

# Guide to RCDSO Discipline Hearings For Self-Represented Registrants

<b>1. Purpose of Discipline Hearings</b>	<b>2</b>
<b>2. Notice of Hearing</b>	<b>3</b>
<b>3. Right to Legal Representation</b>	<b>3</b>
<b>4. Disclosure</b>	<b>4</b>
<b>5. Expert Witnesses</b>	<b>4</b>
<b>6. Pre-Hearing Conference (PHC)</b>	<b>4</b>
<b>7. Motions</b>	<b>5</b>
<b>8. Hearings</b>	<b>5</b>
<b>9. The Individuals Involved at a Discipline Hearing</b>	<b>6</b>
The Panel	6
The Prosecutor	7
Court Reporter	7
College Staff	7
<b>10. Contested vs. Uncontested Hearings</b>	<b>7</b>
Contested Hearings	8
Uncontested Hearings	9
<b>11. Penalties</b>	<b>10</b>
<b>12. Open to the Public</b>	<b>10</b>
<b>13. Decision and Reasons</b>	<b>11</b>
<b>14. Appeals</b>	<b>11</b>
<b>15. Resources</b>	<b>11</b>

*This guide is intended to provide an overview of the discipline process of the Royal College of Dental Surgeons of Ontario (the “College”). Please review this document carefully as it contains important information. This document is not legal advice. If there is any conflict between this document and the applicable legislation or rules, the legislation or rules take precedence. It is strongly recommended that you seek legal advice and retain a lawyer to represent you at a Discipline hearing.*

You are a Registrant who has been referred to Discipline alleging professional misconduct for a Hearing before the Discipline Committee. The Discipline Committee works with the Hearings Office staff who will send you official correspondence on behalf of the Committee. The Hearings Office staff are responsible for the procedures related to the matter. Hearings Office staff cannot provide you with legal advice, but they can answer some questions about procedures, after you have read this guide.

## 1. PURPOSE OF DISCIPLINE HEARINGS

As part of the College’s mandate to regulate the dental profession in the public interest, a College committee called the Inquiries, Complaints and Reports Committee (ICRC) may refer allegations of professional misconduct or incompetence to another committee of the College called the Discipline Committee for a hearing.

A hearing is a formal proceeding, like a trial in a court, conducted by a panel of members of the Discipline Committee. The Discipline Committee will consider evidence and determine if, based on the evidence, the dentist (called a Registrant in this document) committed an act or acts of professional misconduct or is incompetent.<sup>1</sup> If the panel of the Discipline Committee finds that the Registrant committed acts of professional misconduct or is incompetent, it will then determine what penalty should be imposed.

In hearings before the Discipline Committee, the people who are allowed to provide evidence to the panel are called parties. The usual parties in discipline hearing are (1) the College, which is represented by a staff member and a lawyer, and (2) the Registrant against whom the allegations have been made.

The purpose of disciplinary hearings is to help the College ensure that its mandate to protect the public is carried out. Discipline hearings ensure that Registrants govern themselves according to the *Regulated Health Professions Act, the Dentistry Act, 1991* as well as other legislation (or laws) and regulations that govern the profession. Registrants are also required to maintain standards of practice of the profession.

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<sup>1</sup> Incompetent means that the Registrant lacks knowledge, skill, judgment and/or ability to practise dentistry.

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

- Allowing the public to make complaints and provide information to the College that lead to investigations, and possible referrals to discipline
- Allowing the public to attend discipline hearings and
- Publishing the Discipline Committee's decisions in the College's publications, on its website and on other publicly accessible websites like [www.CanLII.org](http://www.CanLII.org).

It is always strongly recommended that you retain a lawyer to represent you at a discipline hearing. If you are a member of the Canadian Dental Protective Association, you are encouraged to contact them about retaining a lawyer. The CDPA can be reached toll free at 1 (800) 876-2372 or by email at [info@cdpa.com](mailto:info@cdpa.com).

## 2. NOTICE OF HEARING

To refer a case to discipline, the ICRC must specify allegations of professional misconduct or incompetence. The allegations must detail the concerns that the ICRC has. After a referral has been made, the matter will be assigned to the College's lawyer (the "Prosecutor"). The College's Hearings Administrator will prepare a document called a Notice of Hearing, which will be sent to you. The Prosecutor will give you a copy of all relevant information in the College's possession, which is called "disclosure".

