



## College of Massage Therapists of Ontario

### Discipline Hearings Information for Witnesses for the College

#### **Purpose of Disciplinary Proceedings**

The purpose of disciplinary proceedings is to help the College carry out its mandate of protecting the public interest. Disciplinary hearings ensure that registrants govern themselves in accordance with the *Regulated Health Professions Act, 1991* and the *Massage Therapy Act, 1991*, in addition to other statutes and regulations governing the profession. This includes maintaining standards of practice, knowledge, skill and judgment, as well as professional ethics.

Disciplinary hearings also help the College preserve public confidence in the profession by:

- Providing public access to the discipline process through a public complaints process;
- Allowing the public access to discipline proceedings by way of open hearings; and
- Publishing the Discipline Committee's decision in College publications and on its website.

#### **The Discipline Hearing**

A discipline hearing is a legal and adversarial process, much the same as any court proceeding, with rules that dictate how the hearing will proceed. All witnesses will be sworn or affirmed before they are permitted to give their evidence. Any documentary evidence will be entered as exhibits during the hearing.

With respect to decorum, the Panel is given the same respect as a judge at trial. The Panel enters the hearing room last. Those present are required to stand when the Panel enters the room and remain standing until advised by the Chair to be seated. The same protocol applies when the Panel exits the hearing room.

#### **Hearing Participants**

The parties to a discipline hearing are the College and the Registrant against whom allegations have been made. The other participants involved in the hearing will include the Panel, the Prosecutor, a court reporter, Independent Legal Counsel, as well as College staff and witnesses called by either party.

#### **The Panel**

The Panel is comprised of three to five individuals from the Discipline Committee of the College. Panels are composed of public members and professional members. One panel member will act as the Chair and has the responsibility to ensure the hearing is conducted fairly and efficiently.

The role of the Panel is similar to that of a judge or jury. The Panel will make a decision and provide its reasons for that decision in writing. The outcome becomes public information upon release of the written decision.

When participating in a hearing, it is important to keep in mind that the mandate of the Panel is to:

- Consider the allegations set out in the Notice of Hearing and ascertain the facts of the case;
- Determine whether the allegations have been proven, based on the evidence and having regard to the applicable burden and standard of proof;
- Determine whether, in respect of the proven allegations, the Registrant has committed an act of professional misconduct or is incompetent;
- Determine the penalty to be imposed in cases where such findings have been made; and
- Determine whether any costs related to the matter are to be paid by the registrant or the College.

The Panel has the right to ask questions of clarification from witnesses.

### **The College's Lawyer (the Prosecutor)**

The role of the Prosecutor is to present the case for the College. The Prosecutor will present relevant evidence to attempt to prove the allegations made against the registrant. The College has the burden of proving the case on a balance of probabilities. This standard requires the Prosecutor to prove that it is more likely than not that the alleged acts occurred and that those acts establish that the registrant committed the misconduct or is incompetent.

### **Independent Legal Counsel (ILC)**

The College also retains legal counsel to provide impartial legal advice to the Panel. The Panel is permitted to seek legal advice from its own counsel with respect to legal issues that arise during the course of a hearing. The right to legal advice is important for the Panel, as panel members are not lawyers.

ILC will provide advice on any given questions of law, procedure or evidence. ILC does not vote or influence the Panel's decision.

### **Court Reporter**

A court reporter transcribes verbatim the entire proceedings. The College is required to have and maintain the record in all disciplinary proceedings.

### **College Staff**

College staff are responsible for making all hearing arrangements. A Hearings Officer will be present during the hearing. They are responsible for: receiving you when you arrive at the hearing, swearing you

in, ushering the panel in and out of the hearing room and safeguarding hearing documents.

Staff will also ensure the panel's decision is distributed and published as required and will monitor the registrant's compliance with any penalty and/or costs order made by the Panel.

### **Additional Concerns for Witnesses**

- Who will pay for my expenses?
  - The College will reimburse for the following expenses:
    1. **Accommodations:** Hotel accommodations will be arranged for those witnesses who require an overnight stay. Please contact the College to discuss your needs.
    2. **Travel:** The College will reimburse you for travel expenses, including economy air/train/bus fare or car mileage (53 cents per km).
    3. **Attendance Allowance:** You will be paid \$50.00 per day to cover your attendance at the College, which includes meals and incidental expenses. This is in accordance with the amount of money a person is entitled to when participating in a proceeding before the Superior Court of Justice.
- Can I have a support person attend with me at the hearing?
  - You are welcome to bring a friend, relative or other support person with you to the hearing. The College may cover the expenses of a support person traveling with a witness. Please contact the College to inquire further.
- What should I wear?
  - Discipline hearings are a formal proceeding. The Panel and other participants will be wearing business attire to ensure appropriate decorum.
- Can I be summoned to attend and give evidence at the hearing?
  - A summons is a legal document that requires a person to attend a hearing. If requested, the Prosecutor can provide you with a summons. You can use the summons to explain why you must be absent from work or other responsibilities. The College may also issue a summons for non-compliant witnesses.