

DISCIPLINE COMMITTEE DIRECTION

ELECTRONIC AND WRITTEN PROCEEDINGS

1. Preamble

- The Discipline Committee is committed to adjudicating allegations referred to it fairly and efficiently, and to fulfilling its mandate to protect the public. Due to the recent COVID-19 pandemic, and the resulting state of emergency, the Discipline Committee discontinued in-person disciplinary proceedings on an indefinite basis.
- This Direction from the Discipline Committee addresses the following areas:
 - [Discipline Committee Rules of Procedure and Relevant Legislation](#)
 - [Scheduling of Discipline Committee Hearings](#)
 - [Pre-hearing Conferences/Case Management Conferences](#)
 - [Electronic Hearing Documents](#)
 - [Videoconference Hearings](#)
 - [Teleconference Hearings](#)
 - [Electronic Hearings – General Information](#)
 - [Written Hearings](#)

2. Discipline Committee Rules of Procedure and Relevant Legislation

- Under Rule 4.05 of the Discipline Committee’s Rules of Procedure (revised February 2015), pre-hearing conferences may be conducted electronically if directed by the Chair or Presiding Officer of the pre-hearing conference. The Discipline Committee notes that prior to the current pandemic, it had become common practice for subsequent pre-hearing conferences and case management conferences to be conducted electronically. Until further notice, the Discipline Committee directs that all pre-hearing conferences and case management conferences be held electronically, including the first conference held in a proceeding.
- Under Rule 5.02, a motion in a proceeding, in addition to being heard by oral argument, may be heard in writing, or electronically, in accordance with Rule 8.
- Under Rule 8, the Discipline Committee may order that a hearing, part of a hearing, or a step in the proceeding be held in writing or electronically and may hold any combination of written, electronic and oral hearings, provided that the obligation to hold the hearing in public can be met.
 - Rule 8.01 sets out the requirements for a request for a proceeding to be held in writing or electronically.
 - Rule 8.01(1) notes that subject to sections 5.1 and 5.2 of the *Statutory Powers Procedure Act*, the Discipline Committee may order that a hearing, part of a hearing, or

a step in the proceeding be held in writing or electronically and may hold any combination of written, electronic and oral hearings, provided that the obligation to hold the hearing in public can be met.

- Rule 8.01(2) sets out the requirements when a person is requesting that a hearing, part of a hearing, or a step in the proceeding be conducted in writing or electronically.
- Rule 8.02 provides the procedure for conducting a proceeding in writing or electronically.
- In addition, on March 25, 2020, the Ontario legislature enacted the *Hearings in Tribunal Proceedings (Temporary Measures) Act*, which also provides authority for the Discipline Committee to hold electronic and written proceedings, specifically:

Conduct of hearings

3 (1) A tribunal may conduct a hearing in person, electronically, in writing or by a combination of any of them, as the tribunal considers appropriate.

Directions, orders

(2) For the purposes of subsection (1), a tribunal may make any orders or give any directions that it considers appropriate in the circumstances respecting,

(a) the format of a hearing and its conduct; and

(b) any matters ancillary to the holding of the hearing, including respecting notice of the hearing, the service or filing of materials for the hearing, attendance at the hearing, any recording of the hearing or public access to the hearing.

Rules

(3) Unless the regulations provide otherwise, a tribunal may make rules for the purposes of subsection (1) respecting any matters referred to in clause (2) (a) or (b) as they relate to hearings before the tribunal.