The Notice of Hearing contains the allegations of professional misconduct or incompetence that have been made against you. The College has the burden of proving the allegations written in the Notice of Hearing. The standard of proof that the College must meet is the civil standard of proof, on a "balance of probabilities". This means that the Discipline Committee must decide whether it is more likely than not that you engaged in the conduct that you are alleged to have engaged in, and the Discipline Committee must also determine that the conduct you have engaged in is in fact professional misconduct or incompetence.

Once you receive the Notice of Hearing, you or your lawyer should contact the Prosecutor assigned to the case to discuss how you intend to proceed. The Prosecutor's contact information is contained in the Notice of Hearing.

## 3. RIGHT TO LEGAL REPRESENTATION

A discipline hearing is a serious matter. If you face allegations of professional misconduct or incompetence before the Discipline Committee, you should consider whether you want to retain a lawyer, paralegal or an agent (in compliance with the requirements of the *Law Society Act*). You are not required to retain a legal practitioner. You can represent yourself. Please be aware that the College is represented by a lawyer at all hearings.

## 4. DISCLOSURE

Any party that wants to rely on evidence at the hearing must disclose the evidence to the other party and must provide the other party with a reasonable opportunity to examine the evidence before the hearing. Where a party wants to call a witness at the hearing to provide oral evidence (testimony), they must disclose the identity of the witness at least 10 days before the start of the hearing. Additional details regarding these deadlines can be found in Rule 7 of the *Discipline Committee Rules of Procedure*. The purpose of these rules of disclosure is to ensure that each party is prepared for the hearing.

## 5. EXPERT WITNESSES

An “expert witness” is someone qualified to give opinion evidence about matters outside the general scope of knowledge of the Panel members. For example, the Discipline Committee often hears expert evidence about what the standards of practice of the profession are, and whether those standards were met or were breached in a particular case. Where a party wants to rely on an expert witness, that party must disclose the identity of the expert and a copy of a written report signed by the expert containing the substance of the expert’s anticipated oral evidence.

The College must provide any expert report it has in its possession at the time of making disclosure, and must deliver any other expert report it obtains within 15 days of receiving it, and in any event at least 60 days before the start of the hearing.

You are required to provide any expert report you intend to rely on at least 30 days before the start of the hearing.

## 6. PRE-HEARING CONFERENCE (PHC)

There are several preliminary matters that should be determined before a hearing takes place, such as:

1. how many witnesses will be called
2. what facts the parties agree on (if any) and
3. what the contentious issues are

To assist with narrowing the issues and to help expedite the time required for a hearing, a pre-hearing conference may be arranged in advance of the hearing. Any party to a hearing may request a pre-hearing conference. The party requesting the pre-hearing conference is required to seek the consent of the other party.

Pre-hearing conferences are closed to the public and all discussions at a pre-hearing conference occur on a “without prejudice” basis. This means that nothing discussed at the pre-hearing conference and no pre-hearing memos written for the pre-hearing conference can be disclosed at the hearing. The purpose of the pre-hearing conference is to plan for the hearing and to determine if any of the issues can be settled. The person who chairs the pre-hearing conference will not be a member of the Discipline Committee Panel at the hearing but is experienced with discipline proceedings at the College. Even if none of the issues can be settled, a pre-hearing conference is a helpful opportunity for the parties to discuss any issues that may arise at a hearing, as well as scheduling issues, including how long a hearing may take. Rule 5 of the *Discipline Committee Rules of Procedure* provides further information about Pre-hearing conferences.

If you would like to request that a pre-hearing conference be held, you may contact the Hearings Office of the College at [hearingsoffice@rcdso.org](mailto:hearingsoffice@rcdso.org).

## 7. MOTIONS

A motion is a request to the Discipline Committee to obtain a ruling or decision on a specific matter relevant to a case. Parties must notify the Discipline Committee of any intention to file a motion so that a motion date can be scheduled. The party bringing the motion must serve a copy of the Motion Record, including a Notice of Motion and all affidavits and any materials to be relied upon, and file it with the Hearings Office at least seven (7) days before the motion is to be heard. A party who wishes to respond to the motion must serve their response to each party and file a copy with the Hearings Office at least three (3) days before the motion is to be heard.

