher course prior to the first hearing if the training was completed more than 12 months prior to the first hearing date.
- Signing of Declaration on Conflict of Interest and Declaration and Undertaking Not to Disclose forms.

Two of the three members appointed to the Discipline Committee panel must meet all criteria. The third member may be appointed without meeting all criteria. YRNA will keep a record of participation by members in the PCR process in order to establish eligibility for appointment. The record will include name, dates and nature of any training courses attended, dates and role assignment of any involvement in the PCR process as a Chair, committee member or Investigating Officer (IO). (*See section 9.0 for information on the Investigating Officer*)

7.3 Appeal Committee

If an Appeal is launched against the decision of the Discipline Committee, the Board shall appoint an Appeal Committee. The Board shall designate a Chair of the Committee and no member that has served on the Complaints or Discipline Committee on the complaint in process may serve on the Appeal Committee. The Appeal Committee shall have one or more persons on the Committee. All decisions require a majority vote of the quorum and the Chair may cast a deciding vote in cases of a tie. Board members may serve on the Appeal Committee and it is expected that at least one member of the Appeal Committee be a member of the Association.

7.4 Assistance for the Committees

YRNA Board, or Complaints Committee or Discipline Committee under the supervision of the Board may employ necessary legal and other assistance as approved by YRNA Board. The Association is responsible for the expenses. (*Act reference section 47.*) Upon appointment of a Discipline Committee or panel of the Discipline Committee to hear a complaint, the YRNA Board will be notified by the Chair of the Discipline committee of the requirement to appoint legal counsel to represent the Association in any proceedings. The same arrangements may be made for the Appeal Committee. In addition, secretarial services will be secured for the Committee from within YRNA or via contract with an outside agency. The secretarial services will assist in

providing access to documents under the rules of full disclosure, booking the hearing, screening documents for the review of the Discipline Committee and other administrative duties.

8.0 Complaints Policy

The policy of YRNA is that each complaint that is received will be fully considered in accordance with principles stated in section 5.0 and this policy. Within that framework, an alternative Consensual Complaint Resolution option is available for the processing of a complaint that has been deemed legitimate and within the jurisdiction of YRNA. The Consensual Complaints Resolution option is offered at the Complaints Committee stage of the process.

8.1 Commencement of a Complaint

A Complaint may be made against a YRNA member by any person as long as it is received in writing and is signed by the complainant. YRNA will ensure that assistance is provided to a complainant that is unable to submit a written complaint due to illiteracy or disability.

8.2 Initial Assessment

All complaints require a response by the Complaints Committee or a person acting on its behalf. The initial assessment of the complaint will be completed by the Executive Director or delegate within five days to determine the following:

- Whether the complaint is in writing, and
- Whether the complaint is against a practising YRNA member, or an individual who was a YRNA member at the time of the incident(s) alleged in the complaint; and
- Whether the complaint is signed by the complainant; and
- Whether the complaint includes an allegation of behaviour deserving of censure against a member.

If assistance is required in drafting the complaint in writing due to literacy, language or other barriers, arrangements will be made by YRNA to provide assistance to the complainant.

If the complaint meets the criteria, it will be forwarded to the Complaints Committee. If the complaint fails to meet the criteria, the Executive Director will inform the complainant of that.

8.3 Complaint assessment

Whenever possible, the Complaints Committee will meet for the purposes of further assessment of the complaint within five days of the completion of the initial assessment by the Executive Director. This meeting may be held by conference call if necessary.

The Complaints Committee will determine whether or not the complaint is within the jurisdiction of YRNA. YRNA jurisdiction includes all of the following:

- The complaint is made against a member of YRNA or an individual who was a member of YRNA at the time of the event that triggered the complaint.
- The respondent is a resident of the Yukon or is a former Yukon resident currently living elsewhere.
- The event or set of circumstances giving rise to the allegation of misconduct occurred in the Yukon or while the nurse was acting as a member of the Association.
- The complaint involves an event or set of circumstances that is related to the practice of nursing in Yukon.
- The complainant is a person who is an adult or is speaking on behalf of a minor child or non-competent adult.

If the complaint is not within the jurisdiction of YRNA, the complainant will be informed in writing. If the complaint is within the jurisdiction of YRNA, the Complaints Committee will make a decision about the next step in the process.

Requirement to Give Notice: The respondent must be notified of the complaint. If the complaint has been found to be outside of YRNA jurisdiction, the respondent is informed that the complaint has been received, but has not been accepted by the Complaints Committee. If the complaint has been accepted, the respondent and the complainant are provided with the date on which the Complaints Committee will render an initial decision.

The complainant has the option to withdraw the complaint at any stage of the process. If the complaint is withdrawn, the process ends and all parties are informed.

Step 1: Determining the Grounds related to the Complaint

Once the requirement to give notice has been met, the Complaints Committee will determine whether there are reasonable and probable grounds for holding that the conduct of the respondent is capable of being found as conduct deserving of strong disapproval/censure.

Points to be considered in making the determination are as follows:

- The complaint is not frivolous or vexatious
- Substance of the complaint could be considered as a breach of Standards of Practice, Code of Ethics or commonly understood guidelines for good professional practice of nursing and that the conduct is deserving of censure

In order to complete Step 1, an Investigation Officer(s) may need to complete a Level 1 investigation. (see Section 9.1)

The Registered Nurse Profession Act empowers the Complaints Committee, at any point in the process of pursuing a complaint in which they feel there is evidence of significant threat to public safety, to direct the Registrar to suspend a member's license to practice as a registered nurse (annual certificate) pending outcome of the investigation.

If the complaint is found to be frivolous or vexatious or if sufficient grounds are not found to consider the member's practice deserving of censure, it is dismissed and the complainant and respondent informed.

Step 2: Rating of Complaint

Once the complaint is accepted as legitimate, a rating may be completed by the Complaints Committee, if they find it useful in determining their approach. The objective will be to assess the complaint and rate it according to seriousness as follows:

Seriousness Rating

A. Serious Threat to Public Safety

This category includes any complaints that allege sexual abuse. It also includes allegations of very serious incapacity or incompetence on the part of the professional that if left uncorrected, could pose a significant threat to public safety. Included in this category are those cases in which the member has been convicted of a serious criminal offence related to the practice of nursing or the person's ability as a nurse.

B. Moderate Threat to Public Safety

Complaints that involve less serious incapacity or incompetence allegations, the resolution of which are important to both the complainant and to the public-at-large. This category includes conduct that is unprofessional but not directly dangerous to the public.

C. Minimal Threat to Public Safety

Complaints with minimal risk to public safety are those relating to communication, administration and behavior problems.

D. Complaint Dismissed

Complaints that are found to be unsubstantiated or without grounds.

Step 3: Types of Complaints

The complaint may be designated as falling within one or more of the following types:

- Professional Incompetence
 - Failure to assess client
 - Failure to intervene appropriately
 - Failure to document appropriately
 - Poor interpersonal skills
- Professional Misconduct
 - Verbal abuse
 - Misappropriation of Property
 - Falsification of Records
 - Emotional abuse
 - Physical abuse
 - Breach of confidentiality
- Professional Incapacity
 - Substance abuse
 - Mental health problems
- Criminal Offence
 - Against person
 - Drug or alcohol related

YRNA reserves the right to enlarge or make additions to these categories depending on the circumstances related to the complaint.

Step 4: Routing of the Complaint:

After a preliminary assessment, the Complaints Committee reaches a decision on the appropriate initial steps to be taken. Among the options they may choose are:

- a request for more information from the complainant, or
- appointment of one or more Investigation Officer(s), to complete a Level 1 investigation, or
- a decision to offer a Consensual Complaint Resolution (CCR) without further fact finding, or
- in exceptional circumstances, a decision by the Committee to route the complaint directly to the
- Discipline Committee

At any point in the complaint process, where the Complaints Committee believes they have sufficient information to determine the substance of and parties to the complaint, they are empowered to offer the CCR option to the respondent. More detailed information on the CCR process can be found in Section 11 of this document.

Complaints of all seriousness ratings, after being assessed by the Complaints Committee, may be considered for Consensual Complaint Resolution, if:

- after preliminary fact finding is complete and the results available to the Complaints Committee, the decision to further pursue the complaint has been made.

