

Complaints, Investigations, Inquiry

Preamble

COTM, through *The Occupational Therapists Act*, has the responsibility to deal with complaints and reports of concerns regarding the conduct of its members and, in some cases, former members. The processes used by COTM are specified in Part 6 of *The OT Act* and are consistent with administrative law (rather than civil or criminal law) practices.

What is the purpose of COTM's work in this area?

The purpose of COTM is to serve and protect the public interest [OT Act S.4(2)]. There are three key ways in which this mandate is carried out by COTM: registration of qualified individuals, development of a continuing competence program and investigation of complaints.

Further, S. 21(1) outlines the decisions that the COTM Investigation Committee can make following an investigation of a complaint. The key work of a professional regulator is to determine if a member should be permitted to practise the profession and if permitted to practise, should there be supports or limitations through the imposition of conditions placed on the member's registration.

The civil system is set up to determine if the OT's actions caused harm to another and if damages need to be paid. In contrast, the professional complaints investigation processes are focused on determining the need for current or future practice / registration limitations.

Who can file a complaint?

Anyone can send a concern to COTM.

COTM receives concerns from clients, individuals who have been harmed by the occupational therapist's actions, family members, colleagues, and employers.

The review process is consistent for all concerns, however the notification processes and appeal rights vary depending on the source of the concern.

Complaints must be provided to COTM in writing and can be mailed to COTM or sent via email to registrar@cotm.ca

Why does COTM have such high costs associated with complaints?

Though there are provisions in *The Act* and administrative law processes that guide COTM's work in this area, it is essential that COTM address each complaint in a thorough and fair manner. Quite often this requires clarification and support from legal counsel.

If a matter is referred to the COTM Inquiry Committee, then costs are significant as COTM is required to engage legal counsel to present the matter to the Inquiry Committee on behalf of COTM and to provide another lawyer to act as support to the COTM Inquiry Committee panel.

Why do all COTM members have to pay for the costs associated with complaints?

Since the complaints investigation stage of the COTM process is one of discerning the nature of the matter and since there are no limits on who may be the subject of the complaint, costs associated with this stage of the process are generally viewed as a cost of doing business as a regulatory organization. This means that a profession that has been granted the privilege of self-regulation by government has made a commitment to carrying out this work.

Once a matter is referred to the Inquiry Committee, then a hearing will be held.

The hearing panel has the option to recover all or some of the costs associated with the investigation and hearing and impose fines if the member has been found guilty of the offences with which the member has been charged by COTM.

What types of complaints does COTM receive?

There are three descriptors generally used to refer to the types of complaints that COTM addresses – these include misconduct, unskilled practice (referred to as incompetence in *The Act*) and fitness concerns (referred to as incapacity in *The Act*). Not all matters that relate to the conduct or actions of an occupational therapist will be addressed by COTM.

How long does COTM complaints investigation take?

This varies as each file has its own unique features. The COTM staff who coordinate complaints can be a resource for these questions if you are a complainant or are the subject of a complaint.

How many complaints does COTM receive?

This varies on a year-by-year basis. COTM reports on number of complaints to COTM members as part of the Annual Report. Since the numbers are relatively low, COTM provides members with information as to the general nature of the complaints.

Can COTM impose requirements on individuals or organizations?

In the course of its investigation, it may become apparent that some of the matters that have been identified by the complainant relate to institutional problems or agency practices. Nevertheless, COTM's focus is on the COTM member's conduct. COTM is unable to dictate to any other agency. The only exception relates to an outcome that places conditions on the COTM's member's registration. These conditions must be respected by the employer. See *The Act* S.58(4).

If I am the subject of a complaint, will my name be posted on the COTM website or published in some manner?

COTM does not have the right to publish the details of an investigation.

COTM is required to publish event details of Inquiry Committee hearings without identifying the member. Once the Inquiry Committee makes a decision and orders, then the Notice of Decision and Reasons will be published on the COTM website. It will include the member's name unless there has been a compelling reason for not including the member's name such as in cases where this is necessary to "protect the innocent".

Can I purchase insurance for complaints investigation?

If you purchase your own professional liability insurance, it may include some assistance for matters before your professional regulator. Professional liability insurance is focused on civil suits filed in court

and not professional regulatory matters therefore it is important to talk to your insurer to confirm the scope of your coverage.

If I am the subject of a complaint, do I need to hire a lawyer?

This is a personal choice. If you do wish to have legal representation, you are encouraged to hire counsel with relevant experience. The Manitoba Society of Occupational Therapists (MSOT) has developed a list of lawyers who practise in the area of professional regulation and do not do work for COTM.

Who looks at my complaint?

Notwithstanding the generality of this description, here is how it normally works.

The COTM staff assigned to this work are the first to review your complaint. The first task is to determine if COTM has jurisdiction. Once this is determined, then staff will coordinate correspondence with the COTM member.

The COTM Registrar is then involved in reviewing the complaint and the member's response and makes the formal referral to the COTM Investigation Committee.

The Committee is made up of two occupational therapists and one public member. The public member is chosen by the COTM Council from a Roster of Public Representatives to which the Minister of Health appoints individuals.

The Committee may appoint an investigator. COTM has four occupational therapists who have been trained as investigators. It also employs professional investigators in certain situations where clinical practice is not in question.

Staff remain involved in supporting the committee and coordinating the file.

How will I know what was decided?

At the conclusion of a matter, the COTM Investigation Committee or COTM Inquiry Committee will produce a Notice of Decisions and Reasons. This is provided to the COTM member and as relevant, the person who filed the complaint.

What happens if there are concerns with the outcomes?

The Occupational Therapists Act provides for appeal processes after the Investigation Committee and the Inquiry Committee make decisions by the relevant parties.

I do not see my question, what do I do?

You are encouraged to contact the COTM Executive Director at sharon.eadie@cotm.ca or 204-957-1214 (22).

For more information, please contact COTM at (204) 957-1214 or by email at OTinfo@cotm.ca

This publication is provided for general information. For more specific information see
The Essential Competencies for Occupational Therapists in Canada,
The COTM Code of Ethics for Occupational Therapists and
The Occupational Therapists Act and Regulation.
COTM publications are available on our website at www.cotm.ca

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