A pre-hearing conference can be helpful in assisting you to determine what motions, if any, should be brought in advance of the hearing. Rule 6 of the *Discipline Committee Rules of Procedure* provides further information about motions that you should carefully review.

## 8. HEARINGS

A hearing is a formal proceeding before an independent Panel of the Discipline Committee made up of members of the profession and the public. The hearing is a full legal and adversarial process – each party presents its own case and represents its own interests. There are specific roles and duties for each individual involved in a hearing. It is important that you appreciate that Discipline Hearings are like court proceedings, and therefore there are rules that must be followed during the hearing.

There is a specific order to the Discipline Hearings, which is described below, as well as a high degree of formality. All witnesses will be sworn or affirmed as to the truth of their evidence before they are permitted to commence their evidence. Any party wishing to rely on documentary evidence at the hearing must ask the discipline panel chair’s permission to enter it as an exhibit during the hearing.

Currently, nearly all hearings are held electronically (online on Zoom). The Hearings Office will provide log-in information to the parties in advance of the hearing and will also be available to troubleshoot any technical issues in advance of the hearing. It is strongly recommended that you contact the Hearings Office in advance of the hearing to ensure that any technical issues are addressed before the hearing.

Electronic hearings are subject to the same rules and decorum as in-person hearings. You must ensure that you are in a quiet space and can focus on the hearing. No one else should be in the room with you except for your lawyer, paralegal or other representative. With respect to decorum, the discipline panel is given the same respect as a judge at trial.

If you have been given notice of the hearing and you fail to attend the hearing, the hearing may proceed in your absence.

## 9. THE INDIVIDUALS INVOLVED AT A DISCIPLINE HEARING

The parties to a discipline hearing are the College and the Registrant against whom allegations have been made. Any other witnesses who may be permitted to give evidence at the hearing, including the complainant if there is one, are not parties.

The other participants involved in the hearing will include the discipline panel, the prosecutor, the court reporter, as well as College staff and any witnesses called by either party.

### **The Panel**

The Chair of the Discipline Committee will assign a panel of three to five members to preside at a hearing and consider the allegations contained in the Notice of Hearing. There are usually a mix of at least one public member, at least one professional member and at least one subject matter expert adjudicator on a panel. The panel at a discipline hearing is led by a panel chair, who is responsible for ensuring that the hearing is conducted fairly and efficiently. The parties should speak to the panel chair during the hearing and not each other.

The role of the panel is like that of a judge (and jury): it will render a decision and give its reasons. The decision of the panel becomes public information upon completion of the hearing.

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, based upon the evidence, the allegations have been proven
- Determine whether, in respect of the allegations that were proved, you have committed an act of professional misconduct or are incompetent and
- Determine the penalty to be imposed in cases where such findings have been made

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

### ***Communication with the Panel***

Do not try to contact the members of the Panel outside your hearing. It is not appropriate for you to reach out to them individually or as a group. If you need to send any letters or information to the Discipline Committee, send it to the Hearings Office email ([hearingsoffice@rcdso.org](mailto:hearingsoffice@rcdso.org)). Any emails you send to the Hearings Office must have the other parties copied (usually the Prosecutor for the College).

### **The Prosecutor**

The prosecutor will present evidence to attempt to prove the allegations. The prosecutor must provide sufficient evidence to meet the burden of proof to allow the panel to make a finding or findings on the allegations.

The role of the prosecutor is to present the case for the College. The prosecutor cannot give you or the witness any legal advice. It is strongly suggested that you seek legal advice and retain your own legal counsel to represent you.

### **Court Reporter**

A court reporter transcribes verbatim the entire proceedings. The College is required to have and maintain the record in all disciplinary proceedings. You can request a copy of the transcripts from the court reporter, however there is a fee for obtaining them.

### **College Staff**

Usually, College staff will be present during the hearing. The Hearings Office is responsible for making all pre-hearing arrangements, such as ensuring all technology is functioning appropriately and arranging for the court reporter. They will also ensure that discipline decision or decisions are distributed and published as required after the Panel has made its decision.

## **10. CONTESTED VS. UNCONTESTED HEARINGS**

Hearings occur in two stages. The first stage of the hearing is focused on whether you committed an act or acts of professional misconduct or are incompetent. The prosecutor will start by reviewing the allegations in the Notice of Hearing. Once the panel has reviewed the Notice of Hearing, you will be asked how you respond to the allegations. You can either deny some or all the allegations, in which case the hearing will proceed on the basis that the denied allegations are contested. You can also admit some or all the allegations, which is the equivalent of a guilty plea. Additional information is provided below.