- the Complaints Committee deems this route appropriate and able to meet the Association's duty to protect the public interest.
- the parties are willing to engage in the CCR process
- the parties acknowledge and accept that the CCR process include the same range of possible outcomes as a formal Discipline process, up to and including termination of a member's license to practice nursing
- a suitable mediator/facilitator is available to guide the process

This route requires the voluntary participation of the Respondent and of YRNA. Generally, the Association will be represented in the CCR process by the Coordinator of Regulatory Programs and/or the Executive Director. When considered appropriate to provide the Complainant with the opportunity to speak or to seek reassurance or resolution of personal differences, the Complaints Committee may offer to the Complainant the opportunity to participate. In all cases, however, the primary parties will be YRNA and the Respondent, and a decision by the Complainant to decline participation will not preclude entry into the CCR process.

The respondent must be assured that new information revealed during the CCR process cannot be brought to a disciplinary hearing that may follow on the current complaint should CCR prove unsuccessful. Information revealed during the CCR process may, however, be used by YRNA in proceedings that result from a failure by a respondent to comply with any conditions agreed to through the CCR process (as written into the Memorandum of Agreement)

As stated above, the Consensual Complaint Resolution process can result in the same outcomes and consequences as those that might be reached through the traditional Discipline process of Inquiry/Hearing. Before entry into the CCR process, a Respondent must indicate cognizance of potential outcomes up to and including suspension, resignation or revocation of license to practice as a registered nurse, or the imposition of monitored conditions to practice being placed upon the license.

If the CCR process is not offered, or is declined by the respondent or by YRNA, the respondent will be provided information on the nature and timing of the investigation and the method by which the final written decision of the Complaints Committee will be delivered.

Step 5: Informing the Parties

The written decision of the Complaints Committee shall be sent by certified mail or personal service to the parties. This will be the second notice. In the case of a successful CCR mediation, the written decision will include the Memorandum of Agreement reached as a result and the Complaints Committee ratification. All parties will be informed that YRNA will not be responsible for any costs that the parties may incur for telephone, fax, travel, accommodation or other costs related to their participation in the process. All parties will be informed that YRNA is not responsible for the cost of legal or other advice and assistance.

8.4 Complaint Committee Decision

The formal Complaints Committee process includes the assessment of the complaint, the investigation by an Investigation Officer as described in section 9.0 and a decision carried out in a meeting of the Committee. The meetings of the Complaints Committee may be held by conference call if necessary.

Each Consensual Complaint Resolution process must result in a written Memorandum of Agreement, signed by all parties involved (generally the YRNA representative and the respondent), and by the mediator. The Memorandum of Agreement shall be taken to the

Complaints Committee for review and ratification prior to being finalized. The Complaints Committee will make a determination as to the ability of the terms of the agreement to protect the public and to address identified concerns about the respondent's practice. After review of the agreement the Complaints Committee, in accordance with the information it receives shall:

- Accept the Memorandum of Agreement reached through the CCR process and
- direct the parties to carry out the provisions therein, or
- direct the parties to the Consensual Complaint Resolution to return to the
- process to seek a revised Memorandum of Agreement able to meet the Committee's criteria for the protection of public safety, or
- direct that the matter (complaint) be referred to the Discipline Committee, or
- decide that no further action be taken.

A Memorandum of Agreement accepted by the Complaints Committee will receive a final signature by the Committee Chair or designate.

In accordance with to Step 5 above, the Committee shall give its decision in writing and it shall be forwarded to the member complained against and to the complainant by certified mail or personal service. If additional parties were included during a Consensual Complaint Resolution process, those additional parties will also receive a copy of the decision.

9.0 Investigation Process and the Role of the Investigation Officer(s) and Legal Counsel

Investigation Officers will work alone, or on occasion in teams of two. The team approach provides for increased opportunity to collect and record information, the additional perspective offered by a second Investigation Officer and the ability to share skills and experience through mentorship. The role of the Investigation Officer is one of fact finding. The Investigating Officer (IO) is considered to be a neutral technical expert in nursing. The role of the IO is to examine and evaluate the disputed facts and key issues and render a non-binding report to the Committee(s). The report of the IO is provided to the complainant, the respondent, any additional parties and the Complaints Committee. In the event the complaint proceeds beyond the Complaints Committee, the report(s) are not made available to the Discipline Committee.

9.1 Fact-Finding Levels

The fact finding has three distinct levels within the process:

Level 1: Preliminary Fact Finding

Once the complaint has been accepted as having reasonable and probable grounds, the Complaints Committee may request a Level 1 Fact finding process be commenced. Level 1 fact finding will be as minimal as possible to determine the following:

- The parties to the dispute - there may be additional parties beyond the complainant and the respondent such as YRNA, employer, supervisor or others.
- The nature and extent of the complaint in order to assess risk to public safety and determine an appropriate initial response.

All of the facts of the case do not need to be determined at this time. The information gathered will not be provided to a mediator. The parties to the dispute will present the information they see as relevant. The Complaints Committee may choose to request additional written information from the Complainant without engaging an IO at this point.

Level 2: Fact Finding for the Complaints Committee

The second level of fact finding is to provide information for the decision-making process by the Complaints Committee on appropriate routing of the complaint. This fact-finding process will be more intensive and thorough. The process is focused on the following:

- The collection of available facts relating to the complaint through interviews and documentation review. Submissions may be collected in writing or written by the IO as a report of an oral report taken during an interview.
- The organization and presentation of the information to the parties and the Complaints Committee. The information collected through witness interviews will be provided in the form of a signed statement which is a transcription of the statement in the witness's hand writing or as documented by the IO and in either case signed by the witness.

Should the investigation uncover information about additional practice issues or incidents of misconduct by the respondent, the complainant should be consulted as to whether it is his or her intent that these also be included in the assessment of the complaint, and should provide written direction regarding them to the Complaints Committee.

Level 3: Fact Finding by Legal Counsel

In the event that the complaint is referred to the Discipline Committee, additional fact-finding may be required. The fact-finding will be conducted by the legal counsel appointed by YRNA. The process is focused on the following:

- Ensuring all relevant facts have been collected in sufficient detail to meet the needs of the Committee.
- Providing the facts to the parties in order to provide them an opportunity to speak to the facts during the Discipline Committee inquiry.
- Full disclosure of the available facts and results of the investigation at least ten days prior to the hearing provides an opportunity for the parties to prepare their submissions.
- Additional areas of investigation deemed necessary by the legal counsel.

9.2 Selection of Investigation Officers

The Complaints Committee will appoint the Investigation Officer(s).

The Investigation Officer(s) will be selected based on the following criteria:

- No professional or personal relationship with complainant or the respondent that could lead to allegations of conflict of interest or bias
- A minimum of five years work experience as a registered nurse
- Registered Nurse actively practicing in the Yukon or another jurisdiction in Canada
- On occasion, technical expertise in the area of nursing from which the complaint arises may be seen as necessary for effective completion of the investigation
- Completion of YRNA training program for Investigation Officers or alternate acceptable training within the prior five years, including at least one joint investigation with a more experienced Investigation Officer
- Willingness to complete brief refresher training prior to initiating the investigation if the training program was completed more than one year prior to the commencement of the investigation

9.3 Investigative Powers

The Complaints Committee and any investigator appointed by the Committee have power to investigate a complaint. YRNA may request any person to answer any question and produce evidence. With the consent of the person providing the evidence, YRNA may copy and keep copies of documentary evidence (*Act reference section 24.4*).

9.4 Inquiry Powers and Witnesses

The Discipline Committee shall have the same power as is vested in a court of record in civil cases to enforce attendance of persons as witnesses, compel them to give evidence and produce documents and things. (*Public Inquiries Act 5.*)

The witnesses required to attend under subpoena at a hearing are to be paid the same as if appearing in the Yukon Supreme Court. (*Act reference section 38.*) There is no statutory authority to pay witnesses outside of a hearing process (i.e. in the investigation stage).

10.0 Rights and Responsibilities of the Parties

The rights and responsibilities of the parties to the complaints and disciplinary process include but are not limited to the following:

10.1 Right to be Informed and Respond

The parties have the right to know the case against them and the right to respond. The respondent has the right to submit information, provide explanations or make representations to the Committees concerning the matter.

The parties have the right to remain informed of the status of the complaint and the outcomes of any decision-making process related to the complaint.

10.2 Right to Representation and Counsel

The parties have a right to representation and a right to counsel at all levels of the Professional Conduct Review process. Representation may be provided by an individual who may not be a lawyer. A party may authorize a representative to attend meetings, Consensual Complaint Resolution sessions or hearings on behalf of the party. Counsel is an individual who is a member of the Yukon Law Society in good standing that has been retained to provide legal advice and/or representation for one of the parties.

