

Complaints Against Psychologists and Psychological Associates:

What to Expect and How to Deal with Them

One of the most important functions that your regulator has is to address complaints it receives about its members. Given that the primary mandate of your regulator is to protect the public, it must be seen as addressing legitimate concerns raised about its members. As a licensed psychologist or psychological associate, you are obligated to comply with the standards of professional conduct and applicable legislation as mandated by your regulator. A failure to do so increases the risk to you that you will be subject to a complaint to your regulator.

The purpose of this article is to provide you with some insight into the nature and types of complaints that are commonly made against psychologists and psychological associates, how regulators have been approaching the investigation and disposition of complaints and some tips on mitigating the risk of receiving a complaint to your regulator.

Complaints - Trends and Common Themes

Anyone can file a complaint to your respective regulatory body if they are dissatisfied with your care or conduct, including a client, a family member /friend of a client, a colleague, employer or insurer. Complaints can arise as a result of client interactions, disputes between colleagues or involve non-therapeutic activities. These activities can be a concern if they reflect negatively on your professionalism or suitability for practice.

Hundreds of complaints every year are filed with regulators across the country. While the College of Psychologists of Ontario ("CPO") consistently receives a large number of complaints on an annual basis, regulators in Alberta, British Columbia and Quebec also receive a significant number of complaints annually.

While the number of complaints has levelled off after increasing in most jurisdictions during the COVID pandemic, regulators continue receive a significant number of complaints.

Regulators receive complaints related to virtually every aspect of a psychologist's professional practice and even some that have nothing to do with the practice of psychology. While the specific facts that form the basis of a complaint are unique, there are issues that regulators are asked to consider on a consistent basis (this list is not exhaustive):

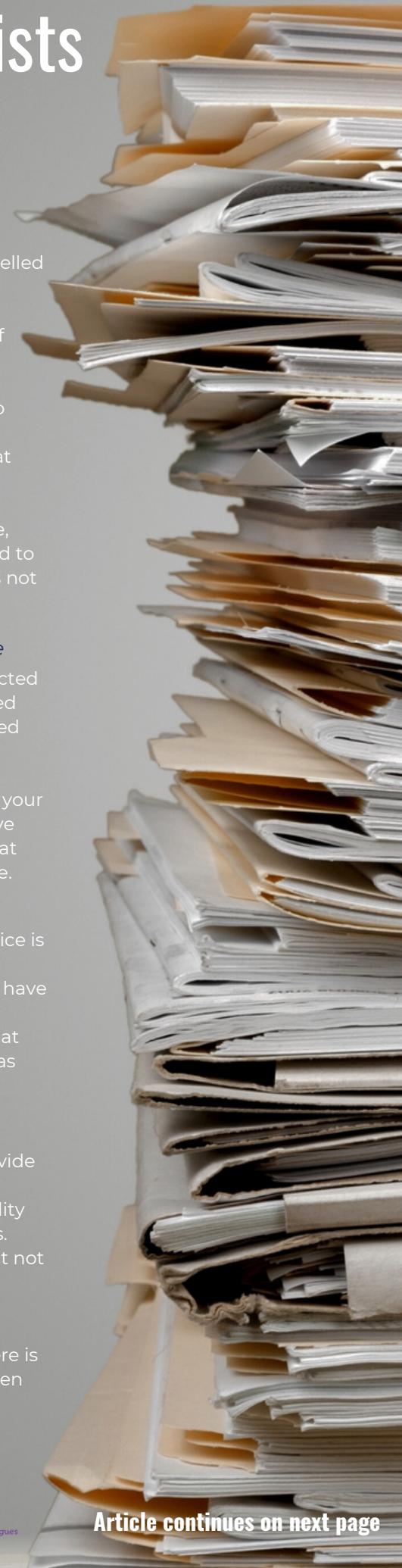
Acting Outside of Scope of Expertise

As a licensed psychologist, you are expected to provide services within your authorized areas of practice and with your authorized client populations and only when competent to provide those particular services. You may run into difficulty with your regulator if it is determined that you have provided services or given an opinion that falls outside of your areas of competence. Some examples of this include:

- Assessing a child when your practice is limited to adults;
- Recommending services that you have no experience in providing; and
- Providing an opinion to a Court that goes beyond the mandate that was provided to you.