If you do not attend the hearing it will proceed as though you had denied the allegations and the College will still present its case against you.

The question of a possible penalty is not addressed in this first part of the hearing – the only decision for the panel to make is whether the allegations in the Notice of Hearing have been established on a balance of probabilities and that the conduct amounts to professional misconduct or incompetence.

If the panel finds that you committed an act or acts of professional misconduct, the second stage of the hearing, which focuses on what penalty is appropriate, begins.

Either or both stages of the hearing can proceed on a contested basis or uncontested basis, which means that:

- 1) you can deny the allegations (contested) and oppose the penalty (contested)
- 2) you can admit the allegations (uncontested) and oppose the penalty (contested)
- 3) you can deny the allegations (contested) and agree to the penalty (uncontested)
- 4) you can admit the allegations (uncontested) and agree to the penalty (uncontested)

As noted above, you can also:

- 1) deny some of the allegations. This would mean proceeding on a contested basis about those allegations you deny
- 2) oppose parts of the penalty sought by the College. This would mean proceeding on a contested basis about those parts of the penalty that you oppose.

## Contested Hearings

Where the registrant disputes the allegations, a hearing occurs on a **contested** basis. Following the opening statements (which describe each party's general position about the allegations), the Panel will hear evidence. The prosecutor will make their opening statement first, and you will then have the right to make an opening statement. The opening statement is not evidence – the purpose is to assist the Panel in understanding the parties' respective positions and the anticipated evidence supporting those positions. You do not have to make an opening statement. You can also wait and make your opening statement after the College has presented its case and before you start to present your evidence.

The College will present its evidence first, and then you will have an opportunity to present your evidence. Evidence may be in the form of 1) documents or 2) oral testimony given by witnesses. Each party will have an opportunity to ask questions of their witnesses (referred to as examination-in-chief) and the other party's witnesses (referred to as cross-examination). Each party is responsible for ensuring that its witnesses attend the hearing. If necessary, witnesses can be served with a summons to require their attendance at the hearing.

A summons to witness must ordinarily be served personally on the witness (i.e., given to them personally rather than sent by mail or email) at least two days before the date on which the witness is to appear. The Hearings Office can assist you to obtain a summons, but the Hearings Office will not participate in the service of that summons. That is your responsibility.

The parties have the right to object to any question asked by the opposing party if they believe it is improper. Some examples include if the question is asking for irrelevant or hearsay information. You are required to explain your objection and you must address the chair of the panel when doing so. The panel may ask the witness to be excused during the arguing of the objection. The panel will then decide as to whether the question is proper or improper.



You have the right to testify in your own defence, but you are not obliged to do so. If you do testify, then the prosecutor is allowed to cross-examine you on your evidence. Testifying is done under oath or affirmation (essentially a promise to tell the truth). If you testify on your own behalf, then you will be cross-examined by the Prosecutor after you have given your evidence (referred to as evidence-in-chief).

After each party has presented their evidence, they will have an opportunity to provide closing arguments (or submissions), summarizing their arguments and what they believe the evidence has demonstrated. It is important to remember that submissions are not evidence – you should keep this in mind when deciding whether to testify. If you do not testify under oath or affirmation, the things you say during your opening or closing submission are not evidence that can be relied upon by the panel. Similarly, the things said by the Prosecutor during opening or closing submissions are not evidence, they are simply argument.

The panel will then decide whether you have committed an act or acts of professional misconduct or are incompetent as alleged in the Notice of Hearing. If the panel decides that you have committed an act or acts of professional misconduct or are incompetent, the panel will then commence the second part of the hearing to consider what penalty is appropriate. Each party will have an opportunity to make submissions and present evidence during the penalty phase of the hearing.

## Uncontested Hearings

Where a hearing proceeds on an **uncontested** basis, you are agreeing that you have committed an act or acts of professional misconduct. This agreement is written and is called an Agreed Statement of Facts (ASF). The Agreed Statement of Facts sets out the facts that are agreed to between the parties. When a hearing proceeds on an uncontested basis, there is no need to present oral evidence; all the evidence is contained in the Agreed Statement of Facts. The Agreed Statement of Facts will also include an admission or admissions of professional misconduct. The admission(s) must be voluntary and informed, otherwise the panel will not accept them. If you tell the panel that you are only pleading guilty because you cannot afford to fight the allegations, the panel will not be able to accept your guilty plea, and the hearing will proceed as a contested hearing.