3. Scheduling of Discipline Committee Hearings

- The Discipline Committee directs that effective immediately, all disciplinary proceedings, including pre-hearing conferences, case management conferences, motions, and hearings be conducted by electronic means (teleconference and/or videoconference), and/or in writing, until further notice.
- The Chair of the Discipline Committee will work with Hearings Office staff in taking responsibility for the scheduling of electronic and written hearings.
- In scheduling hearings during the pandemic, the Chair of the Discipline Committee will be guided by the principles of public protection and fairness to the member, and may take into account such factors as:
 - whether a hearing was previously scheduled but postponed because of the pandemic;
 - whether a hearing was previously scheduled but adjourned;
 - whether a hearing is uncontested or contested;

- for hearings not yet scheduled, the date on which the matter was referred to the Discipline Committee and the date on which the pre-hearing conference or case management conference concluded;
 - the stated preference of the parties, and any agreement between the parties to request a hearing by teleconference, videoconference, or in writing;
 - the needs of the Hearings Office and Discipline Committee in managing the Discipline Committee schedule; and
 - special circumstances brought forth by the parties.
- Parties shall address the above-noted factors in their written requests or responses.

4. Pre-hearing Conferences/Case Management Conferences

- Effective immediately and until further notice:
 - Parties are asked to provide their Form 2A pre-hearing conference memos **15 days** in advance of pre-hearing conferences, instead of 10 days as directed in Rule 4.06.
 - Parties are not required to submit paper copies of pre-hearing conference memos, but are directed to file an electronic copy with the Hearings Office by email at <mailto:hearingsoffice@ocpinfo.com>
 - During pre-hearing conferences and case management conferences the parties shall be prepared to discuss the logistics of the hearing, including the requirements respecting paper and electronic copies of documents.

5. Electronic Hearing Documents

5.1. Uncontested Hearing Documents

5.1.1. Uncontested Hearings - Paper Copies of Documents

- In order to efficiently move between documents and simultaneously permit Panel members to view video images on-screen, parties shall ensure that the Panel is provided with a paper copy of all documents they intend to rely upon during the hearing.
- The parties are asked to send 5 paper copies of their materials to the College at the following address:

Ontario College of Pharmacists
483 Huron Street
Toronto ON M5R 2R4
Attn: Hearings Office
- In turn, the Hearings Office will distribute a paper copy of each party's materials to each Panel member in advance of the hearing.

- For uncontested hearings, the parties are directed to file their materials in 2 Books of Documents each as follows:
 - The College is directed to file 2 Books of Documents:
 - The first shall include the Notice of Hearing, the Agreed Statement of Facts, written submissions on liability, any case law on liability, and any draft preliminary Orders.
 - The second shall include the Joint Submission on Order, written submissions on Order, and any case law on Order.
 - The member is directed to file 2 Books of Documents:
 - The first shall include written submissions on liability, any case law on liability, and any draft preliminary Orders.
 - The second shall include written submissions on Order, and any case law on Order.
- If either party is unable to prepare or deliver paper copies due to self-isolation rules, that party shall notify the Hearings Office as soon as possible.

5.1.2. Uncontested Hearings - Electronic Copies of Documents

- In addition to the paper copies identified above, the parties are directed to file the following electronic copies of documents with the Hearings Office by email at <mailto:hearingsoffice@ocpinfo.com>:
 - Agreed Statement of Facts, Joint Submissions on Order, and any draft Orders in Word format.
 - A PDF (i.e., a scanned) copy of all Books of Documents.

5.1.3. Uncontested Hearings – Filing Deadlines and Notes on Hearing Documents

- All paper and electronic copies shall be received by the Hearings Office no later than noon 7 days in advance of the hearing.
- All documents must have clearly marked page numbers.
- The Panel will be asked to review the Notice of Hearing, Agreed Statement of Facts, written submissions on liability, and any draft Orders relating to preliminary matters (e.g., publication bans) in advance of the hearing, but should not be assumed to have read any case law regarding liability provided in advance.
- The Books of Documents relevant to Order will be provided to the Panel separately, in a sealed envelope, and will not be reviewed until after the Panel has made findings with respect to the allegations of misconduct, if any.

