



POLICY

Role of Council, Committees and Legal Counsel in Disciplinary Investigations and Court Matters

STATUS:	APPROVED
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The Role of the Registrar's Office

1. When information is provided to the College of Physicians and Surgeons that:
 - a) alleges unbecoming, unprofessional or discreditable conduct by a physician, or which,
 - b) alleges lack of competence by a physician, or which,
 - c) in the opinion of the Registrar's office indicates that either may exist,the Registrar's office will conduct such investigation as it thinks appropriate to provide information to the Executive Committee.
2. The Registrar's office will, after completing such investigation as it thinks appropriate, provide a package of information to the Executive Committee to be considered at a meeting of the Executive Committee.

The Role and Decisions of Executive Committee and Council

3. The Executive Committee will decide whether a preliminary inquiry committee or a competency committee should be appointed. In making such a decision, the Executive Committee will consider the following factors, and may consider other factors:
 - a) whether it is in the public interest to appoint a preliminary inquiry committee or a competency committee;
 - b) whether the test established in section 45 of **The Medical Profession Act, 1981** is met (reasonable grounds to believe that a person registered to practise may not have adequate skill and knowledge to practise);
 - c) Whether the test established in section 47 of **The Medical Profession Act, 1981** is met (reasonable grounds to believe that a person registered to practise may be guilty of unbecoming, improper, unprofessional or discreditable conduct).
4. The Executive Committee may determine that Council should decide whether a preliminary inquiry committee or a competency committee should be appointed. If the Executive Committee refers such a decision to Council, the Council may consider the factors set out in paragraph 3.

5. The Executive Committee or the Council may consider an alternative disposition in addition to, or in substitution for, the appointment of a preliminary inquiry committee (see *College Policy Alternative Dispute Resolution*).
6. Preliminary inquiry committees and competency committees shall be appointed by the Executive Committee or the Council.
7. The discipline committee shall be appointed by the Council.
8. The individuals who shall comprise a discipline hearing committee for a particular hearing shall be appointed by the chair of the discipline committee, or in the absence of the chair, by a deputy chair of the discipline committee.

CPSS legal counsel shall not have any input into determining which specific person(s) should be appointed to a discipline hearing committee, unless

- a) that input is provided with the knowledge of legal counsel for the physician charged, and
- b) legal counsel for the physician charged is provided an equal opportunity for input.

The Role of CPSS Legal Counsel

9. Neither the Council nor the Executive Committee, nor any member of the Council or the Executive Committee, has any authority to provide direction to or instruct CPSS legal counsel with respect to any discipline or competence matter.
10. Nothing in the preceding paragraph shall prevent the Executive Committee or the Council from receiving assistance or information from the Registrar or CPSS legal counsel to assist it in making, or in implementing, a decision at the investigatory stage of a discipline or competence matter. The Executive Committee or the Council may, for example, request that the Registrar or CPSS legal counsel obtain additional information to assist it to make a decision or may request CPSS legal counsel to draft appropriate wording for a charge that the Council or Executive Committee intends to place before the discipline committee.
11. The Executive Committee and the Council are independent bodies, performing a quasi-judicial function when making decisions that affect the rights of a physician under investigation, such as when dealing with possible suspensions of a physician from practice and in imposing penalties following a finding of unprofessional conduct. At all times when fulfilling a quasi-judicial function, members of the Executive Committee and the Council shall maintain their independence from CPSS legal counsel.
12. In any disciplinary or competency matter, where legal counsel (either in-house or external) is appointed on behalf of the Registrar's Office, the Registrar will provide instructions to legal counsel.
13. While the Registrar, and counsel retained by the Registrar in connection with a disciplinary or competency matter, should consider the perspective of a complainant, neither the Registrar nor legal counsel represents the complainant, and are not required to follow the wishes of the complainant.
14. The Registrar shall instruct legal counsel in connection with:
 - a) any appeal from a decision of the Executive Committee, the Council, or a discipline hearing committee, and
 - b) any application for judicial review or other court application relating to a disciplinary or competency investigation of the College.

For greater clarity, legal counsel does not represent, and does not take instruction from, the Executive Committee, the Council, or a discipline hearing committee.

The Role of Independent Legal Counsel for the Executive Committee or the Council

15. When performing a quasi-judicial function, the Council or the Executive Committee can retain independent legal counsel to advise it with respect to the proceedings before them, or in relation to the decision to be made.
16. If the Executive Committee or the Council retains independent legal counsel to assist it when making a decision, the President will be primarily responsible for providing instructions to legal counsel.
17. The expectations of independent legal counsel include:
 - a. Acting in a solicitor-client relationship with the Executive Committee or the Council.
 - b. Advising the Executive Committee or Council on any question of law raised in the information or in argument.
 - c. Identifying to the Executive Committee or Council any possible breach of principles of fairness and advising with respect to such a possible breach.
 - d. Advising the Executive Committee or Council with respect to any procedural rulings to be made by the Executive Committee or the Council.
 - e. If asked by a Councilor or a member of the Executive Committee who is preparing draft reasons for consideration by the Council or the Executive Committee, independent legal counsel will review and, if appropriate, comment on draft reasons prepared for the Council or the Executive Committee. In doing so, independent legal counsel will respect the principle that the decision must be the decision of the Council or the Executive Committee. Independent legal counsel shall not attempt to influence the Council's or the Executive Committee's assessments of credibility or reliability of evidence or the inferences to be drawn from the evidence that the Council or the Executive Committee has considered.
18. If the Executive Committee, the Council, or a discipline hearing committee seeks to be represented in relation to a matter that is the subject of an appeal, an application for judicial review, or other court application, it may do so by instructing legal counsel, who shall not be legal counsel instructed by the Registrar, to act on its behalf.

Additional Resources

- Preliminary Inquiry Committees – [The Medical Profession Act, 1981](#) s. 44, 47
- Competency Committees - [The Medical Profession Act, 1981](#) s. 45, College [Regulatory Bylaw 12.1](#)
- The Discipline Committee - [The Medical Profession Act, 1981](#) s. 43, College [Regulatory Bylaw 10.1](#)
- The Discipline Hearing Committee - [The Medical Profession Act, 1981](#) s. 49(5), College [Regulatory Bylaw 11.1](#)
- CPSS Policy: [Alternative Dispute Resolution](#)