

Selection of members for the discipline committee from the profession

revised: June 30, 2016

Purpose and policy direction

To set out best practices when considering registrants who are not currently practicing for appointment to a discipline committee. The public interest will be protected when the regulator establishes selection criteria for appointments that are aligned with legal case law.

Key considerations

1. Registrants may stop practicing on a temporary or permanent basis for a variety of reasons including pregnancy leaves, disability, unemployment and retirement. Nevertheless, these individuals may seek and be eligible to fill certain committee roles at the regulator.
2. An important privilege of self-regulation is the authority to be the preliminary and primary adjudicator on allegations of incompetence or professional misconduct.
3. The finality of decisions of discipline committees is enhanced in those jurisdictions where there are legislated provisions that restrict or limit rights of appeal or review.
4. Upon appeal or review, courts give deference to the findings of a discipline committee on the premise that the committee members have a special expertise. The courts have reasoned as follows:
 - a. through repeated experience, discipline committees develop a capacity to draw inferences from facts related to professional practice and to assess the frequency and level of threat to the public;
 - b. discipline committees arguably have greater expertise than courts in the choice of sanction for breaches of professional standards; and
 - c. current members are uniquely positioned to identify professional misconduct and to appreciate its severity.

Note: Where the court used the expression “current members”, it appears the remark was referring to a discipline committee member who happened to be a “current member.” The remark does not appear to be a judicial effort to distinguish “current members” from other classes of members, such as retired members or lifetime members, who may also be “uniquely positioned to identify professional misconduct and to appreciate its severity”.

5. Any decision by a regulator to select non-practicing registrants to serve on discipline committees shall be made by setting out criteria that is consistent, in spirit, with the aforesaid principles.

6. The criteria shall include profession related expertise in addition to other eligibility requirements.

7. The criteria shall be subject to an appropriate approval process of the regulator.

8. Profession related expertise

The regulator shall identify the level of profession related experience that is necessary for members of the discipline committee. This shall include:

- a) years of experience in practice;
- b) maximum number of years since the member has practiced in the profession;
- c) the nature and scope of the member's practice experience; and
- d) the degree of training and orientation necessary and available to familiarize a new committee member with discipline committee case law and the established standards for sanctions.

A regulator must not include any age requirement in violation of applicable human rights legislation.

9. Additional eligibility requirements:

The regulator shall identify eligibility requirements for discipline committee membership. These requirements may include:

- a. prior volunteer experience with the regulator;
- b. prior committee experience with the regulator;
- c. adjudication skills (listening, communication and writing);
- d. conflict of interest guidelines; and
- e. membership class and status.

The membership class and status eligibility requirement for committees may be addressed in the by-laws. The courts have focused attention on profession related experience rather than membership class.

10. Duties and expectations:

The regulator shall publish duties and expectations to enable potential applicants to self-assess their abilities. The duties and expectations may include:

- a. availability and time commitment;
- b. knowledge regarding the disciplinary principles and processes; and
- c. estimated duration an assigned file might be active.

11. Term of appointment and renewability

The regulator shall establish a policy regarding the term of appointment and renewal. This policy should also discuss whether files assigned and commenced during the term of appointment are to be completed by the assigned committee member, notwithstanding the expiry of the term.

12. The regulator shall review their documented eligibility criteria on a periodic basis to ensure currency.