The Agreed Statement of Facts will usually be accepted by the panel unless the conduct described in the document does not actually amount to professional misconduct or incompetence.

In uncontested hearings, if the panel determines (or “finds”) that, based on the Agreed Statement of Facts, you have committed an act or acts of professional misconduct or are incompetent, the hearing will move to the penalty phase of the hearing. During this second phase, the parties typically present a Joint Submission on Penalty (JSOP) that details the penalty to which the parties have agreed.

Joint Submissions on Penalty are generally accepted by the panel unless to do so would be contrary to the public interest or would bring the administration of the Discipline Process into disrepute. This is a very high threshold to meet, i.e., the penalty agreed to by the parties would have to be much higher or much lower than had been ordered by the panel (or the discipline committee of other similar regulators) in the past for similar conduct.

## 11. PENALTIES

If the panel finds that you have committed an act or acts of professional misconduct, it has the power to order one or more of the following penalties:

- Requiring you to appear before the panel to be reprimanded (in some cases of sexual abuse, a reprimand is mandatory);
- Direct the Registrar of the College to revoke your certificate of registration (in some cases of sexual abuse, revocation is mandatory);
- Direct the Registrar to suspend your certificate of registration;
- Direct the Registrar to impose terms, conditions and limitations on your certificate of registration;
- If the findings of professional misconduct include sexual abuse, require you to reimburse the College for funding provided to the patient for therapy and counselling and to post security to guarantee the payment of any amounts you are required to reimburse the College;
- Requiring you to pay a fine of not more than \$35,000 to the Minister of Finance.

The panel also has the power to order that you pay the College some of the costs of investigating and prosecuting the matter if a finding of professional misconduct is made against you. Costs are separate and apart from the penalty and are meant to allocate the cost of the proceeding fairly so that the Registrant bears some of the costs incurred in the investigation and prosecution of the matter.

If the panel finds that you are incompetent (meaning that your professional care of a patient displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that you are unfit to continue to practise or that your practice should be restricted), then the panel may make an order to revoke your certificate of registration, to suspend your certificate of registration or to impose terms, conditions or limitations (such as practise restrictions) on your certificate of registration.

## 12. OPEN TO THE PUBLIC

Discipline hearings are open to the public except in rare cases where the Discipline Committee determines the hearing should be closed. The decisions of the Discipline Committee are also made public.

In certain circumstances the panel has the power to order a publication ban. For example, in sexual abuse matters, a publication ban may be ordered on the request of a witness who is testifying about allegations of a registrant's misconduct of a sexual nature involving that witness. The order would require that no person shall publish the identity of the witness or any information that could disclose their identity.

## 13. DECISION AND REASONS

After the hearing, the panel will give its Reasons for Decision in writing to the parties. Once issued, the Reasons for Decision will be published and posted on the College's website (on the [public register](#)). A notation of the hearing and the Order of the Discipline panel will also be published on the registrant's profile on the register.

In addition, the College publishes its decisions on the Canadian Legal Information Institute (CanLII) website. CanLII is a not-for-profit organization that provides free electronic access to court judgements from all Canadian courts, as well as decisions of several tribunals and college discipline committees. The panel's Reasons for Decision will be added to the College's [CanLII directory](#) and will be searchable on the CanLII website.

## 14. APPEALS

After the decision of the panel is released, either party is entitled to appeal the decision to the Divisional Court by serving and filing a Notice of Appeal within 30 days. The Divisional Court may overturn, affirm, or modify the order of the Discipline Committee.

## 15. RESOURCES

You are encouraged to consult the following resources for more information:

- *Regulated Health Professions Act, 1991*, [S.O. 1991, c. 18](#)
- [Health Professions Procedural Code](#), being Schedule 2 to the *Regulated Health Professions Act, 1991*
- *Dentistry Act, 1991*, [S.O. 1991, c. 24](#)
- *Statutory Powers Procedure Act*, [R.S.O. 1990, c. S.22](#)
- [Discipline Committee Rules](#)