



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

Memo

Date: November 20, 2023
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 joint legal training sessions led by Independent Legal Counsel on April 20, 2023 and October 20, 2023.

On June 16, 2023, the DC/FTPC and Roster also attended a joint training session on the topic of Equity, Diversity and Inclusion (EDI), which was provided by Nicole Bernhardt, a Human Rights and Equity Specialist.

The FTPC held a formal meeting on October 19, 2023.

Summary of Work/Discussions

a) Joint Training

At the joint training session of the DC/FTPC and Roster on April 20, 2023, Independent Legal Counsel, Julie Maciura of Steinecke Maciura LeBlanc, provided legal training on the following topics: (1) Disclosure and Production; (2) Motions; (3) Sanctions/Orders; (4) Rules of Evidence; and (5) Witnesses.

At the October 20, 2023 joint legal training session of the DC/FTPC and Roster, Ms. Maciura provided legal training on the following topics: (1) Pre-Hearing Conferences; (2) Fitness to Practise; (3) Deliberating and Decision-Making; (4) Criminal Matters; (5) Agreed Statements of Fact and Joint Submissions on Penalty; and (6) Reinstatement Hearings.

At the June 16, 2023 EDI training session, Ms. Bernhardt provided training to the DC/FTPC and Roster on the fundamentals of equity, diversity and inclusion within a human rights framework, with distinct consideration of equitable practices within the individual, interpersonal, institutional and community spheres of influence.

b) Meeting

At the October 19, 2023 FTPC meeting, the members of the FTPC addressed the following topics:

(i) Discussion/Feedback re Committee Member Experience

The Chair opened the floor to receive feedback from Committee members about their experience on the Committee or as panelists in hearings. No concerns were raised.

(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 of the Fitness to Practise Committee* (“Rules”). A question-and-answer session followed. The FTPC then unanimously approved the proposed amendments, which related primarily to (1) bringing definitions in line with current legislation; (2) revising and clarifying processes for the filing of documents with the Tribunals’ Office; (3) updating outdated motions processes for consistency with current practices and with the current governance structure; and (4) establishing a process for disposing of matters referred to the DC under subsection 26(9) of the Act (i.e., administrative revocations and reprimands for members previously convicted of sexual offences). Staff will translate and post the revised rules on the College website, and will communicate the changes to stakeholders, including frequent hearings participants, when the amendments take effect.

(iii) Statistics re Hearings Volume

Mr. Rosenhek presented hearings data from the first three quarters of 2023 in comparison to the trends over the previous four years. The data generally indicated that (1) the DC and FTPC continue to hold a high volume of hearings; (2) the volume of contested hearings has increased significantly (i.e., 58% increase, which leads to lower output due to the increased time taken to hear and then draft reasons in these matters); and (3) successful efforts have been made by the prosecutions’ and tribunals’ teams to reduce the cumulative volume of open hearings files from its height of more than 300 open files in 2019 to current levels that are below 100 open files in 2023. It was anticipated that, given the high volume of open files at the investigation stage (a proportion of which will be referred to the DC and FTPC) and because of the currently high volume of contested files, the number of open hearings files may increase in the coming months and years.

(iv) Self-Represented Members Project

Dina Finkelshtein, Senior Decision Editor, presented to the FTPC about a project that Tribunals’ staff have undertaken to develop new resources to support self-represented litigants in the hearings process. Data was shared to demonstrate that the annual number of contested hearings attended by self-represented members is low (i.e., 0-3 hearings per year). Results of an environmental scan were also shared, which indicated that similar organizations who had implemented duty counsel programs to support self-represented members were largely unsuccessful in their efforts for a variety of reasons, including that such programs were generally costly, ineffective, and led to unexpected delays, despite their good intentions.

Based on their findings and the data collected, Tribunals' staff began developing resources which will be posted on the College website in 2024 to better explain hearings processes to self-represented members. These resources will include (1) a comprehensive glossary of hearings-related terms, and (2) FAQs about general hearings concepts, scheduling processes, hearings procedures that occur before, during and after a hearing, and motions processes.

A question-and-answer session followed the presentation, during which the Committee was invited to share suggestions about what other resources the Tribunals' Office should consider developing to support self-represented litigants, once the glossary and FAQs are completed. A range of suggestions were shared, including the development of: (1) instructional videos; (2) resources to help panel Chairs control the hearings process and guide self-represented litigants as needed; and (3) a duty counsel program.

Motions Referred to Council

No motions were referred to Council.

Committee Mandate/Duties

The duties and mandate of the FTPC are described in Appendix 1 of this document.

Future Meeting Dates

- Training: April 18, 2024 and October 17, 2024
- Meeting: October 18, 2024

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)).