10.3 Authorization of Representative or Counsel

If the representative or lawyer attends without the party being present, a letter authorizing the person to act on behalf of the party is required.

10.4 Confidentiality

All information communicated by a party in the course of the CCR process or during the process of dealing with the complaint or discipline process is confidential. The mediator must also hold the information in confidence. A party must not disclose such information to anyone except for the purposes of the mediation, complaints or discipline process. If such information is disclosed for the purpose of dealing with the complaint, the party must require any person to whom such information is disclosed to hold it under the same confidentiality rules. Any breach in confidentiality will be considered very serious by YRNA.

Exceptions to the strict confidentiality rules are as follows:

- Provision of relevant information to persons authorized in the particular process, including an assistant or representative of a party;
- Where the information suggests an actual or potential threat to human life or safety;
- If a matter is not resolved at the Complaints Committee stage in the process and a person is called upon to testify before a Discipline Committee;
- Information provided in the publication of a decision of the Discipline Committee; and
- For research or educational purposes specifically permitted by the Board of YRNA and the Complaints or Discipline Committee.

10.5 Privilege

All evidence given in an administrative hearing such as a disciplinary hearing is privileged to the extent that it cannot be used against that person in a subsequent proceeding. This allows people to speak freely without concern for potential legal consequences.

10.6 Other Procedural Rights

The parties or their representatives or counsel have the right to cross-examine witnesses. The respondent and the complainant have a right to a hearing before the person making the decision. The parties have a right to adjournment of a hearing on reasonable grounds and the right to be provided reasons for the decision of the Committee.

11.0 Consensual Complaint Resolution Option

CCR is a process of dispute resolution focused on effective communication and negotiation skills. The focus of the mediator or facilitator is on the process of communication and negotiation being used by the parties in their discussions. The mediator's role is to assist the parties in communicating and negotiating more effectively, thereby enhancing their ability to reach a settlement. It is not the mediator's role to make a decision on the issues in dispute and the mediator has no authority to impose a solution. Any costs related to CCR will be paid by YRNA unless alternative arrangements are made.

11.1 Mediator Roles and Responsibilities

Roles:

- **Facilitating:** The mediator will explain the role of facilitator and how it differs from an adjudicator (final decision-maker). The mediator will work with the parties to create an atmosphere where parties can feel free to discuss the issues in dispute between them openly. Guidelines set in this policy will be followed along with guidelines that may be set by the mediator. In the case where guidelines are in conflict, YRNA PCR Policy will be followed.
- **Controlling the Climate and Pace:** The mediator is trained in dealing with high emotion and interpersonal conflict. In addition, the mediator is responsible for moving the pace of the process along toward resolution at a speed that is comfortable for the parties.

Responsibilities:

- To act impartially and independently.
- To act in accordance with a written code of ethical conduct.
- To disclose actual or possible conflicts of interest that exist prior to the initiation of mediation or arise during the mediation.

11.2 Guidelines for Consensual Complaint Resolution

The following guidelines are generally accepted in alternative complaint resolution in order to ensure the most effective process:

Safe and Informal Atmosphere: The informal setting and atmosphere of CCR is conducive to effective communication between the parties about their interests.

Being Fully Heard: The parties are provided a full opportunity to be heard and to vent the emotional side of the dispute.

Voluntariness: In a mediated resolution process, the participation of the parties is voluntary. In addition, the parties are not required to accept any resolution that is proposed, and they should accept only those resolutions which they feel are fair and reasonable. If one of the parties withdraws voluntary participation from the process, the mediator is authorized to end the CCR process.

Confidentiality: The Mediation/CCR approach has the highest chance of leading to effective resolution of a dispute where the discussions take place in confidence. The CCR discussions take place on a "without prejudice basis" which means that concessions that one party may have made during the CCR process cannot later be raised if the mediation is unsuccessful. The mediator also operates in strict confidence.

Privilege: The mediator will be granted a voluntary privilege whereby the parties agree not to subpoena the mediator at a discipline hearing. This helps to build trust in the mediator and gives the mediator more freedom in working with the parties.

Power Imbalance: If a power imbalance between the parties cannot be neutralized during CCR and is rendering one of the parties ineffective as a negotiator, CCR should not proceed. In the event of an identified power imbalance that does not respond to interventions, the mediator is authorized to end the CCR process.

11.3 Qualifications of the Mediator

The mediator selected by YRNA Complaints Committee must be trained, experienced, neutral and impartial. The mediator will be chosen by YRNA from a list of qualified people. In some cases, to ensure the agreement is reached and worded in accordance with standards in law, YRNA may elect to seek a mediator who is also a lawyer.

A mutually acceptable mediator is the best option. In the event that agreement on a mediator cannot be reached within seven days of the decision to mediate, a mediator will be appointed by the President of YRNA.

The criteria to be used to maintain an active standing on YRNA list of mediators is as follows:

- Training - a B.C. Justice Institute Certificate or equivalent as a minimum
- Experience - completion of at least ten paid mediations
- Orientation - the completion of the Orientation to YRNA Complaints and Discipline Process for Mediators (half day workshop).
- Code of Ethics - adherence to a written code of ethics.
- Agreement - willingness to sign the Agreement to Enter into Consensual Complaint Resolution and adhere to the provisions of the Agreement.

11.4 Steps in the Consensual Complaint Resolution Process

Step 1: Identification of the Parties

YRNA and the respondent are the parties that will most often be involved in CCR. Where the primary outcome sought in the process is resolution and peace of mind for the complainant, he/she will be asked to be a party in the process. The mediator will work with YRNA representatives to ensure that any additional parties have been identified and that they will be invited into the mediation process. It is more likely that the CCR process will be successful if the respondent consulted prior to the inclusion of additional parties or, in the case of a three-party CCR, the respondent and the complainant are consulted.

Step 2: Assessment

Once the parties have indicated an interest in CCR, the appointed mediator will establish initial contact with them to explain the process and what is expected of the parties in working toward a solution. The mediator may have insight as to whether, from their perspective as a mediator, the situation is suitable for the CCR process.

Step 3: Initiation of the CCR process

The mediator will make arrangements for the first CCR session. The mediator will ensure all parties are familiar with ground rules to guide the CCR sessions. During their preparation for the sessions, if they have any questions about roles, responsibilities or expectations, the parties are directed to contact the mediator. The mediator will also gather initial information about the complaint from the Executive Director of YRNA, Complaints Committee and/or Investigation Officer, identify some of the issues and set the agenda for the CCR session(s). At the first CCR session or prior to the first session, the Agreement to Enter into Consensual Complaint Resolution will also be discussed and signed off by all parties. (see Appendix 3)

Step 4: *Understanding the Issues and Interests Involved in the Complaint*

This step involves the parties having an opportunity to present their perspective on the issues in dispute to the other parties and the mediator, with the mediator attempting to ensure clarity. The mediator will work to clarify each parties' understanding of the facts as well as to identify interests the parties have that underlie their stated views and positions. The mediator will focus on the interests such as values, needs, concerns, aspirations, limitations and priorities as well as the reasons behind what the parties wish to achieve. In addition, the mediator will seek to identify common interests and understanding.

Step 5: *Creating Options and Negotiation*

Once the issues and interests have been fully explored, the mediator will assist the parties in identifying possible options for resolution of the complaint and guide the parties through a process of negotiation.

Step 6: *Evaluating Options and Reaching an Agreement*

Once the options have been fully described, they are evaluated against the identified interests of the parties. This stage of CCR involves the mediator working with the parties to find a solution that is agreeable to each of them. A brainstorming process which involves generating ideas on a non-committal basis provides a broad basis from which a solution package can be put together. The role of the mediator is to guide the problem solving process without generating the solution as the parties are in the best position to identify the essential elements to a workable, long-lasting agreement. The best agreement is the one that can meet the majority of interests and provides for an acceptable degree of comfort and satisfaction for the parties.

The Memorandum of Agreement will describe the substance of what has been agreed between the parties as well as the plan for implementing and monitoring the agreement.

The Memorandum of Agreement is signed by the parties and may include the following elements:

- Acknowledgement by the respondent of his/her role in the incident, and where appropriate, the suffering or potential harm to the complainant or others arising from the situation.
- May include an undertaking by the respondent to take specified courses, undergo a peer assessment or permit monitoring by YRNA.
- Where the complainant or others are participants in the process, acknowledgement by the complainant and other parties for their role in the situation and any action intended as a result of the agreement.
- The resolution of the case may include the nurse respondent agreeing to restrictions on his/her license for a period of time, or the withdrawal of the license on a temporary or permanent basis.
- Arrangements for remediation or repair including monetary awards are not permitted.

