



Memo

Date: March 4, 2020
To: Members of Council
From: Jacqueline Karsemeyer, OCT
Chair, Investigation Committee
Subject: Report of the Investigation Committee

Committee Meetings/Panel Dates

Meetings

An Investigation Committee meeting was held on November 14, 2019.

Investigation Committee (IC) Panel Dates

October 16, 24, 28*
November 19, 21*, 26
December 10, 16*

* Indicates single-member IC panel meeting (CR).

Summary of Discussions

1. Training

At the November 13, 2019 training, Josh Koziebrocki, Independent Legal Counsel to the Investigation Committee, provided training to committee and roster members on the following topics:

- Refresher on Fitness to Practise Issues
- Employer Hands-off Policies
- Referrals to the Discipline Committee (DC) - Seriousness Test
- Referrals to DC - Parsing Allegations

Katherine Hensel, Legal Counsel, provided an overview of Children's Aid Societies from an Indigenous perspective.

2. Meeting

At the November 14, 2019 Investigation Committee meeting, the committee members discussed the following topics:

The Chair's Report: The Chair informed the Investigation Committee about the College's request for information process regarding Independent Legal Counsel. The Chair also advised that the Investigation Committee's guidelines relating to prior matters and prosecutorial viability assessments would be reviewed and presented to the Investigation Committee at its next meeting. The Chair reported that she would consult with the Chair of Council to clarify the definition of a day in relation to preparation time.

Data on Single Panel Member Complaint Resolution (CR): Nadine Carpenter, Manager Professional Conduct, provided the Investigation Committee with a breakdown of CR dispositions from January 2018 to April 2019.

Several members of the Investigation Committee expressed reservations that files, where admonishments are the likely outcome, are reviewed by single-member CR panels. The rationale being that the threshold between admonishments and sending a file to the Discipline Committee is best considered by a three-member panel.

Staff explained that the Act permits single-member panels to consider files and to adopt all outcomes from reminder to oral admonishment. CR outcomes mirror the Investigation Committee's prior decisions in similar matters. Staff explained that it is more efficient to schedule CR matters separately before single-member panels due to the volume of matters before the Investigation Committee. Efficiency benefits members, complainants and is in the public interest.

This item was concluded with staff noting the concerns raised by the committee.

Data on Benefits Fraud: Jean-François Schaan, Complaint Resolution Officer, provided the Investigation Committee with an overview of the range of outcomes arising from benefits fraud matters over the last five years.

Update on Ontario College of Teachers Act, 1996 (section 26(4.5)): The Chair noted that staff will continue to monitor the status of this legislative amendment relating to incapacity matters, with training to follow for the Investigation Committee in 2020.

Guidelines Regarding Oral Admonishments via Video Link: The Chair presented guidelines for the Investigation Committee relating to requests to deliver oral admonishments via video link. The Chair confirmed that these requests will be reviewed on a case-by-case basis by the panel who considered the matter. The attached guidelines (Appendix 1) underline the committee's decision that oral admonishments via video link should only be permitted under very exceptional circumstances.

The Director's Update: The Director reminded the Investigation Committee of the counselling services available to committee members and roster members. This update was subsequently shared with roster members via email.

Undertaking to Resign and Never Reapply Pilot: The Director provided an overview of the Undertaking to Resign and Never Reapply pilot. This pilot is being established as an additional strategy to address the increased number of complaints. These undertakings will typically be considered in cases where members have expressed that they no longer want to teach or have resigned or retired from the profession. Other factors to consider are, for example, the member's age, the seriousness of the alleged conduct, any historical employer or College concerns and/or if the member is working outside of the education sector. Matters involving sexual misconduct/abuse, serious/significant abuse or a significant pattern of misconduct are some of the factors that militate against offering an undertaking.

Adopting Consent Agenda Format: The Chair proposed that the Investigation Committee adopt a consent agenda format for its future meetings, as the Council's Executive Committee has decided to proceed with this format for its own meetings.

Posting of Investigation Minutes: The Chair explained that in the future, a draft of the Investigation Committee meeting minutes approved by the Chair will be posted 10 days prior to next Investigation Committee meeting. Once the draft is approved at the meeting, a final version will be posted along with the draft version.

Statistics

The following is a summary of the disposition of cases concluded by panels of the Investigation Committee between October 1, 2019 and December 31, 2019.

Disposition of Cases	Complaints
Refused to investigate: not related to professional misconduct or incapacity 26(2)(a), OR, frivolous, vexatious, abuse of process, manifestly without substance or made for an improper purpose; 26(2)(b) (Request for Direction)	0
Referred to Discipline Committee under clause 26(5)(a)	36
Referred to Fitness to Practise Committee under clause 26(5)(a)	3
Not referred under clause 26(5)(a) or (b) and no further action taken	7
Written reminder under subsection 26(5)(d)	1
Written advice under subsection 26(5)(d)	1
Written caution under subsection 26(5)(d)	10
Written admonishment under subsection 26(5)(d)	5

Disposition of Cases	Complaints
Oral caution/ under subsection 26(5)(c)	0
Oral admonishment under subsection 26(5)(c) (in person)	7
Resolved through complaint resolution under subsection 26(5)(d)	22
Resolution by undertaking	1
TOTAL	93

Duties and Mandate of the Committee

The duties and mandate of the Investigation Committee are described in Appendix 2 of this document.