Bias/Lack of Objectivity

Psychologists are regularly asked to provide opinions in many different situations, including capacity, competence, suitability for employment and family law disputes. Your opinion can have significant impact not only on the lives of your own clients, but other individuals who are involved with them. Psychologists are often asked to provide opinions in situations where there is a significant amount of acrimony between individuals.



As a result, any opinion you provide is likely to be heavily scrutinized to ensure objectivity and fairness.

One of the most frequent sources of complaints of bias/lack of objectivity are family law disputes. Given that in most cases, any opinion that you render is going to be perceived as beneficial to one party to the detriment of the other party, litigants and their lawyers will be scrutinizing the process you follow and any opinion you provide to ensure objectivity and fairness.

Unfortunately, in some cases, even where you have provided an objective, well supported opinion, the affected party may still file a complaint against you in an effort to attack your credibility and/or have you withdraw your opinion.

Failure to Respond in a Timely Manner

For many psychologists and psychological associates, your involvement with a client is not limited to in-person or virtual appointments. You are often subject to requests for information, follow-up instructions, letters of support and the completion of insurance forms. If you agree to carry out a private or court mandated assessment, there are expectations and requirements for the delivery of your report. Your regulator regularly receives complaints related to the failure of a psychologist or psychological associate to provide responses to inquiries, documents and reports in a timely manner.

Billing

Issues with invoicing and billing are common. Demanding payment in advance of services being provided, incomplete billing information and claims that services were not provided are all examples of issues that have been raised with regulators. In addition, over the past few years, we have seen an increase in the number of complaints initiated by insurance companies against psychologists who the insurer suspects are engaged in questionable billing practices, including the exploitation of accident benefits regimes.

Poor Communication

The genesis of many complaints is poor communication on the part of the psychologist or psychological associate. Any perceived lack of professionalism, transparency or empathy when communicating with your client can lead to frustration and/or anger on the part of the client which may lead them to file a complaint.

Improper/Inadequate Supervision

The supervision of others is a regular source of complaints to the regulator. Given most regulators have extensive rules and standards with respect to supervision, it can sometimes be a challenge to ensure you are following the expectation of your regulator in every instance. We see a broad range of complaints such as a lack of qualifications to act as a supervisor, improper delegation, failure to adequately supervise and a failure to keep appropriate records.

This is another area where we have seen some insurers become more active in making reports to regulators.

Mandatory Reports

In most provinces and territories, health care professionals have mandatory reporting obligations, such as sexual abuse of a client by another health care professional, child abuse or neglect, elder abuse and incapacity/incompetence of other health care professionals. The determination of whether you are required to make a report can sometimes be challenging. Regardless of the decision you make, you could be subject to a complaint. We see just as many complaints filed by individuals who are unhappy that a mandatory report was made (typically in situations where there is suspected child abuse or neglect) as investigations into health care professionals where there is a concern that a report was not made.

Confidentiality

Any actual or perceived failure to maintain your client's confidentiality can lead to a complaint being filed with your regulator. Not only do you need to be concerned with a complaint to your regulator, you may also be required to address inquiries from the applicable information and privacy commissioner.

How do regulators address complaint investigations?

Your regulator is mandated by law to address all complaints that it receives. While most regulators have the ability to dispose of a complaint on an expedited basis if it determined the complaint is frivolous, vexatious or an abuse of process, most complaints that a regulator receives will be treated seriously and investigated. Most jurisdictions have legislated timelines in place that govern the complaints process.



Regulators typically are provided with broad powers to investigate complaints filed against their members. During the course of an investigation, a regulator can attend at your place of work, with or without notice, for an interview, to examine, remove and/or copy the client's record and any other documentation that is relevant to the complaint, including billing information. Your regulator may also seek information from witnesses such as your colleagues and staff. The applicable legislation typically requires you to cooperate fully with an investigation. Surveillance can also be conducted by your regulator in the course of an investigation.

If the issues are complex, your regulator might seek an expert peer opinion from an independent assessor. You will usually be provided with a copy of any report prepared by the assessor and an opportunity to respond.

All of the information collected during the course of the investigation will be provided to a panel assigned to deliberate on the matter. The composition of the panel varies between provinces but always involves the input of at least one psychologist. Once the panel has considered the matter, you will receive a written decision, along with reasons for the decision.

In many cases, psychologists successfully demonstrate that their care and conduct was appropriate. In those cases, your regulator will typically dismiss the complaint and take no further action.

