



## Guidelines for Mediation Panel

As of 2017, the Act and By-Laws introduced a new process in response to complaints received by the Registrar. The introduction of the Mediation Panel is meant to allow the opportunity for issues to be potentially resolved in a more informal manner rather than to immediately initiate the Complaints Committee process.

The Mediation Panel is established by Council and is made up of licensed members of the College. Council appoints the members of the Mediation Panel, including the Chairperson (Act, subsection 34(1)), for terms of up to 3 years (Complaints By-Law 2(a)). Directors of the College and members of the Complaints Committee and Hearing Committee cannot be appointed to the Mediation Panel (Act, subsection 34(1)).

The following guidelines are meant to provide guidance to members of the Mediation Panel regarding their role on the panel, as well as to provide a clear outline of the process for all members of the College.

### **When is a Mediation Panel struck?**

In response to a complaint against a member, the Registrar has three options:

1. Dismiss the complaint if the complaint is frivolous or vexatious, if there is insufficient evidence, or if the complaint is primarily related to fees and financial charges (Act, paragraph 33(1)(d));
2. Refer the matter to the Mediation Panel if the complaint is not dismissed (Act, paragraph 33(1)(e)); or
3. Refer the matter directly to the Complaints Committee either before, after or during the consideration of the complaint by the Mediation Panel (Act, subsection 34(3)).

If the Registrar refers the matter to the Mediation Panel, the Chairperson of the Mediation Panel will appoint two members of the Mediation Panel (which may include the Chairperson) to carry out the Mediation Panel's tasks, functions and duties (Complaints By-Law 2(b)).

### **Role of the Mediation Panel**

The two appointed members of the Mediation Panel (referred to herein as the "Members") will consider and investigate the complaint in an informal manner, and communicate with the complainant and the member against whom the complaint was made (referred to herein as the "respondent"). The Members should consider recommendations that will help to bring a resolution to the situation and that will be acceptable to both parties.

The Chairperson of the Mediation Panel will:

- Liaise with the Registrar or Assistant Registrar, as needed
- Initiate and facilitate meetings held by the Mediation Panel
- Maintain a secured file including records of discussions, phone calls, interviews, decisions and conclusions
- Ensure the recommendations are provided to the complainant and respondent within **60 days** after receiving the complaint (Act, paragraph 34(4)(b)) (a written summary of recommendations is required for the complainant and respondent to review and provide feedback)
- Keep a record of the feedback provided by the complainant and respondent
- Inform the Registrar and Assistant Registrar whether the complainant and respondent accept the recommendations
- Refer the matter to the Complaints Committee, if the Mediation Panel determines that the complaint is of sufficient importance (Act, paragraph 34(4)(c))
- Provide documentation to the Chairperson of the Complaints Committee, if the matter is referred to the Complaints Committee (Act, subsection 34(7))

The Members will:

- Investigate the matter by communicating with the complainant and respondent (Act, paragraph 34(4)(a))
- Avoid any actual or perceived conflict of interest
- Review any documents provided by the complainant or respondent related to the complaint
- Take into account all relevant factors
- Provide recommendations to the complainant and respondent regarding how the complaint may be resolved within **60 days** after receiving the complaint (Act, paragraph 34(4)(b))
- Participate in the development of recommendations and sign the report

### **Prior to Conducting the Investigation: Assess the Complaint and Plan Next Steps**

Prior to communicating with the complainant and respondent, it is recommended that the Mediation Panel meet to review the information provided by the Registrar and determine a course of action. During this initial meeting, the Mediation Panel should:

- Review and discuss the information that has been provided to the Registrar
- Discuss whether there are any conflicts of interest
- Consider the significance of the issue to the complainant and any ethical concerns the situation presents
- Discuss whether the complaint involves a communication issue that could be resolved through explanation or discussion, or bringing both parties together for a conversation
- Discuss the purposes of the investigation:
  - o Evidence-focused – pursue lines of inquiry that meet the procedural requirements as set forth by the Act (e.g., is the complaint of a significant nature that should be referred to the Complaints Committee?)

