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# Memo

Date: November 18, 2019

To: Members of Council

From: Sara Nouini, OCT  
Chair, Registration Appeals Committee

Subject: Report of the Registration Appeals Committee

## Committee Meeting and Panel Dates

Since its last report to Council, the Registration Appeals Committee met on September 19 (via teleconference), and November 14, 2019.

## Summary of Discussions

The Committee met twice to consider a total of two cases. Decisions were rendered in all cases.

One of the two cases included an oral presentation.

In addition to the meetings above, the committee also considered a Request for an Extension of time to submit an appeal. It was approved electronically on October 1, 2019.

The outcomes for these appeals are as follows:

## Statistics

Registrar's decision upheld (terms, conditions or limitations) <ul style="list-style-type: none"> <li>One College member is required to complete five full courses in complementary education in Ontario.</li> </ul>	1
Registrar's decision upheld (denied applicant) <ul style="list-style-type: none"> <li>One appellant is required to complete an accredited pre-service program (for example, a Bachelor of Education) at an Ontario faculty of education.</li> </ul>	1
Extension request to appeal a decision – Granted <ul style="list-style-type: none"> <li>The committee found that there were reasonable grounds for applying for the extension.</li> </ul>	1

At its November 14 meeting, the Committee approved a “Code of Professional and Ethical Responsibilities for Registration Appeal Committee members and roster panel members who serve on panels of the committee”. The Code is attached as Appendix 1.

The Committee also reviewed a list of committee specific guidelines and protocols supporting the work of the committee and its panels. Of the six guidelines and protocols, five have been reviewed and approved by the committee within the last three years. The committee will review its Rules of Procedures for Hearings in early 2020.

### **Motions Referred to Council**

No motions were referred to Council.

### **Duties/Mandate of the Registration Appeals Committee**

The Registration Appeals Committee is a committee established under the College’s Act. It is responsible for considering appeals of membership denial, and appeals of the imposition of terms, conditions or limitations on a member’s certificate.

### **Future Meeting Date(s)**

- December 17, 2019 (cancelled)
- January 30, 2020

### **Committee Members**

Chantal Côté, OCT

Elizabeth Edgar-Webkamigad, OCT

Marlène Marwah (from September 16 to November 15, 2019)

Sara Nouini, OCT (Chair)

Stéphane Vallée, OCT (Vice-Chair)



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Sara Nouini, OCT



## **Code of Professional and Ethical Responsibilities**

**For Registration Appeals Committee Members  
and Roster Panel Members Who Serve on Panels  
of the Committee**

**November 14, 2019**

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# Code of Professional and Ethical Responsibilities

## 1. Purpose

- a) The purpose of this Code is to establish rules of conduct governing the professional and ethical responsibilities of elected and appointed members of the Registration Appeals Committee, as well as of roster panel members. The Code covers the conduct of committee members during all Ontario College of Teachers business related to their committee, including reviews, deliberations and decision-making. In carrying out these duties, committee members must have regard for the overriding duty to serve and protect the public interest.
- b) In this Code:
- "Appellants": members of the College or applicants
  - "College" refers to the Ontario College of Teachers
  - "committee" refers to the College's Registration Appeals Committee
  - "ILC" refers to the committee's independent legal counsel
  - "panel member" refers to a member of the College's Registration Appeals Committee, as well as to a roster panellist who serves on a panel of this committee
  - "parties": refers to the College representative, the Appellant or their representative
  - "representative": refers to an individual who acts or speaks on behalf of the College or the Appellant during a review
  - "review": refers to an oral presentation, a document review or a hearing proceeding brought before the Committee and includes deliberations and decision making as well as any proceeding such as pre-hearings and extension requests
  - "roster panel member" refers to individuals who have been appointed to the committee in accordance with the Roster of Panellists for Statutory Committees policy
- c) Panel members are expected to comply with current legislative and regulatory provisions applicable to the College, College bylaws, guidelines, policies, protocols, procedures and rules. These documents are set out in the attached Appendix
- d) This Code was developed in recognition of the fundamental and overriding responsibility of all panel members to maintain the integrity, competence and effectiveness of the committee as a whole. When the provisions do not address unanticipated circumstances, it remains the responsibility of each individual

panel member to consider the appropriate standard and to conduct their self in an ethical and professional manner

- e) This Code is based on the Society of Ontario Adjudicators and Regulators' Model *Code of Professional and Ethical Responsibilities for Members of Adjudicative Tribunals*

## **2. Application**

- a) This code applies to all panel members.
- b) Where certain responsibilities of the panel chair have been delegated to a designate, the term "chair" in this Code should be taken to include such designates
- c) The Code governs panel members' conduct for the entire term of their appointment to the committee and includes matters for which panel members remain seized that continue after the end of their term
- d) The Code may be amended to reflect current principles of administrative law, including procedural fairness, or changes in practice that are consistent with those principles