Step 7: *Referral to the Complaints Committee for Ratification*

Once the Memorandum of Agreement has been drafted and signed, it is referred to YRNA Complaints Committee for ratification. The Complaints Committee will assess the agreement against the duty to protect the public interest. The Committee may request review of the Agreement by one or more lawyer(s) prior to reaching a decision on ratification. The Committee will then choose one of these options:

- accept the Memorandum of Agreement reached through the CCR process and direct the parties to carry out the provisions therein, or

- direct the parties to the Consensual Complaint Resolution to return to the process to seek a revised Agreement of Understanding able to meet the Committee's for the protection of public safety, or
- reject the Agreement and direct that the matter (complaint) be referred to the Discipline Committee, or
- decide that no further action be taken.

Step 8: Reporting

The mediator is responsible for submitting the signed written Agreement to Enter into Consensual Complaint Resolution, the signed written Memorandum of Agreement as well as a brief written report on the CCR process, including recommendations for improving the process in the future. The Memorandum of Agreement sets out the terms of the arrangement reached as a result of the mediation process. A Memorandum of Agreement may involve drafting by lawyers, if required. The documents delivered to the Committee, once ratified by the Committee become the written decision of the Committee. All documentation will be stored in YRNA office in a separate and secure cabinet or individually locked drawer.

11.5 Termination of CCR

The formal Complaint Committee process will be reactivated immediately if any one of the following occurs:

- The Respondent declines the invitation or one of the parties refuses to sign an Agreement to enter into CCR;
- One of the parties withdraws voluntary participation after CCR has commenced;
- The parties agree to terminate CCR;
- The mediator withdraws or terminates CCR;
- The Complaints Committee refuses to ratify a Memorandum of Agreement (unless the Committee directs the parties back into mediation to consider amendments to the agreement);
- Thirty days has elapsed from the beginning of the first session or at least three CCR sessions totaling eight hours of mediation has been completed without an Agreement (unless the Complaints Committee determines that an Agreement is imminent and it is in the best interests of all the parties to continue);
- The respondent fails to comply with a Memorandum of Agreement ratified by the Complaints Committee.

11.6 Enforceability

The Memorandum of Agreement is enforceable by the Complaints Committee. The Complaints Committee will monitor the implementation of the binding Memorandum of Agreement to ensure that the public interest continues to be met. In the event that the parties fail to implement the agreement following the signing of a Memorandum of Agreement, the Complaints Committee will notify the parties of their intent to proceed with the complaint through the formal disciplinary process. If a member fails to meet his or her obligations under the Memorandum of Agreement, then specific allegations may be referred by the Complaints Committee to the Discipline Committee. The Association, in the form of the Discipline Committee, after hearing the matter, would then be able to make the appropriate disposition under section 41 of the Act.

12.0 Discipline Policy

The Discipline Committee begins its work when a complaint is referred by the Complaints Committee. No member of the Complaints Committee can serve on the Discipline Committee for the same complaint (*Act reference section 28.4*).

12.1 Time Limits

When the Complaints Committee refers a matter to the Discipline Committee, the Complaints Committee shall advise the Board in writing of the nature of the Complaint and of the decision to refer the matter to the Discipline Committee whereupon the Board shall forthwith appoint counsel to represent the Association in any such proceedings.

Subject to an express waiver of this condition by the member against whom the complaint is made and by the Board, no notice of inquiry shall provide for any hearing more than 60 days from the date of service upon the Member of the notice of Inquiry. The Discipline Committee must, within thirty days of the referral of the complaint, fix a date, time and place for holding the inquiry. In general, it is best to hold the inquiry as soon as possible, allowing for appropriate notice periods and time for preparation by the parties.

12.2 Notice of Inquiry

The Discipline Committee shall serve written notice of the date, time and place of the inquiry upon the respondent and the complainant. In addition, a copy of the written complaint will be sent to the parties. The parties will be notified of the names and contact information of all other parties. The notice will be delivered personally or by certified mail at least thirty days prior to the date of the inquiry. Personal service is preferred. Notice sent by mail shall be deemed to have been served on the fifth day after the date it was posted. Further, the notice shall state the nature of the conduct to be focused on during the inquiry, specify the time and place of the hearing, and state that the member may be represented by an agent.

12.3 Pre-hearing Procedure

Pre-hearing procedure may be required to facilitate the process and deal with the disclosure of witnesses as well as the disclosure and exchange of documents. The fairness of the process will be protected by arranging for full disclosure of evidence prior to the inquiry date. The specification of time lines for certain actions and the planning of the hearing(s) is also carried out as part of the Pre-hearing procedure.

The Discipline Committee may hold a pre-hearing meeting or series of meetings with the parties following the appointment of the Discipline Committee. All disclosure between parties must be complete at least ten days prior to the inquiry in order to assist the parties in preparing for the inquiry. Disclosed documents will not be provided to panel members until the hearing date.

A pre-hearing meeting may be held by telephone conference call or other electronic means.

The Discipline Committee may, at or after a pre-hearing meeting and from time to time throughout the process:

- Deal with preliminary applications from the parties,
- Identify issues to be addressed in the hearing,
- Prescribe times and schedules and require the parties to act in accordance with time frames established,
- Determine hearing dates,
- Determine what documents are to be discovered, produced and inspected during disclosure and provide directions related to ensuring full disclosure,
- Determine all other procedural matters, and/or
- Give direction for the efficient and expeditious conduct of the disciplinary hearing process.

12.4 Disclosure of Information

Documentary Evidence

Each party must deliver to the other party or parties and to the Discipline Committee within twenty days of receiving the notice of inquiry, a list of all documents that are in the care, custody or control of the party and that are relevant to the dispute.

The secretary for the Discipline Committee will be responsible for keeping the official list of all documentary evidence submitted, submission date and party submitting the evidence. Each document will be assigned an official number and the parties will be notified of the number of each document to assist in efficient administration of the process and the hearing.

The Discipline Committee may give directions about what documents are to be listed and produced for inspection and copying. Each party must allow reasonable access to such documents, and for the delivery of the full set of documents to be introduced at the hearing to all parties and to the Discipline Committee members.

The Discipline Committee will determine whether the parties agree that a document is accepted as having originated from the sources indicated in the document and that a copy of a communication (e.g., letter, fax) is accepted without further proof as having been received by the addressee, and that a photocopy is accepted as correct.

The parties may agree to submit a single set of documents as evidence whose authenticity is not disputed. The parties are also responsible for notifying the Committee if they intend to seek, or request that the Committee seek, production of documentary evidence from another party.

The Discipline Committee will not receive any investigation report prepared by Investigating Officers. Further, the Committee will not receive any written statements from witnesses. The one exception is in the case where a witness is being impeached for having said something in the hearing other than what was reported in the signed statement. In that case, the written statement may be placed before the Committee as evidence by the party that has identified a lack of credibility with a witness. The parties would have received copies of the written statements. The evidence will be screened by an appointed secretary to the Discipline Committee. The secretary will take care of document disclosure, setting down of hearing dates and other administrative duties.

All disclosure must be complete ten days prior to the inquiry date.

Witnesses

Each party must, not later than ten days before the inquiry commences, give the other party or parties in writing the name and address of any witness to be called. In addition, a written summary of the evidence to be given by each will be provided. In the case of an expert witness, a written statement or report prepared by the expert witness will be provided. The report of the Investigation Officer(s) will be provided in all cases.

Full Disclosure and Communication

Each party must provide to the other parties a copy of any statement or other information submitted to the Discipline Committee.

The Discipline Committee shall not rely on an expert report or other documents without providing copies to the parties.

The Discipline Committee shall not, except for the purposes of process management, communicate with one party in the absence of the other party or the other party's counsel or designated representative unless the other party has had reasonable notice. It is very important that no member of the hearing have any unilateral communication, social or professional, with any party to a hearing.

Agreed Statement of Facts

Counsel for the Association and the member who is the subject of the inquiry or his or her counsel, may agree upon facts to be presented to the Discipline Committee and any such agreement shall be made in writing signed by both counsel or the member if unrepresented by counsel, and delivered to the member of the Discipline Committee.

