

## **INFORMATION FOR MEMBERS**

### **RESPONDING TO COMPLAINTS AND REPORTS**

#### **Notification of Complaint or Report**

- 1) Pursuant to the *Regulated Health Professions Act, 1991*,<sup>1</sup> the College of Psychologists of Ontario (the “College”) has a mandate to protect the public and is statutorily required to investigate every written (or otherwise recorded) complaint—unless the complaint is frivolous, vexatious, made in bad faith, moot, or otherwise an abuse of process. The College also investigates concerns on the part of the Registrar, if the Registrar believes, on reasonable and probable grounds, that a member has committed professional misconduct or is incompetent. The Registrar will request that the Inquiries, Complaints and Reports Committee (“ICRC”) approve the appointment of an Investigator. Once such an investigation has been completed, the Registrar will provide you with a copy of the report and an opportunity to make submissions to the College with respect to it.

Once a complaint is received by the College, investigative staff will review it and, in many cases, will ask the complainant for clarification of the concerns.

The letter notifying you of a complaint lodged against you will arrive on College letterhead, accompanied by a copy of the complaint materials provided by the complainant and a document which explains the College's procedures for investigating complaints.

- 2) You may have heard a rumour about an outstanding complaint or fear that a complaint may be lodged and wonder if you should provide a response prior to receipt of a written complaint. Until you receive notification of the complaint by means of a College letter, you need not consider that a complaint has been lodged against you.

College staff members are obliged to keep confidential all matters related to complaint investigations. Nevertheless, in some cases, complainants have informed other individuals of the complaint or the possibility of lodging a complaint. As the College regulates only the profession, it has no authority to prohibit a complainant from providing other parties with information related to a complaint. If the complainant discusses the matter with College staff, that staff member will attempt to explain why it is generally in the best interests of the investigative process to maintain confidentiality during the investigation.

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<sup>1</sup> S.O. 1991, c. 18.

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### **Response to Complaint or Report**

- 3) After you have been notified of the complaint, College investigative staff may request information that will assist the ICRC in arriving at a decision. While you are not obligated to respond to the letter of complaint, report, or additional questions raised in the letter of notification, if you do not provide adequate information, the Committee may be left in a position in which it may have to dispose of the matter without having complete information.
- 4) It can be a stressful event to be notified of an investigation into your practice. Nevertheless, ensure that all relevant information has been provided and ensure that the tone of your response is appropriate in the circumstances.
- 5) As the College is the regulatory body investigating the complaint, staff cannot provide advice to either party to the complaint. Members of the College may always contact College staff with procedural questions arising from receipt of a letter of complaint, although staff cannot discuss the substance or merits of the complaint.
- 6) It is not necessary for you to contact a lawyer upon receipt of a complaint, although some members find it helpful. You may wish to consult with your professional association and/or your insurance company to review the provisions of your insurance coverage and make an informed decision about whether or not to retain independent counsel.
- 7) Members are advised to consider seeking legal advice before deciding not to respond to allegations raised in a complaint or to questions from the College.
- 8) Once you have been notified of a complaint, it is not appropriate for you to contact the complainant to attempt to discuss the matter, or to discourage the complainant from proceeding with the complaint.
- 9) If you do not understand the nature of a concern raised by the complainant in a complaint, it is appropriate to make note of this in your response to the College. College staff typically attempt to elicit clarification of concerns from complainants—however, in some cases, it is difficult to obtain a clear and precise description of the concerns from the complainant. The ICRC is cognizant of this fact when considering your response. If you cannot answer a question, for lack of information, please advise College staff or your legal representative.

### **The College's Regulatory Scope**

- 10) If it is your opinion that any of the concerns raised by the complainant do not fall within the regulatory scope of the College, it is appropriate to indicate this opinion and to explain why you have reached this conclusion. While it will be the role of the ICRC to make such a determination, it will be of assistance to the ICRC, in evaluating the merits of the complaint, to have this explanation—rather than having

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no information from you in response to a concern raised by the complainant.

