



Ontario's Teaching Regulator
L'organisme de réglementation
de l'enseignement en Ontario

Memo

Date: November 2, 2022

To: Council of the Ontario College of Teachers

From: Rebecca Forte, OCT, Chair
Fitness to Practise Committee

Subject: Report of the Fitness to Practise Committee

Committee Meeting and Training Dates

The Discipline Committee (DC) and Fitness to Practise Committee (FTPC) and roster of the DC/FTPC attended a joint legal training session led by Independent Legal Counsel on October 20, 2022.

The FTPC held a formal meeting on October 21, 2022.

Summary of Work/Discussions

a) Joint Training

At the joint training session of the DC/FTPC on October 20, 2022, Independent Legal Counsel Julie Maciura and Rebecca Durcan of Steinecke Maciura LeBlanc, provided legal training on the following topics: (1) duties of panel and hearing process; (2) mock hearing scenarios; (3) role of Independent Legal Counsel and staff; (4) appearance of bias; (4) definitions of misconduct, incompetence and incapacity; and, (5) agreed statements of fact and joint submissions on penalty. There was an emphasis on the fact of the independence of Discipline panels from the College when adjudicating cases notwithstanding joint submissions on penalty.

b) Meeting

At the October 21, 2022 FTPC meeting, committee members addressed the following topics:

(i) Chair's Feedback Survey Results

At the request of the DC and FTPC Chairs, an online survey was developed and sent out to all committee and roster members of these two committees in June 2022 to gain feedback on the functioning of the newly implemented procedures as well as general matters. The Chair of FTPC shared the survey results and provided updates on the following topics: (1) duties and responsibilities of panel chairs, including (a) delegation of chair responsibilities, (b) scheduled breaks during hearings, (c) how to address questions to and from parties during hearings; (2) panel independence; and (3) resources available to the committee.

(ii) **Amendments to the Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee**

Andy Rosenhek, Manager, Tribunals, presented a series of proposed amendments to the *Rules of Procedure of the Discipline Committee and Fitness to Practise Committee* ("Rules"). The Discipline Committee unanimously approved the proposed amendments, which related primarily to (1) bringing definitions in line with current legislation; (2) pre-hearing conference processes; (3) production of 3rd party records; (4) sealing orders; and (5) costs. Staff will translate and post the revised rules on the College website, and communicate the changes to stakeholders, including frequent hearings participants (i.e., counsel for the College, members' counsel who appear regularly before the DC/FTPC, and independent legal counsel), when the amendments take effect.

(iii) **Statistics re Hearings Volume**

The Tribunals Manager presented hearings data for DC/FTPC from the first three quarters of 2022 as compared to the trends over the previous four years. From Q1-Q3 of 2022:

- **87 matters were concluded** (i.e., finalized Decision and Reasons of the DC/FTPC), which is a **15% increase** over the previous four-year average;
- **111 panel days were held** (i.e., including hearing days, deliberation days, and pre-hearing days), which is a **23% increase** in the amount of time spent conducting the work of the DC/FTPC over the previous four-year average;
- **32 days** were spent **conducting contested proceedings** (i.e., hearings and/or motions), which is a **22% increase** over the previous four-year average;
- **75 uncontested proceedings** were heard (i.e., hearings and/or motions), which is a **17% increase** over the previous four-year average;
- **4 pre-hearing conferences** were held, which is a **74% decrease** over the previous four-year average.

Overall, the data demonstrates that the Discipline and Fitness to Practise committees continue to hold a high volume of hearings, though not quite as high as 2021, which appears to be an outlier. The higher hearings volume during the pandemic (as compared to the pre-pandemic volume) may be attributed to several factors: (1) the governance changes that led to an increase in the number of adjudicators available for Discipline and Fitness to Practise Committee panels; (2) the shift to electronic hearings and its related efficiencies; and (3) the focused effort on reducing timelines of the disciplinary process (i.e., a strategic priority set by Council), which has led to a reduction in the cumulative volume of open hearings files from a high of approximately 330 in 2019 to approximately 100 currently. The cumulative volume of open hearings files may, however, increase over time as matters are referred from the Investigation Committee, which currently has a high caseload.

Appeals data was also presented which indicated that no decisions of the Fitness to Practise Committee have been appealed in the last five years.

Finally, as questions were previously raised about the College's settlement rate, the above data indicates that the number of uncontested proceedings has remained generally consistent with the overall increase in hearings volume, and is not reflective of an increased settlement rate.