12.5 Inquiry

The Discipline Committee must hold at least one inquiry (*Act reference section 29.*). All oral hearings are to be held in Whitehorse, Yukon, at a time, date and place determined by the Discipline Committee, taking into consideration the parties' convenience and the other circumstances of the case. One of the parties may request that the hearing location be moved to an alternative community in Yukon. The Discipline Committee Chairperson will rule on the request and determine the community in which the hearing will take place.

The purpose of an oral hearing is to define the nature of the complaint, examine the facts and determine an appropriate remedy.

A hearing is expected to last up to six hours per day with one meal break. If additional hearing time is required, a subsequent hearing time will be set. Additional hearing time may be scheduled for consecutive days or may be separated by an adjournment.

The Association, as represented by the appointed counsel, will make a presentation of evidence first, including the presentation of all witnesses and written submissions. The respondent will have an opportunity to cross-examine witnesses. The complainant may choose to add evidence at the end of the presentation made by the counsel representing the Association. The respondent will then present their evidence. Additional parties will present in an order defined by the Committee. The Association will have an opportunity to respond to the submissions made by the respondent and cross-examine witnesses. Following the close of evidence, both the Association, the complainant and the respondent would have the opportunity to make submissions.

The parties may object to the manner in which evidence is being submitted at any point in the process. The Committee will make an immediate ruling on the objection.

The Association has the onus or burden of proof of establishing that the member in question has engaged in conduct deserving censure.

Hearings will be recorded and transcribed by a court reporter. In addition, a secretary will be made available for note-taking. The Committee and parties may also take notes. The verbatim transcript of the proceedings will be considered the official record of the hearing. Alternatively, court approved tape recording equipment may be used to record the proceedings and be reduced to writing as a verbatim transcript which will become the record of the hearing.

The language of the proceedings will be English. If the first language of the complainant or respondent is another language, a request for interpretation services will be considered by the Discipline Committee and a ruling made.

12.6 Rules of Procedure

In the event that the Act and this policy are silent on an issue and the Committee determines the need for a rule in order to direct efficient and effective process, a rule may be set. As long as the rule is within the interpretation of the Act and not in conflict with existing policy, the rule will remain in force until the Committee renders its decision. At that time, the Committee members dealing with the complaint will refer the rule to the full Discipline Committee for consideration in future policy development.

12.7 Privacy

Each party is entitled to attend all hearings and meetings personally or appoint a designated representative.

All hearings of the Discipline Committee will be held in private unless the Committee determines otherwise. (*Act reference section 32*)

Subject to the discretion of the Committee, as opposed to a matter of agreement, certain persons and no others will be entitled to be present at the hearing or meeting.

In most cases, the following people are those entitled to be present at a hearing or meeting:

- The assigned members of the Discipline Committee,
- The parties,
- A designated representative of each party,
- Counsel for a party,
- A witness giving testimony or producing documents, and
- Any other person who is, in the Discipline Committee's opinion, necessary and desirable for the purposes of the hearing.

The Discipline Committee has the power to determine who is entitled to be present under this provision.

12.8 Physical Evidence and On-site Inspection

The Committee may accept physical evidence other than documents. On request by a party or by decision of the Committee, the Committee may carry out an on-site inspection of property or goods.

12.9 Evidence and Recording of Evidence

The Discipline Committee is not bound by the rules of evidence or any other law applicable to judicial proceedings and has the power to determine the admissibility, relevance and weight of any evidence, and the manner in which evidence is to be admitted. If the evidence is relevant, the Discipline Committee is not bound by the rules of evidence that apply in civil or criminal judicial proceedings. The testimony of witness must be taken under oath (*Act reference section 34.*). The oath or affirmation may be administered by any member of the Committee (*Act reference section 37.*).

All oral evidence is to be taken in the presence of the Discipline Committee and all the parties or their designated representatives unless a party or designated representative is absent by default or has waived the right to be present.

Witnesses will be called by the party, evidence introduced and an opportunity for cross-examination by other parties provided. The Committee members will also be allowed to ask questions of the witness, once the parties have completed their questioning. (*Act reference section 34.*) Most examination and cross-examination of witnesses will be carried out by legal counsel.

A witness requiring any special consideration may make application through the appropriate party to have the Committee consider their request. The Committee may grant a request for special consideration as long as the decision remains within the provisions of the Act and the policy and in compliance with the rules of natural justice.

The investigated person and any other person who has relevant information can be compelled to testify. A witness may be asked questions on all matters relevant to the investigation and hearing and shall not be excused from answering questions. If a witness's answers incriminate them, the

Act provides protection from civil proceedings and proceedings under any other Act. (*Act reference section 35.*)

A party may require that any witness whose evidence is received other than orally be made available for cross-examination at the oral hearing.

A party may serve a person with a notice requiring the person to attend and give evidence at the time and place named in the notice.

Any documents delivered during disclosure are not deemed to have been entered into evidence unless and until they are formally entered into evidence during the hearing by providing further proof and being read out.

The Discipline Committee may permit a document to be introduced at the oral hearing that was not previously disclosed. But the Discipline Committee may give directions to avoid prejudice to the other party and take any default in disclosure into consideration when making a decision.

Where character evidence is introduced by the member whose conduct is being inquired into, the Association shall have the discretion to call any admissible evidence in rebuttal on the issue of character.

The Discipline Committee may obtain evidence outside of the Yukon in the same way and on the same conditions as a party to an action in the Supreme Court. (*Act reference section 36*)

12.10 Oral and Written Submissions

Submissions are arguments that each party will make on evidence entered in order to persuade the Discipline Committee to make a particular finding. Oral submissions are those made without being provided in writing throughout the course of the hearing.

The Respondent or the Complainant may make a request for an oral submission to be heard by video conference. The request will be decided on its own merits on a case by case basis. The cost will be born by the YRNA in the event that it is approved. Expert witnesses and panel members will be physically present at the hearing unless unusual circumstances require an exception be made.

Written submissions, other than the report of the Investigating Officers and witnesses (as identified in 12.4) will be accepted as long as full disclosure is maintained. The party must notify the Committee and the parties of their intent to present a written submission. At that time, the Committee may provide direction on the structure of the submission, the time schedule for presenting submissions and the routing of submissions.

The Committee will ensure the following:

- That the names, addresses, fax and phone and e-mail numbers of counsel, representatives and the parties are distributed.
- The number of copies of each document required is specified.
- The exhibits are numbered in a uniform manner, ensuring the ease of location through a referencing system.
- That each party, when referring to a submitted document, identifies the document through the use of its heading and the document number assigned to it.
- That each party, prior to submitting a document, number the paragraphs within the documents to facilitate precise references.
- That translations are prepared and submitted as a part of the document if required by the parties or the Committee.
- That all written submissions are made in a letter size format unless the original document is only available in legal size format. All portions of all documents submitted must be legible.

(*Act references sections 24.4 and, 35.,36.,49.,50.*)

A party may make submissions with respect to the finding to be made by the Committee as well as to the issue of the appropriate penalty or disposition and as to costs.

12.11 Member Pending Completion of Proceedings

If the appointment of a Discipline Committee member expires during the handling of a complaint, the member will be deemed to remain a member of the Committee until the inquiry is completed (*Act reference section 48.*).

12.12 Jurisdictional Challenges

The Discipline Committee will make a ruling on any challenges to jurisdiction. If the Committee is unable to make a ruling without legal advice, the hearing may be adjourned for the period of time necessary to obtain the required advice.

