



## COLLEGE OF CHIROPODISTS OF ONTARIO

*Regulating Chiropodists and Podiatrists in Ontario*

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### DISCIPLINE COMMITTEE DIRECTIVE ELECTRONIC AND WRITTEN PROCEEDINGS

#### 1. Introduction

- The Discipline Committee is committed to adjudicating allegations of professional misconduct and incompetence fairly and efficiently, and to fulfilling its mandate to protect the public. Due to the recent COVID-19 pandemic, the Chair of the Discipline Committee has discontinued in person disciplinary proceedings on an indefinite basis.

#### 2. Discipline Committee Rules of Procedure and Relevant Legislation

- Under Rule 18.5 of the Discipline Committee's Rules of Procedure (revised April 2016), pre-hearing conferences may be conducted electronically, unless a Party satisfies the Chair of the Discipline Committee that the Party will suffer significant prejudice as a result of the electronic format. Until further notice, the Chair of the Discipline Committee directs that all pre-hearing conferences be held electronically.
- Under Rule 9, a preliminary motion, in addition to being heard by oral argument, may be heard in writing, or electronically, in accordance with Rule 21.
- Under Rule 21, the Discipline Committee may order that a hearing, part of a hearing, or a step in the proceeding be held electronically. Rule 22 sets out the procedure to be followed for electronic hearings.
- Under Rule 23, the Discipline Committee may order that a hearing, part of a hearing, or a step in the proceeding be held in writing. Rule 24 sets out the procedure to be followed for written hearings.
- 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 Discipline Committee Hearings

- The Chair of the Discipline Committee directs that, effective immediately, all disciplinary proceedings, including pre-hearing conferences, motions, and hearings be conducted by electronic means (teleconference and/or videoconference), and/or in writing, until further notice. This includes matters that were previously scheduled to take place in person, despite what is set out in Rule 21 and Rule 23.
- The Chair of the Discipline Committee will work with the Hearings Office to schedule 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.
- If Parties wish to make submissions to the Chair about the appropriateness of an electronic or written hearing, the parties shall address the above-noted factors in their written requests or responses. Submissions can be sent to the Chair via email [mclarke@cocoo.on.ca](mailto:mclarke@cocoo.on.ca)

#### **4. Pre-Hearing Conferences – Document Filing**

- In accordance with Rule 18.8, the Parties are required to submit a pre-hearing conference memorandum – ten (10) days prior to the pre-hearing for the College and five (5) days prior to the pre-hearing for the member.
- At this time, Parties are not required to submit paper copies of pre-hearing conference memorandums, but are directed to file an electronic copy with the Hearings Office by email at [mclarke@cocoo.on.ca](mailto:mclarke@cocoo.on.ca)
- During pre-hearing conferences, the parties will be prepared to discuss the logistics of the hearing, including the requirements respecting paper and electronic copies of documents.

#### **5. Electronic Hearing Documents – Document Filing**

##### **5.1 Uncontested Hearings – Document Filing**

- Notwithstanding Rule 5.2, the parties are directed to file the following electronic copies of documents with the Hearings Office by email to [mclarke@cocoo.on.ca](mailto:mclarke@cocoo.on.ca):
  - Scanned copies of the Notice of Hearing, signed copies of the Agreed Statement of Facts and Joint Submissions on Order, signed copy of the written Plea Inquiry (if applicable).
  - 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.
- All electronic copies shall be received by the Hearings Office no later than noon seven (7) days in advance of the hearing.
- All documents must have clearly marked page numbers.
- Unless the parties advise otherwise, the Panel will 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.
- The Books of Documents relevant to a potential penalty Order will be provided to the Panel separately and will not be reviewed until after the Panel has made findings with respect to the allegations of misconduct, if any.

##### **5.2 Contested Hearings – Document Filing**

- Notwithstanding Rule 5.2, the parties are directed to electronically file the documents they intend to rely on during the hearing with the Hearings Office by email to [mclarke@cocoo.on.ca](mailto:mclarke@cocoo.on.ca).
- For the liability portion of the hearing, the parties are directed to file their materials 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.
- 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.
- All electronic copies of documents for each phase of the hearing shall be received by the Hearings Office no later than noon seven (7) days in advance of the commencement of that phase of the hearing, with the exception of Books of Submissions and Authorities.
- All 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 seven (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.

## **6. Videoconference Hearings**

### **6.1 Videoconference Platform**

- Hearings by videoconference will be conducted using Zoom. Victory Verbatim will provide IT support to the College's Hearings Office.
- Parties will receive a link to join the meeting at least 48 hours before the hearing is scheduled to begin.
- Parties will log in at least 15 minutes prior to the hearing start time to avoid any potential issues.

### **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 Panel Deliberations and Breakout Sessions**

- The Panel will be given a private breakout room to deliberate during 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.

## **7. Teleconference Hearings**

### **7.1 Teleconference Platform**

- Teleconferences will be conducted using Bell Conferencing Solutions. Log in details will be provided at least 48 hours prior to the start of the hearing.

### **7.2 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 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 ([mclarke@cocooo.on.ca](mailto:mclarke@cocooo.on.ca)) 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.

## **8.2 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.
  - 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.

## **8.3 Members of the Public**

- Members of the public who wish to attend a 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.

## **8.4 Court Reporter and Transcripts**

- 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 to ensure the transcript is accurate.

## **9. Written Hearings**

### **9.1 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.

### **9.2 Written Hearings – Deadline for Filing Documents**

- Notwithstanding Rule 5.2, documents shall be filed with the Hearings Office electronically by email to [mclarke@cocoo.on.ca](mailto:mclarke@cocoo.on.ca)
- The Hearings Office will schedule a date for the Panel to deliberate (hearing day) and will communicate the date selected to the parties.

- The parties are to exchange and file their electronic documents in accordance with what is set out in the following schedule, unless otherwise directed by the Chair:
  - The College shall file its materials 35 days prior to the hearing;
  - The Member shall file her or his materials 28 days prior to the hearing;
  - The College shall file any reply materials 21 days prior to the hearing;
  - Independent Legal Counsel will provide their advice in writing 14 days prior to the hearing, 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 hearing.

### **9.3 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.

### **9.4 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 the hearing, or at a later date via teleconference or videoconference.

**This Directive takes effect September 29, 2020 and remains in effect until further notice**