



Inquiries, Complaints and Reports Committee

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The Regulated Health Professions Act, 1991 ("the RHPA"), which is the legislation that governs Ontario's health regulatory Colleges, is about to change significantly. These changes, which come into effect on June 4, 2009, will have an impact on how the College processes concerns about members and on members who face complaints or other formal investigations.

Under the current RHPA, concerns about members are investigated by three internal bodies: the Executive Committee (for non-complaints investigations), boards of inquiry (for incapacity concerns) and the Complaints Committee (for formal complaints). Under the new legislation, these investigative functions are merged into one committee, the Inquiries, Complaints and Reports Committee (ICRC). As a result, the ICRC will see all complaints and will also screen all member-specific concerns that arise from other sources, including mandatory reports and registrar investigations.

Although there are many significant procedural changes resulting from the creation of the ICRC, four areas of change are of specific interest to members:

- (i) notice requirements;
- (ii) a member's prior history;
- (iii) alternate dispute resolution procedures; and
- (iv) dispositions available.

NOTICE REQUIREMENTS

Under the new legislation, members will receive notice of a Registrar's investigation within 14 days of it being filed with the committee and of a complaint within 14 days of it being filed with the College. This early notice of a complaint will help members prepare for an investigation while the matter is still fresh in their minds. The notice will also contain formal notice of a member's right to respond in writing to the concern, the timelines that apply to the investigation and a

member's right to an independent review of an ICRC decision by the *Health Professions Appeal and Review Board* (the "Board").

Complaints are to be investigated within 150 days (up from 120 days). If the ICRC has not rendered a decision within 150 days, it must notify the complainant or the member that the matter is not completed and that it will try to do so within a further 60 days. After day 210, the College must send a letter to the parties and to the Board every 30 days explaining why the complaint has not been decided yet. The Complainant or the member can then go to the Board for an order directing the ICRC to complete their investigation promptly or for the Board to take over the investigation. An implication of these timeline requirements is that Colleges will be less likely to agree to lengthy delays in the investigative process (even if requested by the member - for example, if there is a parallel criminal proceeding).

PRIOR HISTORY

The ICRC is required to consider and review that prior history of a member with the College when looking at new concerns. The prior history includes any earlier decision of the Executive, Complaints (except for frivolous and vexatious matters), Discipline or Fitness to Practice Committees. Even prior decisions dismissing a complaint or concern need to be reported to the ICRC. The prior history rule attempts to ensure that the ICRC has the complete picture of the member's professional career so that new concerns are not dealt with in isolation. For example, a member may have a history of concerns with standard of practice, none of which are disturbing on their own, but collectively may raise serious concerns about the member's competence.

The new legislation requires that members also be given copies of their available prior history so that they can respond to it. For example, the member can make written

submissions placing the prior history in context (e.g., if the nature of the member's practice generates a high risk of dissatisfied patients) or indicating that the prior history may have little or no relevance to the current concern.

In complaints matters, there is a possibility that the prior history becomes known to the complainant. This may occur if the member's response to the prior history is given to the complainant by the ICRC. It may also occur if there is an appeal to the Board for a review of the decision of the ICRC, as the Board often discloses the entire ICRC file to both the complainant and the member. Members with a significant prior history may wish to seek professional assistance in dealing with this possibility.

ALTERNATE DISPUTE RESOLUTION (ADR)

While ADR, or informal resolution, has been a common practice at many Colleges for some time now, formal rules must now be developed. These rules apply only to the use of informal resolution processes in formal complaints. Non-complaint investigations or complaints after they have been referred to discipline may still be dealt with flexibly by the internal processes selected by individual Colleges. ADR rules for formal complaints are:

1. The Registrar must initiate the process.
2. The consent of both parties is needed before ADR can begin.
3. ADR cannot be used in a complaint involving sexual abuse.
4. All communications in the ADR process must be kept confidential and privileged and cannot be used in other proceedings, including discipline.
5. If the ADR is unsuccessful, the facilitator cannot participate in the remainder of the ICRC process.
6. Any resolution must be ratified by ICRC to ensure that it is in the public interest.

DISPOSITIONS AVAILABLE

Where there is no successful resolution of matters, the ICRC will have significant new options for disposing of the matters that it reviews.

- The ICRC will be empowered to require members to complete a specified continuing education or remediation program to address practice concerns, for example, successfully completing a continuing education course or a mentorship program. Even certain self-study programs could be ordered, for example to read and summarize, to the satisfaction of the Registrar, certain standards, guidelines and policies of the College. However, this new power means that the ICRC can no longer refer members to the Quality Assurance Committee.
- The ICRC will be able to require members to attend before it for an oral caution in all matters, not just formal complaints.
- The ICRC will also deal directly with incapacity matters. Under the current legislative scheme, the Executive Committee deals with incapacity matters by appointing a board of inquiry. The results of the enquires into a member's health are then reported back to the Executive Committee which, depending on the information contained in the board's report, decides whether a formal incapacity hearing is necessary. Under the new legislation, however, a "panel" selected by the Chair of the ICRC will fulfill all of these functions directly.

Of course the existing options under the current legislative regime remain available - dismissal of the complaint, referral to discipline and negotiating an *Acknowledgement and Undertaking* with the member.

The new procedural changes for investigations, complaints and reports streamline the handling of concerns about members and also provide better options for dealing with them to protect the public interest. In addition, they require greater attention to timelines and communication with complainants and members.