(iv) Electronic Hearings Update and Legal Challenge

The Tribunals Manager, gave a presentation to the committee about (1) how the College and the Transition Supervisory Officer (in his role as committee chair during the governance transition period) decided to adopt electronic hearings as the default hearings format; and (2) a recent, unsuccessful legal challenge brought by a member in relation to the constitutionality and procedural fairness of the Rules of Procedure relating to electronic hearings.

In relation to item (1) above, the decision to adopt electronic hearings as the default format was made after careful consideration of several objective factors including: (a) procedural fairness; (b) transparency and accountability; (c) hearings efficiency; and (d) fiscal responsibility – all of which weighed in favour of establishing electronic hearings as the default hearings format. Transition roster members who had gained nearly a year of adjudication experience in College disciplinary proceedings were consulted as well, and were overwhelmingly supportive of electronic hearings processes (including technological training and support received). They indicated that they could capably and fairly conduct all types of proceedings electronically, including pre-hearing conferences, uncontested and contested hearings, and deliberations sessions.

In relation to item (2) above, a panel of the Discipline Committee found that the Rules of Procedure relating to electronic hearings were neither unconstitutional nor procedurally unfair for reasons set out in [Ontario College of Teachers v. Mammarella, 2022 ONOCT 87](#). The Rules of Procedure provide panels with the discretion to order that a hearing proceed either in person, electronically, in writing, or by any combination of these formats (i.e., hybrid hearing) if a party successfully objects to proceeding entirely electronically based on the circumstances of their particular case.

A question and answer period followed, allowing committee members the opportunity to share any feedback that would inform future hearings process improvements.

(v) Scheduling Modernization

The Tribunals Manager provided the committee with an update about a project that staff have been working on with a third-party provider that is intended to automate and streamline certain aspects of the scheduling process, particularly in relation to panel composition.

Motions Referred to Council

No motions were referred to Council.

Committee Mandate/Duties

The duties and mandate of the Fitness to Practise Committee are described in Appendix 1 of this document.

Future Meeting Dates

- Training: April 20, 2023 and October 19, 2023
- Meeting: October 20, 2023

Committee Members

- Kirby Chown, OCT
- Rebecca Forte, OCT (Chair)
- Kiran Qureshi
- Emile Ramlochan (Vice-Chair)
- Myrna Tulandi
- Hanno Weinberger, OCT

APPENDIX 1

Fitness to Practise Committee

Mandate

To deal with fitness to practise issues. (OCTA, s. 3(1) at para. 8).

Nature of the Fitness to Practise Committee's work

The Fitness to Practise Committee:

- a) shall hear and determine matters directed or referred to it under section 26, 29 or 33. (OCTA, s. 31(1)(a));
- b) shall perform such other duties as are prescribed by the regulations (OCTA, s. 31(1)(b)); and
- c) may, after a hearing, find a member to be incapacitated if, in its opinion, the member is suffering from a physical or mental condition or disorder such that the member is unfit to continue to carry out his or her professional responsibilities or that a certificate held by the member under this Act should be made subject to terms, conditions or limitations. (OCTA, s. 31(2)).

Powers of the Fitness to Practise Committee

Where the Fitness to Practise Committee finds a member to be incapacitated, it may make an order doing one or more of the following, in accordance with subsection 31(3) of the OCTA:

1. Directing the Registrar to revoke any certificate held by the member under the Act.
2. Directing the Registrar to suspend any certificate held by the member under the Act for a stated period, not exceeding 24 months.
3. Directing the Registrar to impose specified terms, conditions or limitations on any certificate held by the member under the Act.
4. Directing that the imposition of a penalty be postponed for a specified period and not be imposed if specified terms are met within that period.

In making an order directing that the imposition of a penalty be postponed for a specified period and not be imposed if specified terms are met within that period, the Committee may specify the terms it considers appropriate, including but not limited to terms requiring the production to the Committee of evidence satisfactory to it that any physical or mental condition or disorder in respect of which the penalty was imposed has been resolved. (OCTA, s. 31(4)).

In making an order revoking or suspending a certificate or imposing terms, conditions or limitations on a certificate, the Committee may fix a period during which the member may not apply for reinstatement or variation of the order. (OCTA, s. 31(5)).

Where the Fitness to Practise Committee is of the opinion that the commencement of the proceeding was unwarranted, the Committee may order that the College reimburse the member for his or her costs or such portion of them as the Committee fixes. (OCTA, s. 31(7)).

A hearing of the Fitness to Practise Committee shall, subject to written notice by the member received by the Registrar before the day the hearing commences, be closed to the public. (OCTA, s. 32(8)).