## **3. Conflict of Interest**

- a) Panel members must refer and adhere to the provisions of the College's current *Guidelines - Conflict of Interest/Bias - Council and Committee Member Resource Document*. This document contains a process for resolving possible conflicts of interest

## **4. Panel Members' Responsibilities During a Review**

- a) Panel members:
- must receive appropriate training prior to serving on a panel
  - must comply with the policies, procedures and standards established for the committee and for Council, including procedural rules and practice directions governing the conduct of proceedings
  - must be sensitive to issues such as gender, ability, race, language, culture and religion as these factors may affect various aspects of a review, such as affirmation/swearing-in of witnesses in the event of a hearing, the scheduling and times of the review day, participants' personal presentation and demeanour

- must be aware of the requirements that the review process and room are accessible and barrier-free for all parties, parties' representatives and witnesses in the event of a hearing
- must be aware of the importance of punctuality, both in beginning a review and returning from breaks on time
- must conduct reviews without unnecessary delay, but must ensure that parties have a fair opportunity to present their case
- must not interrupt or interfere during oral presentations or with the cross-examination of witnesses during a hearing. It is permissible for a panel member to question a party or their representative during an oral presentation or a hearing and this to clarify evidence but leading questions should not be used to do so
- must not show impatience with, or display a negative attitude towards, a party or their representatives, witnesses in the event of a hearing or any other participant
- will remain attentive throughout the review
- will maintain neutral body language through the review. Both negative displays such as eye-rolling, finger-drumming, head-shaking and glaring, and positive displays such as affirmative nodding of the head may suggest bias against or in favour of a party
- must not interrupt or interfere with the parties' submissions unless it is necessary to clarify submissions or to ensure that arguments are relevant to the matter
- have special responsibilities for self-represented parties to ensure that they are not unduly disadvantaged during the review. ILC may be asked to help explain proceedings to self-represented Appellants. While a panel member cannot act as counsel to the self-represented party, it is appropriate to explain clearly the procedure to be followed during the review. Panel members may, in clear and simple language, describe how a proceeding is conducted and explain relevant evidentiary and procedural rules
- must not communicate directly or indirectly with parties, legal counsel/representatives or witnesses in the event of a hearing, about the review, except in the presence of all parties and their legal counsel/representatives. Written or oral communications to panel members must be referred to the committee's support staff who will forward copies to ILC for further instructions

- must not make public comment, orally or in writing, on any aspect of a matter before the committee. Panel members will not discuss in private, outside the committee, any aspect of a matter before the committee. Panel members must not divulge confidential information
  - will not have any significant social interaction (such as dining) with parties, legal counsel/representatives or witnesses, in order to avoid the appearance of conflict of interest or bias
- b) During a review, if the panel chair becomes aware of a difference of opinion among members of a panel on a procedural or substantive issue affecting the conduct of the review, they should call a recess to allow the panel to discuss the issue and reach a decision on how to proceed.

## **5. Panel Members' Decision-Making Responsibilities**

### a) Panel members:

- must decide on the merits of the matter based on the law and the evidence presented at the review
- must not conduct any independent research of any aspect of the case, either in advance of, or during, a review. The decision must be based exclusively on the evidence presented during the review. Panel members who conduct independent research about a case may give rise to a ground of appeal, which could result in the committee's decision being overturned on appeal
- must apply the law to the evidence in good faith and to the best of their ability. The prospect of disapproval or censure from any person, institution, interest group or community must not deter panel members from making decisions based solely on the law and the evidence presented during the review
- must ensure that all decisions are made promptly in accordance with the committee's guidelines/protocols. Written decisions must be finalized within the timelines set out in the committee's guidelines/protocols and without undue delay
- must ensure that the draft decision to be written by a decision editor is reviewed by ILC and all panel members and reflects the committee's reasons
- must promptly review and comment on the draft decision and reasons, once circulated to the Panel by a decision editor;
- must consider relevant previous committee and court decisions and the need for consistency in the interpretation of the law. Where relevant precedents

are not followed, the decision must include clear reasons for the panel's departure

- must ensure that their decisions are written in clear and accessible language, and ensure that decisions are available in a format that meets the special needs of the parties
- will prepare their dissenting reasons within timelines in accordance with the committee's guidelines/protocols when a unanimous decision cannot be reached after discussion
- must not communicate with the media regarding a decision of the Council or a committee or the Council's or a committee's conduct of a proceeding. Reference should be made to the College's Spokespersons Policy. All inquiries from the media should be referred to the College's Communication Unit.