12.13 Finding of the Discipline Committee

The Discipline Committee may dismiss a complaint or find the member guilty of professional incompetence, professional misconduct, or professional incapacity. A finding of professional misconduct includes a finding of a contravention of the Act or the regulations or a failure to maintain the standards of practice of the profession. A finding of incompetence includes the finding of that the member, in the care of patient(s), displayed lack of knowledge, skill, or judgement or disregard for the welfare of a patient of a nature and extent that demonstrates that the member is unfit to continue in practice. The Committee may find the member incapacitated if the result of the inquiry demonstrates that the member is suffering from a physical or mental condition or disorder of a nature and extent that makes it desirable that the member no longer be permitted to practice or that the member's practice be restricted. (*Act reference section 40.*)

12.14 Disposition by the Discipline Committee

Pursuant to section 41(1) of the Act:

(1) Where the discipline committee finds that a member is guilty of professional misconduct, is incompetent or is incapacitated, it may

- (a) revoke the registration and annual certificate of the member;
- (b) suspend the annual certificate of the member for a stated period, either generally or in relation to a particular field of nursing;
- (c) suspend the annual certificate of the member either generally or in relation to a particular of nursing until
 - (i) that person has completed a specified course of studies or obtained supervised practical experience, or
 - (ii) the discipline committee or registrar is satisfied as to the competence of the investigated person generally or in a specified field of nursing;
- (d) accept in place of suspension the member's undertaking to limit their practice to specified fields of nursing;
- (e) impose conditions on the member's entitlement to practice nursing generally or in specified fields of nursing, which conditions may include that the member
 - (i) practice under supervision,
 - (ii) not engage in sole practice,
 - (iii) permit periodic inspections by a person authorized by the discipline committee or registrar, or
 - (iv) report to the discipline committee or registrar on specified matters;

- (f) direct the member to pass a particular course of study or satisfy the discipline committee or registrar as to their competency generally or in a specific field of nursing;
- (g) direct the member to satisfy the discipline committee or registrar that a disability or addiction can be or has been overcome, and suspend the person until the committee or registrar is so satisfied;
- (h) require the member to take counselling that, in the opinion of the discipline committee or registrar, is appropriate;
- (i) direct the member to waive, reduce, or repay a fee for service rendered by the investigated person that, in the opinion of the discipline committee, were not rendered or were improperly rendered;
- (j) reprimand the member and, if deemed warranted, direct that the fact of such a reprimand be recorded in the appropriate roster, or
- (k) carry out a combination of the above.

12.15 Right to Reinstatement

Pursuant to section 41(2) of the Act:

- (2) A member whose registration and annual certificate have been revoked
 - (a) has no right to be reinstated;
 - (b) may not apply for reinstatement before expiration of two calendar years after the end of the calendar year in which revocation occurred;
 - (c) may, in the discretion of the discipline committee, be reinstated, or denied reinstatement, or denied reinstatement until the member has complied with any condition, requirement, or direction of the same kind that the committee can order in connection with a suspension;
 - (d) may not apply again for reinstatement before the expiration of two calendar years after the end of the calendar year in which their last application for reinstatement was disposed of.

12.16 Costs

For the purposes of section 43(1) of the Act, "costs of discipline hearing" awarded at the discretion of the Discipline Committee include but are not limited to the following:

- (a) all reasonable costs and expenses incurred by the Association either by way of disbursements or fees in connection with the investigation or prosecution of the matter at any time from the date of the receipt of the complaint by the Complaints Committee up to and including completion of all matters related to the investigation or prosecution including any appeals taken pursuant to the Act;
- (b) witness fees;
- (c) court reporter fees and transcript fee;
- (d) any reasonable mail, advertising or other expenses in connection with either the hearing or the penalty or discipline imposed;
- (e) all reasonable expenses incurred by any member conducting a preliminary investigation, counsel for the Association, any witness in the proceedings and the Discipline Committee.

For the purposes of section 43(1) "costs incurred through disciplinary action" of any member shall include but not be limited to all reasonable costs and expenses incurred by the member either by way of disbursements or legal fees from the date of the receipt of the complaint by the Complaints Committee up to and including the completion of all matters related to the investigation or prosecution including any appeal.

The Discipline Committee may award costs of a hearing against a member of the Association if the Committee believes their defense was frivolous or unreasonably lengthy and may reimburse any member for costs incurred through a disciplinary action if the committee believes the action was unwarranted.

The YRNA is responsible for collecting any costs awarded and using the funds to reimburse another party if the decision of the Committee is to reimburse costs to a wronged party. Any order for the payment of costs pursuant to the Act shall operate and be enforceable in the same way as if it were a judgement of the Yukon Supreme Court in respect of the outstanding amount.

12.17 Written Decision

The Discipline Committee shall prepare a written report of the decision and the reasons for the decision and a copy of this report shall be forwarded to the member complained against and the complainant by certified mail or personal service. (*Act reference section 42.*)

12.18 Record of Proceedings

The evidence presented at a hearing and the report of the findings of the Discipline Committee shall constitute the record of proceedings and kept on file until one year after the date the Committee gives its decision or the final disposition of the appeal, if any, against the decision, whichever is the longer period of time. The legal minimum is as above, however, it is suggested that the record of proceedings be kept on file for a minimum of five years in order to be available if required. (*Act reference section 50.*)

12.19 Liability

The Association and its Members of the Board, a Complaints Committee or the Discipline Committee are not liable for any loss or damage suffered by any person as a result of anything done by it or them in good faith in the Administration of the Act, the bylaws or the regulations.

12.20 Adjournments

A Discipline Committee may from time to time, and only in the presence of the parties or their counsel adjourn the hearing of an inquiry either upon application of either party or upon its own motion, however, any application for an adjournment of the hearing of the Committee before the return date specified in the Notice of hearing shall be made in writing to the chair of the Discipline Committee and shall be made not less than two days before the time set for hearing in the Notice of Hearing. The length of the adjournment should be decided on a case by case basis.

12.21 Close of Hearings

The Discipline Committee shall close the oral hearing or hearings when the parties advise that they have no further evidence to give or submissions to make or the Discipline Committee considers further hearings to be unnecessary or inappropriate. At any time before delivering the final decision, the Discipline Committee may reopen the oral hearings if it is just and appropriate to do so. If the Discipline Committee decided to reopen a hearing, the Committee must provide notice to all parties of its intention to reopen the hearing and an opportunity for those parties to speak to any new evidence or argument.

12.22 Appeal of the Decision of the Discipline Committee

A member complained against may appeal the decision of the Discipline Committee to an Appeal Committee by filing a notice of appeal with the Registrar no later than thirty days from the date of the service of the decision. The notice shall set forth the grounds for the appeal and state what is wanted in the way of relief. The Registrar will notify the Board immediately upon receiving the appeal.

The Appeal Committee has established its Rules of Procedure for Appeal Committee Hearings. Appeals will usually be carried out on the record, using the documentation from the original hearing. If the record is so incomplete that the issues on appeal cannot be fairly decided by an appeal on the record, the appeal committee may conduct the appeal by way of a hearing of the matter in whole or in part.

(See Appendix 4 for Rules of Procedure for Appeal Committee Hearings)

On an Appeal to it, if the Appeal Committee is satisfied the Discipline Committee erred, the Appeal Committee may make any finding or order that it believes the Discipline Committee should have made.

Where the Discipline Committee revokes, suspends or restricts an annual certificate, the decision takes effect immediately even if an appeal is begun. If an appeal is taken, the Appeal Committee may order a stay of the Discipline Committee's decision pending the completion of the appeal proceedings. *(Act references sections 52., 53., 54.)*

13.0 Public Relations

Section 32 requires that all hearings of the Discipline Committee shall be held in private unless the Discipline Committee determines otherwise. A person is presumed innocent until proven guilty. This is a criminal legal concept but given the highly judicial nature of disciplinary proceedings, it is useful to apply in principle to the process.

Throughout the complaints and discipline process, the YRNA staff and Committee members may have to respond to calls from members of the public or the media. The calls will be handled by implementing a communications strategy that seeks to:

- ensure the confidentiality and privacy provisions set down in policy are respected.

There will be no information provided to the media or the public on the status of the complaint until there has been a finding by the Discipline Committee that a member has engaged in conduct deserving of censure.

If the complaint is dismissed, the media may be notified if the respondent agrees with the publication.

The details of the results of mediation are also to be kept confidential. The YRNA will publish a summary of the complaint and disposition without identifying any of the facts in the YRNA newsletter. Publication will be delayed until after an appeal is heard if an appeal is launched.