When issues are identified with regard to the practice or conduct of a psychologist, each regulator has a broad discretion to dispose of the complaint. While the potential outcomes vary depending on jurisdiction, some of the more common outcomes are:

- Referral of the matter to alternative dispute resolution;
- Counsel (advise) the member on how to improve their practice by making recommendations or providing guidance;
- Caution (warn) the member that more serious consequences may be considered if the issues reoccurs;
- Require that the member participates in a specified continuing education and remediation program;
- Request that the member enters into a contract with the regulator imposing some restrictions, limitations, directives or requirements on the member's certificate of registration.

In cases where the regulator is concerned that a member is suffering from a health condition or disorder, including a substance abuse problem, the regulator may refer the matter to a committee responsible for assessing the member's fitness to practice.

Where there are serious concerns identified with regard to a member's conduct or practice, the matter is referred to a committee responsible for assessing professional misconduct and competency. A hearing (similar to a criminal trial) is typically required where the regulator will have the burden of proving its case against the member. The decision from the panel presiding at the hearing may range from a dismissal of the charges to the revocation of the member's license to practice.

Any decision rendered by a regulator can typically be appealed. Each province and territory has its own legislation governing the appeal process.

Common Trends

While the situation in each jurisdiction differs, you should be aware of the following common trends.

Your regulator is going to take the complaint seriously

Do not underestimate the manner in which your regulator is going to address a complaint. You cannot assume that because you believe a complaint is lacking merit that your regulator is going to view it the same way. Your regulator knows nothing about you or your practice at the time it receives a complaint. Given the primary mandate of regulators is the protection of the public, your regulator is going to approach any complaint cautiously and will investigate it to the extent it believes is necessary.

In light of a regulator's public protection mandate, it will want to make sure it is seen to be taking steps to ensure that its members are meeting the standards. Even in cases where you have not done anything to warrant action being taken by your regulator, it may still choose to do so in order to demonstrate to the complainant that it took their complaints seriously. Recent legislative changes in Ontario and Alberta with respect to allegations of sexual abuse and the current overhaul to the statutory regime in British Columbia make it abundantly clear that regulated health care professionals are going to be held to a higher standard.



Article continues on next page

Remember that your regulator is not a neutral arbiter of disputes: do not assume it will give you the benefit of the doubt when looking into your practice.

You may be subject to an investigation into issues that were not specifically identified by the complainant

While the issues identified by the complainant will be the basis for an investigation by your regulator, this does not preclude your regulator from looking into other issues that it identifies as a result of its review of your records and response to the complaint. In preparing your response, assume that all aspects of your practice, as reflected in your records and response, will be subject to scrutiny by your regulator.

Your participation in the process may be extensive

Investigations tend to stretch out over time and require your involvement multiple times. You may receive a request for further submissions based on the questions that arise after the investigator has considered your initial response. Many regulators will provide your initial response to the complainant and invite a further submissions. If the complainant obliges, you will be given an opportunity to provide further submissions. Your regulator may also obtain a third party expert report and/or provide you with a summary of the complaint investigation, both of which you will be expected to respond to.

As a result, you may find that you are required to provide multiple submissions to your regulator over an extended period of time.

Delay

You should not expect that the investigation into a complaint that has been filed against you is going to be addressed in a timely manner. Although most jurisdictions have statutory deadlines for complaints to be investigated and disposed of, those deadlines are often not followed. For example, in Ontario, the legislation requires a complaint to be disposed of in 150 days. However, it is not uncommon for the College in Ontario to take more than 1 year to dispose of a complaint after receipt. There are many reasons for this, including:

- The complexity of the issues raised in the complaint;
- Extensions of time requested by the complainant and psychologists;

- The comprehensive nature of the investigation;
- The retention of third party experts to opine on issues; and
- Lack of sufficient resources.

You will need to exercise patience while the complaint investigation winds its way through the process.

The decision made by your regulator may have impact on your practice

In the event that your regulator decides to take action against you as a result of a complaint, any action taken is intended to be remedial (with the exception of sanctions that can be imposed by a disciplinary tribunal for professional misconduct). However, that does not mean that the remedial nature of the action will not impact on your practice. You may agree to or be required to work with a coach or supervisor, take educational courses, prepare a self-reflective paper, have your charts reviewed or have some limits imposed on your practice in order to address the concerns of your regulator. This may cause you to spend time you would have otherwise been using to provide services to your clients on addressing the concerns that have been raised by your regulator.