## **6. Panel Members' Responsibilities to Each Other and to Staff**

a) Panel members:

- must behave civilly during decision-making and in discussions and consultations. Panel members must remain professional and respect the views and opinions of colleagues, ILC and College staff members
- must consider their colleagues' views, including when there is a difference in opinion on substantive or procedural matters in their proposed disposition of interim and final decisions. However, panel members should not abandon strongly held views in order to reach a unanimous decision or in exchange for agreement on other issues
- will be punctual for all reviews
- must refrain from commenting publicly on the behaviour of other panel members during a review
- will maintain confidentiality with respect to all details of the decision-making process.

## **7. Panel Members' Post-Term Responsibilities**

a) Panel members:

- are prohibited from appearing before a panel of the committee as a representative, expert witness or consultant until six (6) months after the release of any outstanding decisions of a panel on which they served

- are bound by the restrictions and obligations of these rules, including the responsibility of maintaining confidentiality while the panel continues to be seized of any matter and after ceasing to be a member of the committee or a roster panellist.

## 8. Remedies

- a) The complaints process set out in sections 28-32 of Regulations 72/97 of the *Ontario College of Teachers Act* will apply to members of the committee to resolve alleged breaches of this code. Section 33 of the College's bylaws will apply to roster members of the committee to resolve alleged breaches of this code.
- b) Panel members:
  - must immediately inform the committee/panel chair of any basis on which an allegation of bias or conflict might be raised with respect to any activity, interest or relationship of the panel member
  - must advise the panel chair upon becoming aware of conduct of a colleague that may threaten the integrity of the committee or its process and adhere to the applicable rules under the College's regulations and bylaws.

## Appendix

### Act, Regulations and Bylaws

College Legislation - *Ontario College of Teachers Act*

<https://www.ontario.ca/laws/statute/96o12>

College Bylaws

<https://www.oct.ca/about-the-college/what-we-do/legislation-regulations-and-bylaws/college-bylaws>

College Regulation 72/97 [General]

<https://www.oct.ca/about-the-college/what-we-do/legislation-regulations-and-bylaws/college-bylaws>

*Statutory Powers Procedure Act*

<https://www.ontario.ca/laws/statute/90s22>

College Regulation 271/09: *Fair Registration Practices*

<https://www.ontario.ca/laws/regulation/090271>

### Guidelines, Policies, Protocols, Rules

Council Spokesperson Policy [June 2, 2016]

<https://council.oct.ca/resources/Documents/Council%20Spokespersons%20Policy%20-%20approved%20June%202016.pdf>

Guidelines - Conflict of Interest/Bias – Council and Committee Member  
Resource Document [March 3, 2015]

[https://council.oct.ca/resources/Documents/Conflict\\_of\\_Interest\\_and\\_Bias\\_Guidelines.pdf](https://council.oct.ca/resources/Documents/Conflict_of_Interest_and_Bias_Guidelines.pdf)

Harassment and Discrimination Policy

<https://council.oct.ca/resources/Pages/Harassment-and-Discrimination-Policy.aspx>

Media Protocol [Mar 28, 2008]

<https://council.oct.ca/resources/Pages/Media-Protocol.aspx>

Resource Manual for the Registration Appeals Committee

[Guide to the Registration Appeal process](https://www.oct.ca//media/PDF/Appealing%20Registration%20Decisions/2019%2008%2022/2019RACGuidetotheRegistrationAppealsProceesENPUBLISH.pdf)

<https://www.oct.ca//media/PDF/Appealing%20Registration%20Decisions/2019%2008%2022/2019RACGuidetotheRegistrationAppealsProceesENPUBLISH.pdf>

[Guidelines for Oral Presentations](https://www.oct.ca/-/media/PDF/Appealing%20Registration%20Decisions/2019%2008%2022/2019RACCommitteeGuideforOralPresentationsENPUBLISH.pdf)

[https://www.oct.ca/-](https://www.oct.ca/-/media/PDF/Appealing%20Registration%20Decisions/2019%2008%2022/2019RACCommitteeGuideforOralPresentationsENPUBLISH.pdf)

[/media/PDF/Appealing%20Registration%20Decisions/2019%2008%2022/2019RACCommitteeGuideforOralPresentationsENPUBLISH.pdf](https://www.oct.ca/-/media/PDF/Appealing%20Registration%20Decisions/2019%2008%2022/2019RACCommitteeGuideforOralPresentationsENPUBLISH.pdf)

Roster of Panellists for Statutory Committees Policy [effective January 1, 2019]

[https://council.oct.ca/Documents/Protocol%20for%20Roster%20of%20Panellists%20Statutory%20Committees%20January%202019\\_.pdf](https://council.oct.ca/Documents/Protocol%20for%20Roster%20of%20Panellists%20Statutory%20Committees%20January%202019_.pdf)

Protocol for Extension of Time to submit an Appeal

Protocol for Additional Documents submitted after the Timelines