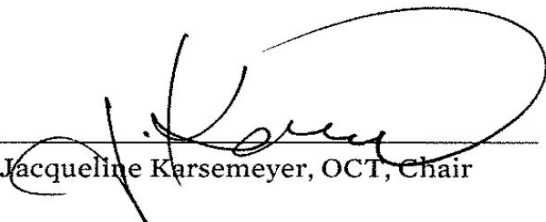
Future Committee Training and Meeting Dates

The next training is scheduled for April 7, 2020 and the next meeting is scheduled for April 8, 2020.

Members of the Investigation Committee

Robert Cooper, OCT
Tim Gernstein, OCT
Erin Glen, OCT
Jacqueline Karsemeyer, OCT (Chair)
Michelle Miner-Seal
Gerry O'Reilly, OCT
Jennifer Wyatt, OCT (from December 6, 2019)
Stephen Zimmermann, OCT (Vice-Chair)

The Investigation Committee appreciates the support of roster members in carrying out its panel duties.



Jacqueline Karsemeyer, OCT, Chair

APPENDIX 1

ORAL ADMONISHMENT GUIDELINES

In exceptional circumstances, the panel of the Investigation Committee which issued the decision (the "Panel") may permit alternative arrangements (i.e., the delivery of the oral caution or admonishment via video link) to a member who requests it. Such arrangements are only available in cases where the member establishes that personally attending the oral admonishment would cause undue hardship. The fact that it may be inconvenient for a member to personally attend an oral admonishment or that there may be costs involved in doing so does not automatically mean that a member would experience undue hardship.

A member requesting alternative arrangements may make written submissions to the Panel explaining why personal attendance would cause the member undue severe hardship and what alternative arrangements the member would need.

The Panel will consider submissions made regarding a request for accommodation. The Panel will then decide whether to permit alternative arrangements and, if so, what those arrangements would be.

The College will make reasonable efforts to provide the member with the Panel's written decision in a timely way. The decision of the Panel is final.

In each case, the Panel's decision will be based on the unique facts of the case.

In making its decision, the Panel may consider factors including, but not limited to:

- the purpose and desired effect of the oral admonishment being delivered in person by a member's peers;
- the gravity of the Panel's concerns regarding the member's alleged conduct;
- the importance of ensuring that the significance of the Panel's message is conveyed sufficiently to the member; and
- the member's personal circumstances, including, but not limited to:
 - whether the member is still a member of the College;
 - if no longer active, or retired, the member does not intend to return to teaching;
 - the member has limited financial resources such that attendance would impose a financial hardship on the member ;
 - the member no longer resides in Canada or Ontario;

- the member is suffering from a serious health issue, which is well-documented;
- the member would require a travelling companion because of well-documented health and/or mobility issues; and
- the distance that the member must travel in order to attend in Toronto.

APPENDIX 2

Investigation Committee

Mandate and Duties

The Investigation Committee is one of five statutory committees of the College established by the *Ontario College of Teachers Act, 1996* (the “Act”):

- Section 3 of the Act establishes the objects of the College, and the object most directly pertinent to the Investigation Committee is the following:
 8. To receive and investigate complaints against members of the College and to deal with discipline and fitness to practice issues
- The following are among the specific duties of the Investigation Committee, as stipulated in section 26 the Act:
 - To consider and investigate complaints regarding the conduct or actions of a member made by the four designated sources: a member of the public, a member of the College, the Registrar or the Minister.
 - To ensure that:
 - the complaint is in the format prescribed by the by-laws and has been filed with the Registrar;
 - that the member has been notified of it and given at least 30 days to respond; and
 - that the committee has examined all the relevant documents and information.
 - To use its best efforts to dispose of a complaint within 120 days of it being filed with the Registrar.
 - To refuse to investigate a complaint if, in its opinion, it does not relate to professional misconduct, incompetence or incapacity; and/or is frivolous, vexatious or an abuse of process.
 - To ensure that notice of the complaint includes reasonable information about the allegations.
 - To provide its decision in writing to the Registrar, and, with the exception of when the decision was to refer the complaint to a hearing committee, to also provide its reasons.
- To either:
 - refer the matter, in whole or in part, to the Discipline Committee or the Fitness to Practise Committee;
 - not refer a complaint;take such other action, such as cautions, admonishments, advice, reminders, as it considers appropriate and that is not inconsistent with the Act, the regulations or the by-laws.