5.2. Contested Hearing Documents

5.2.1. Contested Hearings – Paper Copies of Documents

- In order to efficiently move between documents and simultaneously permit Panel members to view video images on-screen, parties shall ensure that the Panel is provided with a paper copy of all documents they intend to rely upon during the hearing.
- The parties are asked to send 5 paper copies of their materials to the College at the following address:

Ontario College of Pharmacists

483 Huron Street

Toronto ON M5R 2R4

Attn: Hearings Office

- In turn, the Hearings Office will distribute a paper copy of each party's materials to each Panel member in advance of the hearing.
- For contested hearings, each party is directed to file their materials for the liability phase in Books of Documents using sequentially numbered volumes as follows:
 - Book(s) of Documents containing all documents that will be provided to the Panel during the liability phase of the hearing.
 - Book(s) of Submissions and Authorities containing written closing submissions and any case law regarding liability.
- For contested hearings, if findings of misconduct are made each party is directed to file their materials for the Order phase of the hearing in Books of Documents using sequentially numbered volumes as follows:
 - Book(s) of Documents containing all documents that will be provided to the Panel during the Order phase of the hearing.
 - Book(s) of Submissions and Authorities containing written closing submissions, any case law regarding Order, and a draft Order.
- If either party is unable to prepare or deliver paper copies due to self-isolation rules, that party shall notify the Hearings Office as soon as possible.

5.2.2. Contested Hearings – Electronic Copies of Documents

- In addition to the paper copies identified above, the parties are directed to file the following electronic copies of documents with the Hearings Office by email at <mailto:hearingsoffice@ocpinfo.com>:
 - Any Agreed Statement of Facts, and draft Orders in Word format.
 - A PDF (i.e., a scanned) copy of all Books of Documents, and Books of Submissions and Authorities.

5.2.3. Contested Hearings – Filing Deadlines and Notes on Hearing Documents

- All paper and electronic copies of documents for each phase of the hearing shall be received by the Hearings Office no later than noon 7 days in advance of the commencement of that phase of the hearing with the exception of Books of Submissions and Authorities.
- All paper and electronic copies of Book of Submissions and Authorities for each phase of the hearing must be received by the Hearings Office no later than noon 7 days in advance of the scheduled day for oral closing submissions. In the event the oral closing submissions are scheduled to occur immediately following the end of the evidentiary phase, the parties shall seek direction from the Panel Chair regarding the deadline for filing their written closing materials.
- All documents must have clearly marked page numbers.
- The Panel will not review any materials provided to them in advance of a contested hearing except on consent of the parties.

5.2.4. Contested Hearings – Witness Copies of Documents

- During the course of the hearing, the Hearings Office will display documents for view by a witness, the Panel, and the parties through the videoconference. As such, ALL documents that will be referred to during the hearing must be included in the party's Book of Documents.
- Any documents inadvertently omitted from the party's Book of Documents must be forwarded to the Hearings Office as soon as possible, with clear direction regarding when it will be referred to (i.e.: during which witness).

6. Videoconference Hearings

6.1. Videoconference Platforms

- Hearings by videoconference will be conducted using the Adobe Connect platform for the video portion, and Mitel Teleconferencing for the audio portion.
- In the event a participant's videoconference fails, they will still be able to hear and communicate using the teleconference, and should attempt to reconnect to the Adobe Connect platform.

6.2. Videoconference Requirements

- Counsel, members and witnesses must have access to the following to participate in a hearing by videoconference:
 - Computer (desktop or laptop, but not a tablet)
 - Video camera capability (either built into the computer or a web cam that is attached)
 - Internet connection (wired connection preferred for greater stability and security over wifi)
 - Adequate internet speed and stability to support a videoconference (a minimum of 5 to 8 mb of bandwidth is recommended)

- Landline telephone preferred over cell phone (if possible) to minimize potential for problems connecting to the teleconference, and feedback due to overloaded cellular services
- A physical location to conduct the videoconference in that is suitably quiet and professional

6.3. Videoconference Testing

- Prior to the hearing all participants, including witnesses, will be emailed instructions on how to download the necessary software and join the videoconference.
- All participants are expected to download the software and then participate in a test in advance of the hearing with a College staff member.
- The test must be conducted using the exact same environment as will be used the day of the hearing including the same device, internet browser, network, and physical location.
- Counsel are expected to provide the Hearings Office with an email address and telephone number for all of their witnesses for the purpose of providing the videoconference instructions and scheduling the test, as well as contacting the witness should the witness encounter technical difficulties during the hearing.

