

Responding to Complaints Before the College of Audiologists and Speech-Language Pathologists of Ontario A Defence Lawyer's Perspective

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As legal counsel for audiologists and speech-language pathologists, we are regularly asked questions about the complaints process before the College of Audiologists and Speech-Language Pathologists of Ontario ("CASLPO").

Although the regulatory framework governing complaint matters is quite extensive, the following is the essential information that audiologists and speech-language pathologists need to know.

Role of CASLPO

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

Responding to a Complaint

If a complaint is filed against an audiologist or a speech-language pathologist, CASLPO is required to provide the member with a copy of the complaint within 14 days.

The audiologist/speech-language pathologist then has 30 days to respond to the complaint. If additional time is required, a request for an extension should be made to the investigator assigned to the file. If a complaint involves a clinical issue, CASLPO 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 and reflective 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, CASLPO has the discretion as to whether to provide a copy to the audiologist/speech-language pathologist for further comment. For example, CASLPO may choose to do so in cases where the reply raises issues that were not mentioned in the complaint.

If the audiologist/speech-language pathologist has any prior decisions before CASLPO, 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 professional and public members and possess the authority to make a wide range of dispositions.

One of the most serious actions that the ICRC can take is to refer an audiologist/speech-language pathologist 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 CASLPO website.

Alternatively, the ICRC may require the audiologist/speech-language pathologist 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 few years, as legislative changes now require cautions and SCERPs to be posted on the public register on an indefinite basis.

If the ICRC does not have any significant concerns about the conduct of the audiologist/speech-language pathologist, it may decide to take no further action or simply provide advice and recommendations in respect of the matter.

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. This document is provided to both the audiologist/speech-language pathologist and the complainant.

HPARB Review

Both the audiologist/speech-language pathologist and the complainant have the right to request a review of an ICRC decision to the Health Professions Appeal and Review Board ("HPARB"), which is an independent adjudicative agency. The only ICRC decisions that cannot be reviewed by HPARB are referrals to the Discipline Committee or referrals for incapacity proceedings.

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

The conduct of an HPARB review involves the audiologist/speech-language pathologist and the complainant (or their respective counsel) making submissions^[1] 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.^[2]

Final Comments

In view of the potential consequences, it is imperative that audiologists and speech-language pathologists treat all complaints very seriously and take great care in preparing responses and any other submissions. Given the stakes involved, audiologists and speech-language pathologists should also strongly consider obtaining assistance from experienced legal counsel to ensure that their interests are being properly 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 audiologists, speech-language pathologists and other regulated health professionals regarding the full spectrum of college matters, including complaints, investigations, discipline and appeals/reviews.

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^[1] Typically, submissions before HPARB are made orally.



[2] 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*, 26 July 2019.

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