Mitigating Risk

While you cannot completely eliminate the possibility of a complaint being made, there are steps you can take to mitigate the risk, including the following:

Documentation

Make sure you document all encounters and interactions– the more detail, the better.

Stay within your scope

Know what you are able (and not able) to do.

Keep up to date

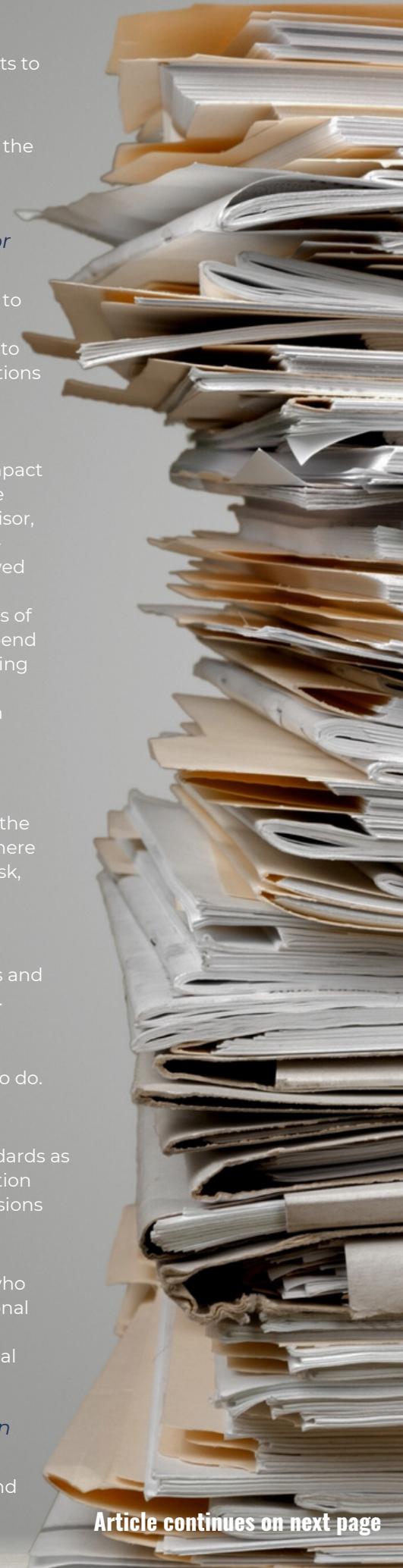
- Review College policies and standards as well as articles from your Association
- Attend continuing education sessions

Respect confidentiality and privacy

Remember, your client is the only one who can consent to the release of their personal health information (except in limited circumstances as prescribed by provincial and territorial privacy legislation).

Be honest, transparent and timely in your communication with clients

Your regulator expects that you do so and your clients will appreciate it.



Make sure you obtain informed consent

Your client must be capable of giving consent and understand what they are consenting to.

If you do not know the answer, ask

There are multiple resources available to you, including:

- Website of your regulator
- College practice advisor (we recommend general questions only)
- Gowling WLG's pro bono legal hotline (professional liability questions only)

KEY CONTACT INFORMATION

To access Gowlings WLG pro bono legal hotline please call 1-855-441-4424.

To report a professional liability insurance claim, including a College complaint, please contact Crawford & Company (Canada) Inc. at 1-877-805-9168 or by email at BMSclaims@crawco.ca.

For more information about your professional liability insurance coverage or to speak with a BMS broker, please contact 1-855-318-6038 or psy.insurance@bmsgroup.com.

This article was prepared and written by Andrew McKenna, Gowling WLG in partnership with BMS Canada Risk Services (BMS).

Over the past 10 years, lawyers from Gowling WLG (LLP) Canada ("Gowlings") have assisted hundreds of psychologists and psychological associates in responding to and addressing complaints that have been made against them to their regulator. The legal team at Gowling WLG works closely with BMS and its clients to deliver a pro bono legal hotline for professionals participating in the Professional Liability Insurance program. Gowling WLG is one of the largest and most highly recognized legal firms in medical defence and professional liability in Canada and their lawyers will help you navigate decisions related to your reporting obligations and other complex practice risk questions.

This article is for general information purposes and should not be interpreted as the provision of legal or broker advice.

bms.



CANADIAN
PSYCHOLOGICAL
ASSOCIATION

SOCIÉTÉ
CANADIENNE
DE PSYCHOLOGIE