6.4. Videoconference - Panel Deliberations and Breakout Sessions

- The Panel will be given a private breakout room within Adobe Connect to deliberate during the course of the hearing.
- A separate private break out room will also be provided for each of the member, and the College. In the event a witness is excused from the hearing during an objection, a private breakout room will be provided for the witness also.
- Parties will be given information in advance on how to dial into the teleconference for their breakout room to ensure complete audio and visual privacy.

7. Teleconference Hearings

7.1. Teleconference Platform

- Hearings using teleconference will be conducted using Mitel Teleconferencing.

7.2. Teleconference - Panel Deliberations and Breakout Sessions

- The Panel will be provided with a private method to conduct their deliberations during hearings. Counsel should make their own arrangements with their clients in advance to have private discussions as needed.

8. Electronic Hearings - General Information

8.1. Electronic Hearings - Preliminary Orders

- Parties are reminded that they are required to provide draft Orders for any preliminary procedural requests they are making, including publication bans, and that copies of the Orders shall be filed as set out above.

8.2. Electronic Hearings - Waiver of Appeal

- If the joint submission on order (JSO) includes an oral reprimand, and the member intends to provide a waiver of appeal so that the reprimand can be administered at the conclusion of the hearing, the member is requested to email an electronic copy (scanned PDF or picture JPEG or PNG) of the signed waiver to the Hearings Office during the Panel's deliberations on Order.
- If a signed waiver is not provided, the member may be asked to provide an oral waiver on the record.

8.3. Electronic Hearings - Etiquette

- All individuals participating in electronic hearings are expected to be respectful of the other participants and the procedure by adhering to the following guidelines:
 - Mute computer microphones and telephone when not speaking.
 - Wait for direction from the Panel Chair to speak.
 - Use the "hand raise" function in videoconferences if you need to speak out of turn.
 - Log into the technology 15 minutes in advance of the hearing and return promptly from any scheduled break.
 - Dress code for hearings conducted via videoconference is business attire.
 - Although the usual norms of an in person hearing, such as standing when the Panel enters, cannot be respected during an electronic hearing, all participants shall maintain a high level of professionalism and respect for the process throughout.

8.4. Electronic Hearings - Members of the Public

- Members of the public who wish to attend a particular hearing will be directed on the College's website to contact the Hearings Office to determine whether it is possible to participate by listening to the audio from hearings held by videoconference or teleconference.
- Rule 10.09 of the Discipline Committee's Rules of Procedure regarding access to the hearing record continues to apply.

8.5. Electronic Hearings - Court Reporter and Transcript

- A court reporter will make an audio recording of hearings held by teleconference and videoconference. The transcript can be ordered in the usual course.

- For hearings held by teleconference without accompanying video, all parties must identify themselves each time they speak so as to ensure accuracy of the transcript.

9. Written Hearings

9.1. Written Hearings - Documents

- The parties are directed to file their materials in two Books of Documents each as follows:
 - The College is directed to file two Books of Documents:
 - The first shall include the Notice of Hearing, the Agreed Statement of Facts, written submissions on liability, and any case law on liability.
 - The second shall include the Joint Submission on Order, written submissions on Order, any case law on Order, and a draft Order.
 - The Member is directed to file two Books of Documents:
 - The first shall include written submissions on liability, and any case law on liability.
 - The second shall include written submissions on Order, and any case law on Order.
- The Panel will be asked to review the Book of Documents relevant to liability in advance of their deliberation meeting.
- The Book of Documents relevant to the Order will be provided to the Panel separately in a sealed envelope and will not be reviewed until after the Panel has made findings with respect to the allegations of misconduct, if any.