14.0 Policy Review and Amendments

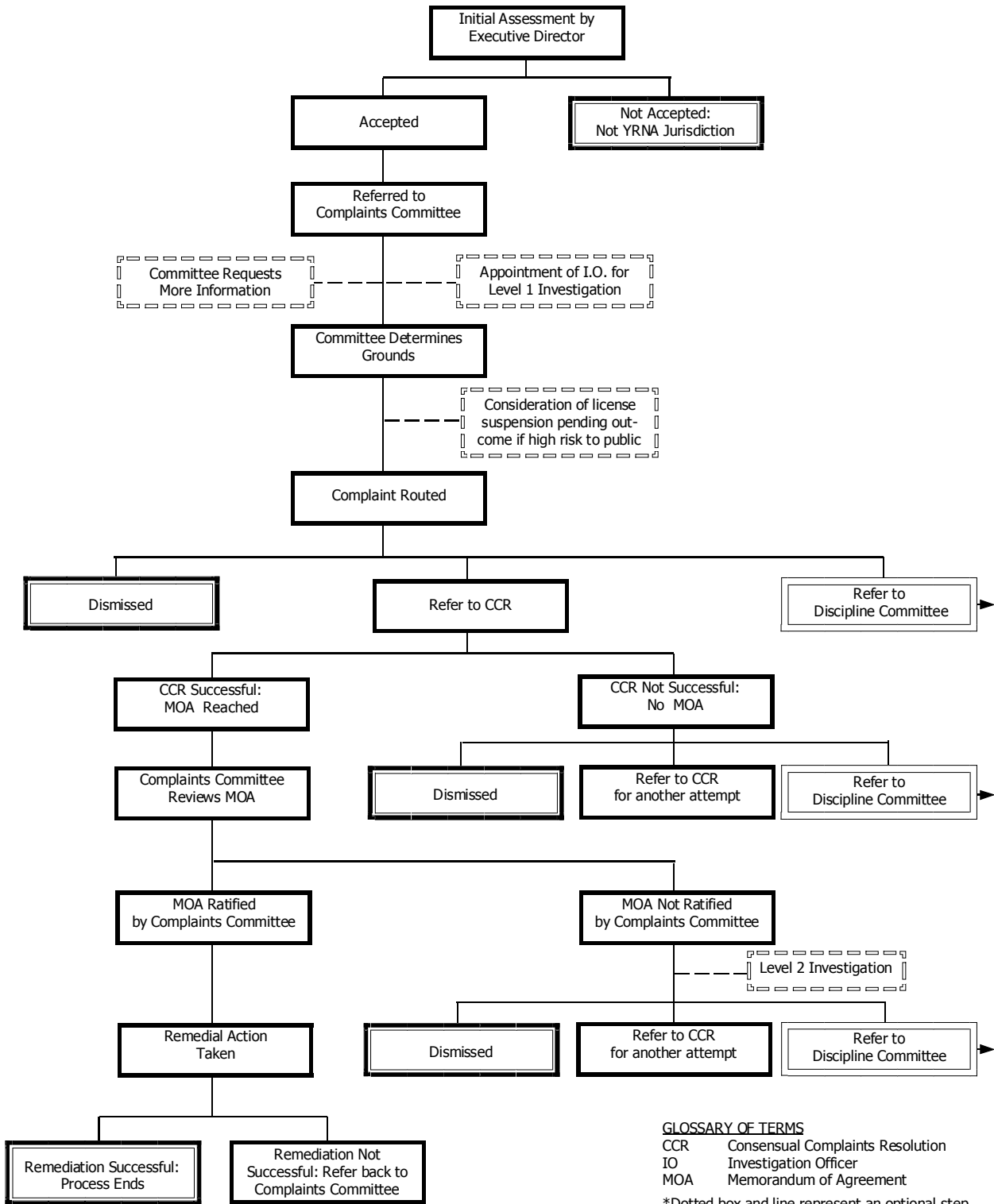
The assessment, review and amendment of policy must support the ongoing development of optimal policy and procedural responses to professional conduct issues. Policy implementation must include regular reviews at least every five years and amendments considered if:

- Superior methods of handling complaints and discipline are developed;
- Flaws are detected in the current policies;
- Change occurs in Association philosophy or practices, the members or the nature of complaints/complainants;
- The cost of dealing with complaints or disciplinary hearings is beyond the financial capacity of the YRNA;
- The effectiveness of the process in producing durable solutions is lacking.

The environment needs to be one of openness and flexibility as new alternatives to existing policies and procedures become apparent. Policy development which encompasses the design of conflict management systems using alternative dispute resolution is a new and evolving area. Continuous renewal provides an environment for dynamic future development.

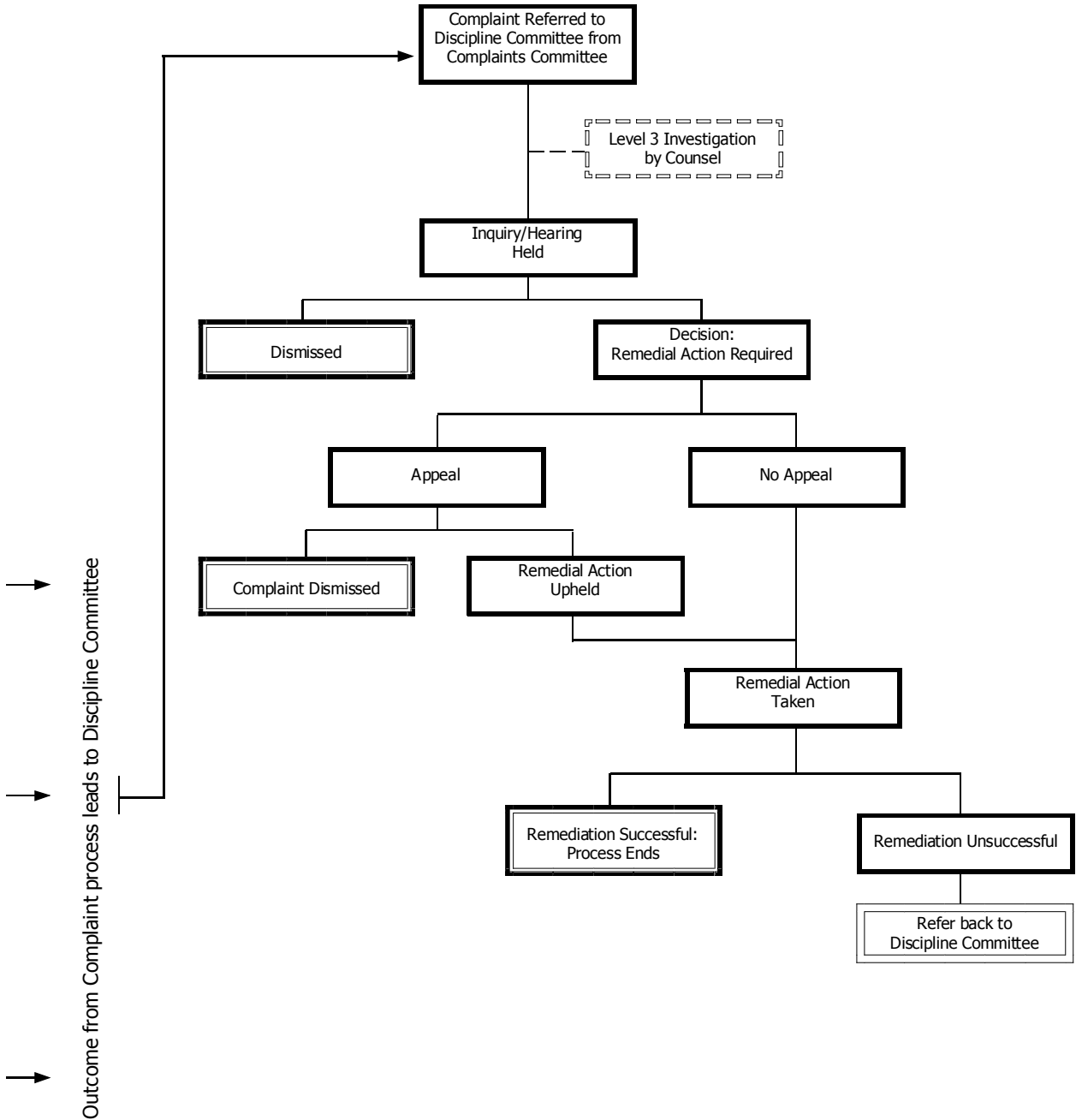
APPENDIX 1:
Complaints and Discipline Process Flowchart

COMPLAINT PROCESS



GLOSSARY OF TERMS
 CCR Consensual Complaints Resolution
 IO Investigation Officer
 MOA Memorandum of Agreement
 *Dotted box and line represent an optional step.

DISCIPLINE PROCESS



*Dotted box and line represent an optional step.

APPENDIX 2:
Principles - Additional Rationale

Principles for Guiding the Professional Conduct Review Process

- Additional Rationale -

1. Public Interest

Definition:

YRNA has been granted authority for self-governance through legislation. This authority gives the Association responsibility to regulate the profession in the public interest. To act in the public interest is to consider the benefit and risk of action or non-action to the community-at-large rather than benefit to an individual or profession.

Rationale:

Professional groups have the expertise to determine standards of practice and conduct and to judge the competence, practice and conduct of their members. Maintaining the public trust and judicial trust is essential for any profession wanting to keep the privilege of self-regulation.