### **Acknowledgments**

- 11) It may be appropriate for you to acknowledge an error or change in practice, if such a situation has occurred. In many cases, the ICRC may acknowledge the recognition of the error and/or change in your practice in its decision.

### **Relevant Documentation**

- 12) It may be helpful to provide all relevant additional documentation—clinical notes, test results, etc.—which would support your response or address the allegations. While it may be evident to you why a particular course of action was taken, without supporting documentation it may be impossible for the ICRC to evaluate whether such action was appropriate in the circumstances. It may be to your benefit to include such supporting documentation with your response, as it would minimize delay and may clear up confusion with respect to why a particular action was taken. You need to include such supporting documentation only if it is relevant to your response. There is no obligation to provide this information unless it has been requested, or if you are of the view that it will be of assistance.
- 13) In many cases, we require information from the clinical file relevant to this matter for the purpose of conducting an investigation pursuant to the *Regulated Health Professions Act, 1991*.

Pursuant to section 43(1)(b) of the *Personal Health Information Protection Act, 2004*,<sup>2</sup> a health information custodian—which includes a member of the College—may disclose personal health information about an individual “to a College within the meaning of the *Regulated Health Professions Act, 1991* for the purpose of the administration or enforcement of the ... , *Regulated Health Professions Act, 1991* or an act named in Schedule I to that Act.”

The purpose of our request for such records is the enforcement of the *Regulated Health Professions Act, 1991*. If your services fall outside of the authority of the *Personal Health Information Protection Act*, as some assessments performed for litigation or other forensic purposes may, or if you have concerns about releasing information, you may wish to seek legal advice.

### **Time Limit**

- 14) Under the *Regulated Health Professions Procedural Code*,<sup>3</sup> you are generally permitted to respond to the complaint or report within 30 days of receipt of the complaint.

### **Submissions by member**

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<sup>2</sup> S.O. 2004, c. 3, Sched. A.

<sup>3</sup> *Regulated Health Professions Act*, Sched. 2

## **Information for Members About Responding to Complaints**

25.2 (1) A member who is the subject of a complaint or a report may make written submissions to the Inquiries, Complaints and Reports Committee within 30 days of receiving notice under subsection 25 (6).<sup>4</sup>

Under this Code, notices are deemed to be received five days after they are mailed by the College or no later than the following day if faxed.

Extensions on the response deadline may be granted in exceptional circumstances. Should you need to request an extension, please do so as soon as the circumstances present themselves, by contacting College staff by telephone, fax or mail. Please provide specific information about the reasons for the request.

### **Review of Complaint Decisions**

- 15) The complainant and the member have the right to request that the Board review the Committee's decision unless there has been a referral to the Discipline or Fitness to Practice Committees. The purpose of the Board is to ensure that an investigation was adequate and the decision was well reasoned. About 25% of eligible cases are reviewed by the Board.

### **Confidentiality**

- 16) At the ICRC level, College procedures are designed to keep confidential, even to members of Council, any information about a complaint or report. If allegations are referred to the Discipline Committee, and a Notice of Hearing is issued and served on a member, it becomes public information that there is an impending hearing related to the matter. Hearings are generally public. Additionally, the College has no ability to make assurances regarding confidentiality in cases reviewed by the Health Professions Appeal and Review Board (the "Board"), which has the authority to review a complaint investigation and/or decision and can determine whether or not the investigation was adequate and/or the decision was reasonable.

It is our hope that this helps clarify the process. If there are any questions or concerns, please do not hesitate to contact the College.

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<sup>4</sup> Notice to member

- 25(6) The Registrar shall give the member, within 14 days of receipt of the complaint or the report,
- (a) notice of the complaint, together with a copy of the provisions of sections 28 to 29, or notice of the receipt of the report;
  - (b) a copy of the provisions of section 25.2; and
  - (c) a copy of all available prior decisions involving the member unless the decision was to take no further action under subsection 26 (5). 2007, c. 10, Sched. M, s. 30.