9.1.1. Written Hearings - Paper Copies of Documents

- Parties shall provide the hearing Panels with a paper copy of all documents.
- The parties are asked to send 5 paper copies of their materials to the College at the following address:

Ontario College of Pharmacists

483 Huron Street

Toronto ON M5R 2R4

Attn: Hearings Office

- The Hearings Office will distribute a copy of each party's documents to each Panel member.
- All documents must have clearly marked page numbers.
- If either party is unable to prepare or deliver paper copies due to self-isolation rules, please notify the Hearings Office as soon as possible.

9.1.2. Written Hearings - Electronic Copies of Documents

- In addition to the paper copies identified above, the parties are directed to file the following electronic copies of documents with the Hearings Office by email at <mailto:hearingsoffice@ocpinfo.com>:
 - Agreed Statement of Facts, Joint Submissions on Order, and any draft Orders in Word format.
 - A PDF (i.e., a scanned) of all Books of Documents.

9.2. Written Hearings - Plea Inquiry

- The parties are asked to ensure that the Agreed Statement of Facts contains explicit statements that track the questions Panels of the Discipline Committee usually ask when they conduct the plea inquiry in uncontested hearings. The Hearings Office will provide a copy of the plea inquiry questions upon request.

9.3. Written Hearings - Deadlines for Filing Documents

- The Hearings Office will schedule a date for the Panel to deliberate and will communicate the date selected to the parties.
- The parties are to exchange and file their electronic documents in accordance with the following schedule, unless otherwise directed by the Chair:
 - The College shall file its materials 35 days prior to the deliberation day
 - The Member shall file her or his materials 28 days prior to the deliberation day
 - The College shall file any reply materials 21 days prior to the deliberation day
 - Independent Legal Counsel will provide their advice in writing 14 days prior to the deliberation day, which the Hearings Office will circulate to the parties for comment
 - The parties shall file any comments on ILC's advice 10 days prior to the deliberation day
- The parties shall file 5 paper copies of all of their documents with the Hearings Office at least 10 days prior to the deliberation day.

9.4. Written Hearings - Independent Legal Counsel

- Independent Legal Counsel (ILC) will be invited to join the Panel at the commencement of their deliberation meeting to provide advice in accordance with the written advice previously circulated to the parties as well information about the process and how the Panel should proceed with their deliberations regarding the allegations of misconduct.
- ILC will be asked to leave the meeting while the Panel members deliberate.
- If the Panel makes findings against the member, ILC will be asked to join the deliberation meeting again to provide advice in accordance with the written advice previously circulated to the parties as well information about the process and how the Panel should proceed with their deliberations regarding the Joint Submission on Order.

- It is anticipated that the advice provided by ILC to the Panel during the deliberation meeting will be limited to procedural matters only. Both parties are asked to confirm that they are content for ILC to answer any further questions regarding procedural matters only without additional opportunity to comment.
- In the event ILC is asked for advice on a substantive issue that was not addressed in the written advice circulated to the parties in advance, the parties shall be given an opportunity to comment.

9.5. Written Hearings - Availability for Teleconference on Deliberation Day

- Counsel, the member, and ILC are required to be available to participate in a teleconference on the day the Panel deliberates, in case the Panel has questions of clarification or requests additional advice from ILC.
- The Hearings Office will communicate to the parties as soon as possible on the deliberation day whether the teleconference is required, and if so, the exact time.

9.6. Written Hearings – Reprimands

- If the Panel is asked to include a reprimand as a term of their Order and makes such an Order, the Panel will deliver the reprimand either by teleconference on the day of their deliberation meeting, or in writing when they provide their written Decision and Reasons.
- Parties shall ensure that JSOs are clear as to which type of reprimand is being sought.

This Direction takes effect May 6, 2020 and remains in effect until further notice.