

# ALTERNATIVE DISPUTE RESOLUTION POLICY

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## Purpose

To describe the College's Alternative Dispute Resolution program and outline the criteria that must be met to process a complaint in this manner.

## Scope

This policy applies to complaints filed with the College.

## Definitions

"Alternative Dispute Resolution (ADR)"<sup>1</sup> – a voluntary process in which an independent mediator assists the complainant and registrant (the parties) in resolving a complaint to create a mutually acceptable resolution.

"Inquiries, Complaints and Reports Committee (ICRC)" – the statutory committee whose mandate is to investigate and render decisions on complaints.

"Mediator" – the person who assists the parties to achieve resolution by acting as the facilitator.

"Registrant" – a midwife registered with the College against whom a complaint is made.

"Resolution Agreement" – a document signed by the registrant and complainant setting out the mutually agreed upon terms as a resolution to the dispute/complaint.

## Policy Statement

ADR is an alternative process that allows a registrant and complainant to work together to achieve a resolution that is mutually agreeable. A complaint may be processed by ADR if resolving the issue through ADR is deemed to be in the public interest. In this process, there is no investigation on the facts of the case and the complaint does not proceed via the College's regular ICRC complaints process.

## The Program

Once a complaint is deemed suitable for ADR, and both parties agree to participate, the Registrar will formally initiate the process by appointing a mediator. Otherwise, the complaint shall be processed through the regular ICRC complaints process. The registrant and complainant are expected to participate and attend any mediation discussions but either party may bring a representative with them.

The mediator is a neutral third party who is not a member of any College committee or staff and who does not have a conflict of interest with either party. The mediator independently contacts the parties and engages in discussions to achieve resolution. The mediator can propose options or advise when an option may be contrary to the public interest. The mediator will have access to clinical or practice advice from the College's practice advisor but details of those communications will remain confidential.

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<sup>1</sup> Section 25.1 of the Code, which is Schedule 2 to the RHPA

The mediator will only update the College on the status of the process and will not disclose the contents of any discussions to the College. If either party chooses to withdraw from the process, or resolution is not achievable, the mediator will notify the College and return the matter to the College to be processed by the ICRC.

The mediator provides the College with a proposed resolution agreement signed by both parties within 60 days of the referral. If no agreement is reached, the College may agree to extend the ADR process for up to an additional 60 days. If the parties do not achieve resolution within 120 days of the referral of the complaint, the complaint must be processed through the regular ICRC complaints stream.

The Registrar may adopt the proposed resolution or may refer the decision of whether to adopt the proposed resolution to a panel of the ICRC (who may adopt the proposed resolution or continue with its investigation of the complaint) to ensure the agreement is not contrary to the College's public protection mandate. Once the Registrar or ICRC adopts the resolution, the file is closed on the consent of all parties. The complainant cannot file the same complaint again.

If the College becomes aware that a registrant did not comply with any terms of the resolution agreement, the Registrar may take action to address the conduct, which could include commencing an investigation into the concern.<sup>2</sup>

### *Eligibility*

All the issues of a complaint must meet the criteria for a complaint to be eligible for ADR. ADR **will not** be used in following circumstances:

1. If the complaint involves allegations of:
  - sexual abuse<sup>3</sup> or incapacity concerns;
  - physical, emotional, or financial abuse;
  - intentional dishonesty or fraud;
  - intentional acts of harm; or
  - serious practice or conduct concerns that pose a serious risk of harm to clients
2. If the ICRC has:
  - Referred the matter to the Discipline Committee; or
  - Released a final decision on the matter<sup>4</sup>
3. If due to the circumstances of the complaint or the position of the parties, the Registrar believes that:
  - ADR would be ineffective<sup>5</sup> or
  - ADR would not serve the public interest

### *Confidentiality*

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<sup>2</sup> An investigation may be commenced pursuant to Section 75(1)(a) of the Code

<sup>3</sup> *Health Professions Procedural Code*, s. 25.1(b).

<sup>4</sup> *Ibid*, s. 25.1(a) and (b).

<sup>5</sup> For example where a complainant may be vulnerable due to age, disability, illness, trauma, emotional state or other personal circumstances.

ADR discussions between the parties and with the mediator are confidential and considered “without prejudice.” This means that a party cannot use information shared confidentially in the ADR process against the other party in any other forum, including before a College committee. The parties shall not disclose information obtained during the ADR process in any other forum, including to College staff, any ICRC panel, the Health Professions Appeal and Review Board, the Discipline Committee, or in any process of the civil or criminal courts.

The mediator’s notes and records, and content of discussions about resolution during the ADR process remain confidential. Details of any communications with the College’s Practice Advisor also remain confidential.

Resolution agreements are not public and will not be considered as prior history by the ICRC in the assessment of future complaints or reports involving the registrant.

A copy of the complaint, any documentation related to consent, the resolution agreement, and any information regarding completion of terms in the agreement are kept on file at the College.

## References

*Health Professions Procedural Code, Schedule 2 to the Regulated Health Professions Act, S.O. 1991, c. 18.*

Approved by Council

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