Regulation should meet a public need. The health, safety and welfare of the public must be reasonably well protected from harm. Self-regulating professions should make decisions in accordance with statutes or regulations directed at serving the public interest. This is done to: 1) promote efficient and high quality provision of services; 2) protect the public from incompetent or unethical provision of services; 3) support the ability of the public to make free and informed choices when they select professional services; and 4) strike a proper balance between the rights and responsibilities of members and the public.

Examples of principle being operationalized:

The regulating authority:

- provides current standards of practice and a code of ethics to guide members
- assesses the competence of members
- regulates members within its jurisdiction
- has public representation on policy making and professional conduct review committees
- manages the Professional Conduct Review Process with administrative efficiency
- allows the public to have access to information about members on the register
- provides information to the public regarding the Professional Conduct Review Process

2. Fairness

Definition:

In the interests of natural justice, the professional body has a duty to act fairly. This means that throughout the management of the Professional Conduct Review Process, a regulating authority must follow an administrative process which ensures that the steps through which a decision is made and the basis of that decision are legal and fair to all parties. Procedural fairness has been served when the following conditions are met: 1) the public has the right to access and be a party to the complaint process; 2) the member has adequate opportunity to respond to the allegation before a decision is made; 3) the decision-maker(s) is/are unbiased; and 4) reasons for the decision are clear, based on fact and are communicated to all parties.

Rationale:

High standards of procedural fairness are essential since the impact of a decision could influence public trust in a profession and/or affect a member's career. The type of process and reasons for a decision that meet the test of fairness will be determined by the context of each situation. The duty to act fairly is particularly significant for self-regulating professions to maintain the trust of the judicial system and thereby limit the incidence of decisions being reversed on appeal.

Examples of principle being operationalized:

The public has a right to:

- information about how to submit a complaint
- information about the complaint handling process
- participate in the complaint processing
- information about possible options for resolving the complaint
- be treated fairly, impartially and with respect
- be informed in a timely way about progress in processing of complaint
- information regarding the right to and process of appealing decision
- a written explanation of the decision and reasons
- help in achieving satisfactory closure

The member has a right to:

- be treated fairly, impartially and with respect
- seek legal assistance
- know the specifics of a complaint or what is being investigated
- be informed in a timely way about progress in processing of complaint
- adequate time to respond
- information about possible options for resolving the complaint
- a review by an impartial committee composed of professional and public members
- a written explanation of the decision and reasons
- request the review of a decision by a separate body
- help in achieving satisfactory closure

3. Transparency

Definition:

Transparency is the ability to be readily understood and accessed.

Rationale:

The purpose of the Professional Conduct Review Process, the steps involved and the progress at each step should be clearly communicated to all who will be affected by the process. The rights and obligations of the public, the member and the regulating authority should be clear and obvious. Defined roles and responsibilities which are communicated clearly will increase the public's and the profession's satisfaction and confidence with self-regulation, and enhance the efficiency of the process.

Examples of principle being operationalized:

The regulating authority ensures that:

- the rights of the public are clearly communicated
- options available for the management of the complaint are clear
- the consequences for each option are made obvious
- the steps of the process are well documented and accessible to all parties

4. Jurisdiction

Definition:

Allegations about a member's professional practice and conduct must be measured against nursing practice standards, code of ethics and the mandate of the professional body. Information must be clear and include factual details.

Rationale:

Complainants might not be members of the profession under scrutiny and may not have the specialized knowledge of the profession to comprehensively and specifically detail their allegations. The complainant may not have sufficient understanding of the mandate of the professional body or of more appropriate routes of action. It may be that a member of the public does not wish the regulatory body to investigate but wishes to express concern "for the record." In all these situations the

complainant should be assisted in articulating concerns clearly, in understanding the professional body's jurisdiction and in finding other means of resolving the situation if appropriate.

Examples of principle being operationalized:

- complainant is assisted in providing clear and factual details
- details of complaint are measured against professional body's mandate and criteria for complaints
- exploration of alternative ways of handling situation
e.g. through workplace employee relations procedures

5. Administrative Efficiency

Definition:

Administrative efficiency is the management of the professional conduct review process with fairness, in the public interest, in a timely fashion and with consideration of the cost in both human and financial resources.

Rationale:

In the public interest and in fairness to members, administrative procedures must be managed in an efficient and economic manner. Adherence to the rules of natural justice will enhance the fairness and efficiency of the professional conduct review process. It is incumbent upon the regulating authority to try mechanisms for alternate dispute resolution when feasible. In this way, the number, length and cost of hearings, and the number and cost of appeals will likely be reduced. An ongoing evaluation of the process will provide feedback that can be used for improving administrative efficiency and cost-effectiveness.

Examples of principle being operationalized:

The regulatory authority:

- adheres to the rules of natural justice
- applies alternate dispute resolution mechanisms appropriately
- avoids unreasonable delay
- weighs the seriousness of the incident against the use of resources

APPENDIX 3:
Sample Agreement to Mediate

Agreement to Mediate (sample)

1.0 Parties to the Agreement

This Agreement is made between:

_____ and _____ and
(Mediator) (YRNA)

_____ and _____ and
(Complainant) (Respondent)

_____ and _____ and
(other party) (other party)

(Additional parties may be added.)

2.0 Purpose of the Agreement

This Agreement governs the terms and conditions of mediation and describes the process of mediation to be used by the parties identified above in attempting to resolve the complaint to the YRNA.

3.0 Mediator Roles and Responsibilities

The mediation procedure is to be developed by the mediator, based on the Act and the YRNA *Professional Conduct Review Program Complaints and Discipline Policy* ("the Policy").

The Mediator agrees to help the parties discuss the matters related to the complaint, assisting the parties in communicating and negotiating as effectively as possible, and assist the parties in coming to an agreement to resolve the complaint.

The mediator agrees to abide by the confidentiality provisions, notice requirements, timelines and other relevant sections of the Policy.

The Mediator agrees to keep confidential discussions in the mediation sessions and all documents written for the purpose of coming to an agreement.

The Mediator's agreement to keep matters confidential does not apply if the Mediator is required by law to disclose the discussions or documents.

The Mediator is committed to remaining neutral and independent.

Mediation is a process of facilitated negotiations and accordingly the Mediator will NOT make decisions for the parties, nor will the Mediator provide legal advice to the parties. The Mediator will NOT impose an agreement.

4.0 Roles and Responsibilities of the Parties

The parties are committed to the process and reaching an agreement. The parties agree to not interrupt other parties to allow for relevant information to be shared as easily as possible. The parties will maintain good faith efforts to resolve the complaint.

5.0 Full Disclosure

In accordance with the relevant sections of the Policy, the parties agree to fully disclose all material information relating to the issues in dispute.

6.0 Caucusing

The parties and the Mediator agree that caucusing will be allowed. Each party may choose to meet with the Mediator during a caucus session.

7.0 Fees and Expenses

The Mediator's fees will be charged at a rate of \$_____ per hour for telephone discussions, preparation, meetings, mediation sessions and follow-up work.

All expenses incurred by the mediator and approved in advance will be paid by YRNA. Expenses could include fax messages, messenger costs, long distance telephone calls, travel, accommodation, meal costs and word processing.

8.0 Mediator Privilege

The parties agree that they will not subpoena or otherwise request or require the Mediator to be a witness in any legal, inquiry, or other proceedings relating to the complaint nor subpoena any document or other information in possession of the Mediator. All parties to the Agreement waive any right they may individually or collectively have to call the Mediator as a witness in any legal, inquiry or other proceedings.

9.0 Without Prejudice Proceedings

The parties agree that the proceedings, the subject of this agreement, will be conducted with a view to resolving the complaint and as such, everything said, prepared, generated or proposed is for that purpose and is privileged and will not be used for any other purpose.

10.0 Comment to the Public or Media

The parties agree that no comment will be made to the public or media without the agreement of all parties.

11.0 Representatives

The parties agree that the persons attending the mediation on their behalf have authority to negotiate and approve an agreement, subject to the relevant sections of the Policy.

12.0 Termination

The mediation may be terminated through the use of the provisions of section 11.5 of the Policy.

Dated in _____, _____ on _____, _____.
(Municipality) (Province/Territory) (Month and Day) (Year)

Signed:

(Mediator)

(YRNA)

(Complainant)

(Respondent)

(other party)_

(other party)

(Additional parties may be added.)