





Alternative Dispute Resolution within the
Complaints Process: Perspectives from the Pilot
Project of the Ontario College of Pharmacists
Tracy Wiersema, Katharine Neufeld,
Charlene Rochman, Maryan Gémus



 Council on Licensure, Enforcement & Regulation
www.clearhq.org

Health Professions Procedural Code

1. (1) In this Code,
“alternative dispute resolution process”
means mediation, conciliation, negotiation,
or any other means of facilitating the
resolution of issues in dispute; (“processus
de règlement extrajudiciaire des
différends”)


 Council on Licensure, Enforcement & Regulation
www.clearhq.org

Health Professions Procedural Code

**Alternative dispute resolution with respect to a
complaint**


25.1 (1) The Registrar may, with the consent of
both the complainant and the member, refer the
complainant and the member to an alternative
dispute resolution process,

- a) if the matter has not yet been referred to the
Discipline Committee under section 26; and
- b) if the matter does not involve an allegation of
sexual abuse. 2007, c. 10, Sched. M, s. 30.

 Council on Licensure, Enforcement & Regulation
www.clearhq.org

Health Professions Procedural Code

Confidentiality
(2) Despite this or any other Act, all communications at an alternative dispute resolution process and the facilitator's notes and records shall remain confidential and be deemed to have been made without prejudice to the parties in any proceeding. 2007, c. 10, Sched. M, s. 30.




© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

Health Professions Procedural Code

Facilitator not to participate
(3) The person who acts as the alternative dispute resolution facilitator shall not participate in any proceeding concerning the same matter. 2007, c. 10, Sched. M, s. 30.




© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

Health Professions Procedural Code

Ratification of resolution
(4) If the complainant and the member reach a resolution of the complaint through alternative dispute resolution, they shall advise the panel of the resolution, and the panel may,
a) cease its investigation of the complaint and adopt the proposed resolution; or
b) continue with its investigation of the complaint. 2007, c. 10, Sched. M, s. 30.



© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

Health Professions Procedural Code

Timely disposal

28. (1) A panel shall dispose of a complaint within 150 days after the filing of the complaint. 2007, c. 10, Sched. M, s. 30.

Not affected by ADR

(2) A referral to an alternative dispute resolution process under section 25.1 does not affect the time requirements under this section. 2007, c. 10, Sched. M, s. 30.



© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

Additional Considerations

- Transparency vs. Efficiency
 - Provisions are there to prevent sweeping anything under the rug
 - There is a risk that any informal resolution not conforming to the ADR process set out in the Code may unintentionally skirt the provisions and requirements of the Code



© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

Lesson Learned

The legislation is somewhat minimal and doesn't give a substantial amount of guidance



© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org


Why did we want to do this in the first place?

- Offers another way for parties to resolve their complaints and concerns
- Can provide a more active process to the participants
- Opportunity for each of the parties to gain insight into how the other felt/was impacted by the incident
- Can provide outcomes that are not available through the ICRC

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org


Why did we want to do this in the first place? (Continued)

- Streamlining of cases suitable for ADR to other resources and allowing for greater efficiency
- Can be more timely and less adversarial
- Provides a different face of the College to the public and the members

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org


Why did we want to do this in the first place? (Continued)

- Because it is a more participatory process, the parties may gain more from the experience than they might through ICRC review

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org


**Environmental Scan:
Lessons Learned**

- Each college was doing something different to fit their own culture and professional practice
- Some used external mediators, others were in-house; some used an in-person process, others used a phone-based or paper-based process
- Some streamed a very small number of files through ADR, others sent a considerable portion through ADR

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org


**Environmental Scan:
Lessons Learned**

- The Code stipulates that ADR is not appropriate where there is an allegation of sexual abuse. All colleges had a list of further excluded criteria
- Some colleges allowed for a financial settlement as part of the ADR resolution and some did not

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org


ADR Working Group

- The ADR Working Group began meeting in August 2012
 - Group was formed from members of the Inquiries, Complaints and Reports Committee (the "ICRC")
 - Staff were assigned to support the Working Group

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org


ADR Working Group

- The Working Group reviewed ADR programs from other colleges in Ontario and other colleges of pharmacy within Canada
- The Working Group determined the ADR process for the OCP and the documentation to be used

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org


**ADR Working Group:
Lesson Learned**

Learning to give up some control
while remaining comfortable with
the process

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org

**ADR Working Group:
Lesson Learned**


What happens in ADR, stays in ADR

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org

The ADR Program

The Pilot Project operated under the following parameters:

- Matters Suitable for ADR
- Matters Not Suitable for ADR
- Mediation Ground Rules
- External or In-House Mediator




© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

The ADR Program (Continued)

- Discovery of Additional Information
- Options available for ADR Resolution
- Options not available for ADR Resolution
- ICRC Ratification Process




© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

The ADR Program (Continued)

- Considered a “Prior Decision”?
- Limited Access for members to ADR Process




© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org


ADR Process

- Voluntary and confidential process
- Parties may withdraw from the process at any time
- College pays the costs of the mediator
- Mediation can be via teleconference or in person

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org


ADR Process (Continued)

- Parties cover any costs outside of the mediation (i.e., travel, accommodation)
- Created the position of a dedicated ADR Liaison
- Pharmacy Practice Advisor may be involved if impartial information about pharmacy practice is necessary

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org

Financial Matters in the ADR Process

- The ADR Working Group initially decided to exclude financial compensation as part of a possible ADR resolution
- The ADR Working Group later revised this position and allowed for a nominal amount of money to be part of an ADR resolution

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org

Financial Matters in the ADR Process: Lesson Learned

Important to ensure that the parties understand that the OCP cannot require a member to financially compensate a complainant, and that if a member chooses to do so, it is entirely his or her choice, and should be considered a gesture of good will



© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

Pilot Project Statistics June 2013 to May 2014

Files initially identified as appropriate for ADR: 30

Files later determined to be unsuitable for ADR: 6

Files in which the complainant declined ADR: 7

Files in which the complainant decided not to proceed with matter: 3



© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

Pilot Project Statistics June 2013 to May 2014 (Continued)

Files for which ADR did not proceed for other reasons: 3

Files for which the ADR was in progress: 2

Files that reached a settlement: 4



© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org


Pilot Project
Introducing ADR to the Parties

- An important component of the ADR process is the initial communication with the parties and the approach taken in this communication.
- This communication must be neutral and impartial.

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org

Pilot Project
Why Parties Consent and Decline


- Not all complainants agree to participate in the ADR process
 - The parties generally maintain their initial position of being open or closed to ADR
- Conversely, all members (so far) have agreed to participate in the ADR process

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org

Pilot Project:
Lessons Learned

It is important to be flexible.


You won't be able to anticipate all circumstances.

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org

**Pilot Project:
Lessons Learned**


Address day-to-day procedural matters that arise

- Issues with documentation
- Can the complainant withdraw?
- Can a party be represented during ADR?
- Records management

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org

**Pilot Project:
Lesson Learned**


An ethical wall may be necessary.

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org

**Pilot Project:
Lessons Learned**

Building an ethical wall:


- Determine which staff need access to what information
- Determine how records management works with an ethical wall
- Plan what should happen if the Practice Advisor has a conflict of interest

 © CLEAR 2014 Council on Licensure, Enforcement & Regulation
www.clearhq.org

Pilot Project: Lessons Learned

Ethical Wall (Continued):

- Determine which staff the mediator can contact if he/she has questions
- Ensure that all parties understand their respective confidentiality obligations within the process
- If the ICRC refuses to ratify an agreement, ensure that those ICRC members do not review the final investigation




© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

Pilot Project: Final Lesson Learned

Have a good lawyer on speed dial.




© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

Expansion of the ADR Program

After the Pilot Project, the ADR Working Group decided to expand some of the criteria to allow more matters to go through the ADR process



© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

Moving Forward

- ADR is no longer in the pilot phase and has been incorporated as one of the mechanisms for resolving complaints
- Important to open up public education about ADR



© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

Successes

- Thus far, all settlement agreements have been adopted by the ICRC
- Surveys have been provided to the parties and feedback has been generally positive
- Some resolutions speak to the learning of new conflict resolution skills



© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

Speaker Contact Information

Tracy Wiersema, R.Ph.

- Pharmacist and ADR Working Group Member
- taa.arone@sympatico.ca

Katharine Neufeld

- Decisions Coordinator
- Ontario College of Pharmacists
- kneufeld@ocpinfo.com



© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org

Speaker Contact Information

Charlene Rochman

- ADR Liaison
- Ontario College of Pharmacists
- crochman@ocpinfo.com

Maryan Gémus

- Manager, Investigation and Resolutions
- Ontario College of Pharmacists
- mgemus@ocpinfo.com



© CLEAR 2014

Council on Licensure, Enforcement & Regulation
www.clearhq.org
