

Draft for Consultation

Your input is requested on the following Framework Element. Engineers Canada is seeking expert feedback and validation regarding alternative dispute resolution. Key questions for consideration:

- Should ADR be a mandatory component to a regulator’s disciplinary process?
- What criteria should be used considered for inclusion or exclusion from and ADR process?
- Are there any restrictions on the contents of settlements?

If you have any questions, or would like to submit your feedback please contact:

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We welcome your feedback!

Alternative dispute resolution

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Purpose and policy direction

Alternative dispute resolution (“ADR”) can help protect the public by achieving timely solutions focused on remediation in appropriate cases. Disciplinary processes should allow for ADR opportunities.

Key considerations:

1. A complaint may be referred to ADR at any time prior to the commencement of a disciplinary hearing.
2. Criteria for eligibility for referral to ADR includes the following:
 - a. agreement of the registrant, the regulator with input from the complainant,
 - b. the allegations do not involve a threat to public safety,
 - c. the registrant will benefit from rehabilitative measures, and
 - d. public confidence in the profession will not be undermined.
3. Matters not suitable for ADR include:
 - a. matters involving a threat to public safety and
 - b. allegations which, if proven, would be grounds for suspension or revocation of membership.
4. There should be independent oversight over whether matters that are more appropriately referred to disciplinary panel are not settled through ADR.

5. The benefits of an ADR process include:
 - a. timely, cost-effective dispute resolution, and
 - b. the opportunity to draft a resolution that
 - i. meets the needs of the registrant, the statutory mandate of the regulator and
 - ii. which may not be available to a disciplinary panel. (e.g. a resignation of membership or an agreement that includes attendance at a drug rehabilitation clinic.)
6. ADR proceedings should be conducted by an appropriately trained individual.
7. The parties to the ADR process are the registrant and the engineering regulator. The complainant is not a party but may be requested to provide input into the process and any agreed-upon resolution. Both parties and the complainant may, but need not, be represented by legal counsel.
8. The ADR process should allow a reasonable amount of time for resolution but should not extend the disciplinary process unreasonably.
9. Any agreement reached should be documented and should include:
 - a. all agreed-upon facts;
 - b. all admissions on the part of the registrant; and
 - c. the outcome of the ADR process.Agreements and decisions must be ratified by a statutory committee of the regulator and should be issued as an order of that committee.
10. If, as part of the resolution, the registrant agrees to practice restrictions, then the said practice restrictions should be published in the register.
11. If ADR is unsuccessful in achieving resolution, or if the resolution is rejected by the committee or compliance is breached, all records of the ADR process should be destroyed. No admissions made by the registrant or offers exchanged during the ADR process should be used by the regulator in the subsequent disciplinary process.
12. No committee member who is involved in the ADR process should sit on a disciplinary panel.

Definitions

Alternative dispute resolution: a process or processes for the full or partial resolution of one or more matters which would otherwise be dealt with via disciplinary proceedings and includes without limitation:

- (i) negotiation;

- (ii) mediation;
- (iii) such other process as the parties agree to; or
- (iv) a combination of the above.

(definition adapted from bylaws of APEGBC s. 18)

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