- Outcome-focused – identify possible solutions to the situation, and obtain sufficient information to make a fair and informed judgement of the issues in question
- Identify what questions need to be answered, and the best way to obtain the information
- Identify roles and responsibilities of each member

A face-to-face meeting with each of the complainant and the respondent, conducted separately, is recommended when possible. If such meetings will take place, the Mediation Panel should consider the following questions in advance of the meetings:

- Will you meet face-to-face?
- Where will you meet (e.g., a neutral and private space)?
- Will more than one member of the Mediation Panel be present during the discussion? If so,
  - Who will take the lead role?
  - What are the members' roles, styles and preferences?
- Will you meet with the parties separately or together?
  - If meeting with the parties together, a pre-meeting session with each of the complainant and the respondent is important to prepare them for the meeting
- What ground rules need to be set for the conversation to proceed effectively?

### **Initial Phone Contact**

The Member who first contacts either party (e.g., by telephone) should do the following:

- Introduce yourself
- Describe your role and appointment to the Mediation Panel
- Review the information that was provided by the Registrar and/or Assistant Registrar
- Acknowledge the party's emotions and/or concerns
- Request an in-person meeting (indicate if someone else will be present, such as another member of the Mediation Panel)
- Describe the limits of confidentiality (Note: It is important for both parties to understand that this is not a confidential process. Documents and evidence obtained through this process will be shared with the Registrar, Assistant Registrar, and possibly the Complaints Committee.
- Explain that the goal of meeting is to better understand the parties' concerns and identify solutions

### **Meeting with Each Party**

The Member(s) who participate(s) in a face-to-face meeting with either or both parties should do the following:

#### *1. Introductions and role*

- Introduce yourself and establish a positive climate
- Stress that the purpose of mediation is to reach a mutually agreeable solution
- Review your role on the Mediation Panel (i.e., to better understand the situation and make fair and informed recommendations)

## 2. *Process*

- Describe the process (review information received from the Registrar and/or Assistant Registrar, obtain information from the complainant and respondent, and make recommendations within 60 days after receiving the complaint; if either party is not satisfied, they have 30 days to indicate whether they want the matter to be referred to the Complaints Committee) (Act, subsection 34(5)) [See Flowchart entitled “Mediation Panel Process” at page 5 of these Guidelines]
- The Mediation Panel and the Registrar can refer the matter to the Complaints Committee at any time during the process (Act, paragraph 34(4)(c), subsection 34(3))
- If the matter is referred to the Complaints Committee, the Chairperson of the Mediation Panel will provide all of the information gathered through the process to the Chairperson of the Complaints Committee

## 3. *Confidentiality*

- Ensure that both parties understand that this is not a confidential process
- Information will be gathered during the process (e.g., notes of conversations, review of documents)

## 4. *Understanding the Conflict*

- Invite each party to tell their story
- Restate the problem to ensure a proper understanding of the situation
- Explore each party’s needs and concerns
- Review any records shared by the complainant or respondent

## 5. *Discuss Solutions*

- Invite each party to identify possible solutions that would address their needs and concerns
- Generate a list of possible options and seek feedback from both parties

## 6. *Close session*

- If possible, re-affirm the possible solutions that have been discussed
- Discuss next steps

## **Report Writing and Recommendations**

- Prepare a document describing the complaint, the investigation process, relevant facts, conclusions, findings and recommendations (signed by the Members)
- Prior to completing the report, review recommendations with the complainant and respondent, and make necessary and/or appropriate adjustments based upon their feedback, to increase the likelihood that the outcome will be mutually satisfying
- Determine how you will share the report and recommendations with the complainant and respondent
- Remind the complainant and respondent verbally and in the report that, if they disagree with the recommendations, they have 30 days from the date on which the recommendations are made to refer the matter to the Complaints Committee (Act, subsection 34(5))

- The complainant, the respondent, and the Registrar/Assistant Registrar should each receive a copy of the report

## Mediation Panel Process

