

December 7, 2016

VIA EMAIL

Dear Dr. McCleary:

Re: November 15, 2016 Meeting with CVO

The following is a memo with respect to the questions asked and answers given at the meeting with CVO Registrar and counsel (lawyers) on November 15, 2016. In addition, some conclusions are given where there appears to be procedural fairness/natural justice failings. These are outlined in yellow.

CVO has two different committees that screen complaints. These committees are:

- Executive
- Complaints

CVO's official literature indicates that the decision about which committee will screen a complaint depends upon the nature of the complaint itself and the type of investigation that will be required.

1. What are the criteria to determine if the Executive Committee or the Complaints Committee screens a complaint?

Complaints are screened only by the complaints committee.

Investigations are limited to paper process. No independent investigation of persons or members is undertaken. 75-85% are resolved before discipline.

Executive Committee – Reasonable and probable grounds to take something forward – legal standard.

Exceptionally complex matters may be managed by the Executive Committee.

This is done with consent of the individual bringing the complaint.

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Exec is the only committee that can strike a board of inquiry.

Unauthorized practice can be reviewed by the Registrar.

On a complaints matter, sent to complaints and if complex consideration on whether sent to the executive committee is given.

2. What statutory authority does the Executive Committee have to screen complaints?

The registrar can undertake an investigation and direct which committee should deal with it.

200 complaints of 4500 are investigated.

The powers of the Executive Committee in relation to Registrar's Investigations are laid out in [section 36 of the Veterinarian's Act](#). I would like to particularly draw your attention to 36. (1) and 36. (11). In addition, other clauses that relate to the work of the Executive Committee are found throughout the Veterinarian's Act. Some examples are: Section 4. (8), 9. (1), 12., 28. (11), 30. (1) and (2)(a), and 33. The role of the Executive Committee is also outlined in the Governance Manual.

These are general empowering provisions dealing with composition and authority. There are no objective guidelines, scoping language or process indications. In the absence of this language (which is not unusual in legislation) one would look to policy and procedure documents for process. Here the guidelines are wanting to say the least. It is an open book with no limitation on what form of investigation is warranted in what situation, the timelines for the investigation, steps to be taken in the investigation and triggering standards for next steps.

3. Aside from membership or past membership, what are the criteria for empanelment to the Complaints Committee?

Governance Policy – Non-council committee members. 1 member of the public. 1 Councillor.

Non-council committee appointments. Governance Policy.

Undertaking to produce document related to criteria.

***Governance policy with respect to non-council membership does not speak to anything related to discipline and is general in nature. It appears that selection criteria for discipline would be ad hoc and undertaken through a highly subjective evaluation



process. Without formalization of this process ensuring the quality of discipline committee members cannot be ensured or supported with data.***

4. What training do members of the Complaint committee receive with respect to the conduct of an investigation?

Staff gather the information as a part of the investigation. CLEAR: Council on licensure, enforcement and regulation provides education for regulators. Investigator training. LeBlanc firm and Wier Foulds provides training.

5. It appears that either the Complaints Committee or Executive Committee can refer a matter to the Discipline Committee for a hearing. Is there a proceedings authorization process undertaken by parties aside from those undertaking the investigation?

Prosecutorial viability assessments (PVA): Lawyers assess the case. The lawyer who prosecutes does the PVA.

-Undertakings – Voluntary to avoid discipline. This is always with the caveat that to not undertake is to move to discipline process.

-Remediation of the vet.

-CVO suggests evidence of prosecutorial self interest is to the contrary. i.e. they will say this isn't a case if they don't think there is a case.

-Economics are never a reason not to proceed.

It is counter intuitive to suggest that with no separation between the PVA and prosecuting lawyer, there wouldn't be some self interest. If they approve for prosecution in PVA they have just approved work for themselves.

6. Aside from membership or past membership, what are the criteria for empanelment to the Discipline Committee?

Pool of adjudicators. Selection criteria discussed above.

7. What form of adjudicator training do members of the Discipline Committee receive?

Independent legal council – Provides the training to the adjudicators.



Independent Legal Council is tendered and interviewed by Registrar and members of council.

There is no process or procedure for the audit of decisions for consistency. There has been a discussion at CVO about consistency and reliability.

Suggests that there is an inherent uniqueness to cases that somehow militates against 'consistency'.

While the concept of a 'case by case' analysis is ubiquitous in the common law process, the notion that there would not be clear trends of fact pattern, elements of alleged offences and severity of conduct, giving rise to consistent outcomes, is not logical. A process of decision audit to ensure fairness and consistency is a must and without it, fairness cannot be said to have been a part of the process.

8. What is the process for the evaluation of a member of the Discipline Committee?

There are improvements that could be made in adjudicator evaluation. There is tension between independence and evaluation.

Currently an anecdotal review.

Chairs are evaluated in a more regular way.

Formal adjudicator evaluation is a must for the consistency and reliability of the process. There are self-assessments and peer assessments done in other more sophisticated regulatory bodies. These are robust and regular. In order to ensure the competency of an adjudicator these reviews must be standardized, formalized and made part of the process.

9. What is the frequency of CPD and evaluation for Discipline Committee members?

Training related to committee to onboard new members. There is also refresher training – Just in time training. Time with ILC before each panel sits. No ongoing improvement.

10. Are members of the Complaints, Executive or Discipline Committee paid for work done on investigations or hearings?

Per diem councilors are paid from day one.

11. Are there published rules of practice and procedure for the investigations and discipline processes?

Undertaking to provide rules. Discipline and Rules of Procedure were just revised.



Code of ethics and Professional Practice Standards – No Rules of Professional Conduct in a comprehensive manner.

Commentary is being investigated and more universal statement is being considered.

12. What disclosure is provided to the member when discipline hearings are 'ordered'?

Complaints – Obligation to provide a member with notice and an opportunity to respond. Get a copy of the complaint itself.

On the Registrar's Investigation side itself – initial review may not be brought to members attention if there isn't enough there to let the member know.

13. How do you inform the member of their rights to counsel and/or the prudence of independent legal advice?

No formal process for informing member of their right to counsel etc.

In administrative law, there is a clear legitimate expectation of counsel being involved in a formal discipline process. To proceed without counsel would put a member at a serious and potentially fatal disadvantage when going up against trained prosecutors. Given the quasi-criminal nature of the discipline process, clear guidance to counsel and perhaps access to a free brief advice lawyer should be part of the process.

Yours very truly,

the ross firm
PROFESSIONAL CORPORATION

Per:

A handwritten signature in black ink, appearing to be the initials 'JR' followed by a period.

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