

# KEEPING CURRENT

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## Responding to Complaints Before the College of Chiropractors of Ontario (CCO): A Defence Lawyer's Perspective

By Lad Kucis

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

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As legal counsel for chiropractors, we are regularly asked questions about the complaints process before the College of Chiropractors of Ontario (the "College").

Although the regulatory framework governing complaint matters is quite extensive, the following is the essential information that chiropractors need to know.

### **Role of the College**

At the outset, it is imperative that chiropractors recognize that the mandate of the College is to protect the public by ensuring that chiropractors act in accordance with established legislation, standards of practice and codes of ethics. This public protection mandate underlies all actions taken by the College.

### **Responding to a Complaint**

If a complaint is filed against a chiropractor, the College is required to provide the member with a copy of the complaint within 14 days.

The chiropractor then has 30 days to respond to the complaint. If a chiropractor requires additional time to prepare their response, they should contact the

investigator assigned to the file to request an extension. If a complaint involves a clinical issue, the College will also require production of the patient chart.

In responding to a complaint, it is important to ensure that the response is drafted in a clear and professional manner, addressing each of the concerns in a thorough, reflective and professional manner. A copy of the response is typically provided to the complainant, who is given an opportunity to submit a reply.

If the complainant submits a reply, the College has the discretion as to whether to provide a copy to the chiropractor for further comment. For example, the College may choose to do so in cases where the reply raises issues that were not mentioned in the complaint.

If the chiropractor has any prior decisions before the College, they will also be provided with copies of such cases and an opportunity to make written comments. Any such comments should be made in a submission separate from the response to the complaint, failing which they will be provided to the complainant.

### **ICRC Review**

Ultimately, all of the above documentation is provided to a panel of the Inquiries, Complaints and Reports Committee (“ICRC”) for its review. ICRC panels are comprised of chiropractors and public members.

Although the ICRC may choose to make a decision based on the above documentation, it will often appoint an investigator to conduct an investigation of the complaint. Such investigations will typically include collecting additional information, including interviewing the chiropractor, the complainant and other relevant parties. For a variety of reasons, it is important that chiropractors are well prepared for such interviews, including to ensure that the information they provide is consistent with their complaint response.

The investigator will then prepare an Investigation Report and submit it to the ICRC for its review. A copy of the Investigation Report is not provided to the chiropractor or the complainant, although in my experience the College will generally permit the chiropractor to make additional submissions to the ICRC if they would like to do so. Chiropractors may wish to make such additional submissions if new information has arisen and/or they would like to revise/clarify information provided in their complaint response and/or their interview.

### **ICRC Decision**

The ICRC will then meet to review all of the documentation provided and make a decision. Chiropractors and complainants are not permitted to attend the ICRC meeting.

The most serious action that the ICRC can take is to refer a chiropractor to the Discipline Committee on specified allegations of professional misconduct or incompetence. If a matter is referred to the Discipline Committee, a notation of that fact is immediately posted on the public register, which is available on the College website, and the chiropractor will be provided a Notice of

Hearing setting out the charges of professional misconduct.

If the ICRC determines that there is no risk or minimal risk in respect of the conduct of the chiropractor, it will take no further action or provide advice and recommendations in respect of the matter. Neither of these dispositions result in a notation being made on the public register.

If the ICRC has a moderate level of concern, it may require the chiropractor to appear before it for a caution or require the completion of a Specified Continuing Education and Remediation Program (“SCERP”). Such actions have become much more serious dispositions over the past several years, as legislative changes now require cautions and SCERPs to be posted on the public register, where they typically remain on an indefinite basis.

With the exception of matters referred to the Discipline Committee (or matters referred for incapacity proceedings), the ICRC will provide reasons for its decisions, as set out in a Decision and Reasons, which is provided to both the chiropractor and the complainant.

### **HPARB Review**

Both the chiropractor and the complainant have the right to request a review of an ICRC decision to an independent tribunal called the Health Professions Appeal and Review Board (“HPARB”). A key exception is the ICRC decisions referring complaint matters to the Discipline Committee cannot be appealed to HPARB.

In the past, the vast majority of HPARB reviews were requested by complainants. However, chiropractors are increasingly requesting these types of reviews, as they are seeking to set aside ICRC decisions that have resulted in findings that are now required to be posted on the public register (i.e. cautions and SCERPs).

The conduct of an HPARB review involves the chiropractor and the complainant (or their



respective counsel) making oral submissions regarding the reasonableness of the ICRC decision and/or the adequacy of its investigation. It is beyond the mandate of HPARB to engage in any other inquiries.

Following the review, HPARB may do one or more of the following:

- confirm all or part of the ICRC's decision;
- make recommendations to the ICRC;
- require the ICRC to exercise any of its powers, other than to request a Registrar's investigation.<sup>1</sup>

### **Final Comments**

In view of the potential consequences, it is imperative that chiropractors treat all complaints very seriously and take great care in preparing responses and any other submissions. Given the stakes involved, chiropractors should also strongly consider obtaining assistance from experienced legal counsel to ensure that their interests are being properly protected.

### **About the Author**

If you have a health law matter and are in need of legal advice, please contact [Lad Kucis](mailto:Lad Kucis), at 416.864.3114 or [lkucis@grllp.com](mailto:lkucis@grllp.com).

*Lad Kucis is certified by the Law Society of Ontario as a specialist in health law. As part of his practice, he provides advice and representation to chiropractors and other regulated health professionals regarding the full spectrum of college matters, including complaints, investigations, discipline and appeals/reviews.*

*This article has been prepared for information purposes only and is not intended to be construed as legal advice.*

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<sup>1</sup> For more information about reviews before HPARB, please see my article, "Complaint Reviews at The Health Professions Appeal And Review Board (HPARB): The Essential Information", *Keeping Current*, July 26, 2019.