



Memo

Date: January 23, 2020
To: Members of Council
From: Irene Dembek, OCT
Chair, Fitness to Practise Committee
Subject: Report of the Fitness to Practise Committee

Committee Meetings/Hearing Dates

Meetings

A Fitness to Practise Committee meeting was held on November 28, 2019.

Hearing Dates (From December 9, 2019 to March 4, 2020)

December: 11, 12, 13
January: N/A
February: 10
March: 3.

Summary of Discussions

1. Joint Training

At the November 27, 2019 Joint Training Session of the Discipline and Fitness to Practise Committees and their roster members, the following topics were covered by Julie Maciura, Steinecke Maciura LeBlanc:

- Definitions of Misconduct, Incompetence and Incapacity (including jurisdiction issues regarding pre-registration conduct and retired members);
- Rules of Evidence;
- Witnesses; and
- Agreements and Joint Submissions (ASF/JSP).

2. Meeting

At the November 28, 2019 Fitness to Practise Committee meeting, the committee members discussed the following topics:

Amendments to the *Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee*

The Fitness to Practise Committee voted on the proposed amendments to the *Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee* that had been previously presented to the Discipline Committee. The Fitness to Practise Committee voted in favour of the proposed amendments.

Costs and Fines

Staff provided the Committee with background information on the collection and tracking of costs and fines. The Committee discussed these processes and their applicability to future hearings.

Director's Update

The Director of Investigations and Hearings, Chantal Bélisle, provided the Committee with information regarding the following topics:

- counselling services available for Council members;
- the posting of the Teacher Performance Appraisal Guide on the College's website, and outreach efforts made to inform stakeholders;
- a statistical analysis of the form of reprimands (oral or written) that have been recently ordered, and an explanation of the College's default position with respect to reprimands;
- an explanation of the various considerations at play when negotiating agreements in discipline or fitness to practise matters; and
- future plans to address the volume of open hearings files.

Pre-hearing Conference Data

The Manager, Tribunals, Andy Rosenhek provided the Committee with a statistical analysis to demonstrate the effectiveness of pre-hearings in terms of leading to negotiated settlements, which in turn leads to considerable time and cost savings.

Role of Panel/Staff

Julie Maciura, Independent Legal Counsel from Steinecke Maciura Leblanc provided the Committee with an explanation of recent case law outlining the appropriate limits of decision-writing support to disciplinary panels. She confirmed that the College's use of decision editors to help panels articulate their reasons for decision is legally appropriate.

Statistics

There were five Fitness to Practise matters concluded from October 1 to December 31, 2019. Four of the members were found to be incapacitated and had terms, conditions or limitations placed on their certificates. One member had their certificate revoked.

Duties/Mandate of the Fitness to Practise Committee

The duties and mandate of the Fitness to Practise Committee are described in Appendix 1 of this document.

Future Committee Training and Meeting Dates

- Thursday, April 2, 2020: Joint Training of the Fitness to Practise and Discipline Committees and Roster Members
- Friday, April 3, 2020: Fitness to Practise Committee Meeting.

Future Hearings (March 5 to June 3, 2020)

March: 10
April: N/A
May: N/A

Members of the Fitness to Practise Committee

Diane Ballantyne, OCT (Vice-Chair)
John Cammarata (from December 6, 2019)
Irene Dembek, OCT (Chair)
Richard Fillion
Rebecca Forte, OCT
Mary Ellen Gucciardi, OCT
John Hamilton, OCT
Godwin Ifedi
Marlène Marwah
Sara Nouini, OCT
Thomas Potter
Nicola Powadiuk, OCT
Jonathan Rose
Stéphane Vallée, OCT



Irene Dembek, OCT

APPENDIX 1

Fitness to Practise Committee

Mandate

To deal with fitness to practise issues. (OCTA, s. 3(1))

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 assigned to it by the Council. (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:

- a) Directing the Registrar to revoke any certificate held by the member under the Act.
- b) Directing the Registrar to suspend any certificate held by the member under the Act for a stated period, not exceeding 24 months.
- c) Directing the Registrar to impose specified terms, conditions or limitations on any certificate held by the member under the Act.
- d) 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. (OCTA, s. 31(3)).
- e) 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)).
- f) 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)).

- g) 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)).
- h) 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)).