

# KEEPING CURRENT

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## Discipline Matters Before the Ontario College of Pharmacists (OCP): 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 pharmacists, we are often asked questions about what happens when a pharmacist is referred to the Discipline Committee of the Ontario College of Pharmacists (the "OCP").

The following is the essential information that pharmacists need to know about the discipline process.

### **Referral to the Discipline Committee**

After reviewing a complaint or report, the Inquiries, Complaints and Report Committee ("ICRC") of the OCP will refer the matter to the Discipline Committee if it believes that a pharmacist has committed an act of professional misconduct.

In such circumstances, the pharmacist will be given notice of the ICRC decision and will thereafter be provided with a Notice of Hearing that will set out the allegations of professional misconduct. The Notice of Hearing is also posted on the OCP website. In addition, the pharmacist will be provided with a copy of all documentation that was

reviewed by the ICRC, which is known as disclosure.

In most cases, the pharmacist will also be presented with an offer to resolve the matter on consent by pleading guilty to the charges of professional misconduct and agreeing to a penalty, which will typically include a reprimand, a suspension, or in the most serious cases, revocation of their certificate of registration. In addition, a component of the settlement offer will invariably require the payment of costs, which is currently a minimum of \$10,000.00.

It is imperative that pharmacists consult with a lawyer before agreeing to any such offer, as pleading guilty to professional misconduct carries serious implications, including the items discussed in the preceding paragraph and publication of the finding on the OCP public register on an indefinite basis.

If a resolution is reached, counsel for the parties prepare an Agreed Statement of Facts (which sets out the facts of the case and the admissions made by the

pharmacist) and a Joint Submission on Penalty (which sets out the penalty and costs award that has been agreed upon).

If an acceptable resolution cannot be reached, the matter will proceed to a contested hearing.

### **The Discipline Committee Hearing**

A Discipline Committee hearing is a formal legal proceeding that is typically conducted before a panel of three Discipline Committee members and a court reporter. It can either proceed on consent (i.e. if a resolution has been reached) or via a contested hearing. The OCP is represented by legal counsel and the pharmacist is either self-represented or has their own legal counsel. The panel also has its own independent legal counsel who provides assistance regarding legal issues that may emerge.

If a hearing proceeds on consent, the Agreed Statement of Facts and the Joint Submission on Penalty are submitted to the panel for its consideration and approval. In most cases, settlements that have been agreed upon by counsel are accepted by the panel, unless it believes that to do so would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

On the other hand, a contested hearing looks very much like a criminal or civil trial, with legal counsel making opening and closing statements and examining and cross-examining witnesses. Pharmacists considering a contested hearing must keep in mind that the costs of a contested hearing can be extremely high, especially given the fact that they would be exposed paying a proportion of the OCP's legal costs in the event they are found guilty of professional misconduct.

Following a hearing, the Panel will issue a Decisions and Reasons, which will set out its findings in respect of a matter. If a pharmacist is found guilty of professional misconduct, the panel will also issue a penalty.

A pharmacist also has a statutory right to appeal a decision of the Decision Committee to the Ontario Divisional Court.

### **Publication**

Discipline Committee decisions are published on a legal database called [canlii.org](http://canlii.org) and case summaries are also posted on [pharmacyconnection.ca](http://pharmacyconnection.ca).

### **Final Comments**

A referral to the Discipline Committee is a very serious matter that can result in significant professional and monetary consequences. As such, it is imperative that pharmacists obtain assistance from experienced legal counsel to ensure that their interests are being protected.

### **About the Author**

*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 pharmacists and other regulated health professionals regarding the full spectrum of college matters, including complaints, investigations, discipline and appeals/reviews.*

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