

Policy

Type:	Inquiries, Complaints & Reports Committee		
Name:	Alternative Dispute Resolution		
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Purpose

The purpose of this policy is to describe the College of Optometrists of Ontario's Alternative Dispute Resolution (ADR) process and outline when ADR is suitable to resolve a complaint filed with the College.

Introduction

Alternative Dispute Resolution (ADR) is an effective way to resolve complaints in a manner that:

- satisfies the complainant and the optometrist and;
- serves to protect the public interest.

Section 25.1(1) of the *Health Professions Procedural Code* (the Code) specifically allows for the use of an ADR process to resolve complaints, most commonly using tools including mediation.

The ADR process:

- provides both parties an informal, confidential space to discuss the matter openly without prejudice;
- allows both parties to discuss, in general terms, the standards of practice of the profession and in what circumstances the member may or may not have acted appropriately;
- gives the member constructive steps to:
 - prevent similar problems in the future; and
 - maintain the standards of the profession;
- promotes accountability on the part of the member;
- creates an opportunity for a mutually beneficial agreement to be reached; and
- allows the complainant to be directly involved in the resolution of the complaint.

The ADR process is **not**:

- mandatory,
- disciplinary or punitive in nature; or
- an investigation into the facts of the case.

Criteria for Suitability

The ADR process is not suitable for every complaint filed with the College. After a complaint has been filed and confirmed with the College, the appropriate College staff, with approval from the Registrar, will determine if the matter appears suitable for ADR.

ADR **will not** be used if:

- a. The allegations involve sexual abuse as defined by section 1(3) of the Code.
- b. The optometrist has prior disciplinary history or a current discipline referral with the College or other regulatory body with which they are registered.
- c. The optometrist has any current charges, existing conditions, terms, orders, directions or agreements and/or findings of guilt in respect of a federal, provincial or other offence recorded on the Public Register.
- d. The optometrist has, in the preceding 3 years, had complaint(s) of a similar nature filed with the College that were not referred to the Discipline Committee, but were considered by the Inquiries, Complaints and Reports Committee (ICRC).
- e. The optometrist has, in the preceding 3 years, participated in 3 settled ADR processes with the College regarding a complaint.
- f. The optometrist is currently under investigation for any other issue, but the matter has not been decided by the ICRC.
- g. The optometrist has an interim order, made by the ICRC, suspending or imposing a term, condition, or limitation on their certificate of registration.
- h. The allegations involve:
 - incapacity;
 - physical, emotional, or financial abuse;¹
 - allegations involving fraud or significant and intentional dishonesty; or
 - a vulnerable complainant.²
- i. The Registrar believes that public protection requires a formal investigation, either due to the circumstances of the complaint or the parties: in this case, ADR would be ineffective or not serve the public interest.

NOTE: Where a complaint raises certain issues that may be handled by the ADR process and other issues that are excluded, it is not possible to separate them: all the issues must be brought forward and dealt with by the ICRC through the formal investigation process.

The ADR Process

After a complaint has been filed with the College, the following steps will occur:

1. The complaint will be assessed as to whether it is suitable for an ADR process (see criteria above).

¹ A dispute over the billing may not constitute financial abuse and may be suitable for ADR. Financial abuse would be considered in a situation where the optometrist took advantage of the patient-practitioner relationship to influence a patient in their financial matters.

² By reasons related to age, handicap, illness, trauma, emotional state or similar causes.

2. If it appears suitable and is approved by the Registrar, the complainant will be contacted by the College to canvass their interest in taking part in an ADR process.
3. The optometrist will be notified about the complaint, as required by section 25(6) of the Code, and the College will also canvass their interest in taking part in ADR.
 - Both parties must voluntarily agree to participate in ADR.
4. If there is mutual agreement, the parties will begin discussions with an ADR facilitator.
5. There is no investigation on the facts of the case.
 - The optometrist, as a regulated health professional, respects the complainant's perspective and remains accountable for the care provided.
 - Optometrists are not expected to admit blame or wrongdoing, but to reflect on their practice and consider potential means to enhance it.
6. After the parties agree, the College's formal investigation process does not proceed and will only commence if the facilitator notifies the College that no settlement can be reached.
7. The facilitator is neutral, but can propose options, or advise when an option may be contrary to any governing legislation, such as the Code, or to the public interest.
8. The facilitator will update the College only on the status of the process.
 - The facilitator will not disclose the contents of any discussions to the College so as to maintain confidentiality.
9. The facilitator will have access to clinical or practice advice from the appropriate College advisor on staff.
 - Details of communication between a College advisor or, when appropriate, a clinical expert, and the facilitator will remain confidential.
10. The facilitator will ensure that both parties continue to voluntarily consent to be a part of the ADR process as they work towards a potential agreement.
11. The College and/or the facilitator may end the process if it is evident that either party is abusing the process and/or not acting in good faith.
12. The facilitator must disclose to the College any new concerns that are brought to light by either of the parties that would render the case not suitable for ADR (see criteria above).
13. Either party can withdraw from the ADR process at any time, at which point the formal investigation process will be initiated.
14. Time spent by a complainant and member in an ADR process shall not be included in the calculation of time for the disposal of a complaint, as is otherwise stipulated under section 28(1) of the Code.

Conclusion of ADR Process

1. If an agreement is reached, it will be provided to the Registrar for approval. Alternatively, the Registrar can request that a panel of the Inquiries, Complaints and Reports Committee (ICRC) approve the agreement. Approval by either the Registrar or ICRC ensures that the agreement is not contrary to the College's mandate of public protection.
2. Once an agreement has been reached and accepted by both parties, it constitutes a full and final resolution to the matter. The complainant commits to not file the same complaint again.
3. If the member does not comply with any terms of the agreement, this may be grounds for a Registrar's investigation under section 75(1)(a) of the Code.
4. If no agreement is reached within 60 days, the facilitator must notify the College. The parties and the College may collectively agree to extend the ADR process for up to an additional 60 days.
5. If no settlement can be reached, the formal investigation process will be initiated.

Confidentiality

- The process is confidential without prejudice.
- The facilitator and both parties will sign confidentiality agreements prior to the initial ADR meeting. These will be kept on file by College staff.
- ADR settlement agreements are not public and will not be considered in the assessment of future complaints or reports involving the member.
- Staff can only keep the following information in confidence:
 - a copy of the complaint;
 - signed confidentiality forms;
 - documentation related to consent for ADR;
 - the settlement agreement including the approval of the Registrar/ICRC; and
 - any information regarding the completion of terms in the agreement
 - The facilitator's notes will not be obtained by the College.
- The ADR facilitator will not take part in any subsequent investigation.
- Parties may not rely on information that was disclosed specifically for the purposes of the ADR process in any subsequent investigation.
- The facilitator will not be liable to any party or representative for any act or omission pertaining to an ADR process. The parties must agree that they will not invoke any legal process for the purpose of compelling the facilitator to produce any documents or to testify in any judicial forum concerning anything whatsoever about the mediation proceeding, nor to give evidence pertaining to any aspect of the proceeding.