



College of
Midwives
of Ontario

Ordre des
sages-femmes
de l'Ontario

Resource for Midwives - Complaints and Investigations

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Introduction

Midwifery clients, members of the public, and midwives have a right to report concerns and file complaints about a midwife's conduct to the College. This means that some midwives will be the subject of complaints or reports at some point in their career.

The College is obliged to process complaints it receives about a midwife's practice or behaviour. The Registrar also has a responsibility and obligation to review information about a midwife's conduct that is not a formal complaint. In these cases, the Registrar will consider whether it is necessary to take steps to address the alleged conduct or actions of the midwife.

The College recognizes that midwives may find it stressful when the College makes inquiries into a midwife's practise, or when the midwife becomes the subject of a complaint or College investigation. The formal process for complaints and investigations are outlined in legislation and each step of the process is designed to ensure fairness to the midwife (as well as the complainant in complaint matters). This resource is intended to provide information, so midwives know what to expect.

What resources are available for midwives?

Contact the Association of Ontario Midwives, Risk Management Department
Midwives are entitled to seek legal counsel to assist them with complaints and investigations. Legal counsel can usually be obtained through liability insurance and is usually covered.

Contact the College
Midwives can review the College's website for information on complaints. College staff can assist by explaining the College processes.

What happens when a complaint is received about a midwife?

The College will confirm receipt of the complaint to the complainant within 14 days and request additional information as required. The midwife will be notified of the complaint in writing within 14 days of the College receiving the complaint. This notice letter will contain an explanation of the complaints processes available for the complaint, along with a copy of the complaint, and any available prior decisions involving the midwife.

What happens when the College's receives concerning information about a midwife?

When the College receives concerning information that is not a formal complaint, it will consider and decide what, if any, action is required in the public interest. This information could be in the form of a mandatory or permissive report, correspondence from the coroner, or simply information received from a midwife or a member of the public outside of a formal complaint. The College may conduct preliminary inquiries into certain reports, however, the

nature of those inquiries will vary from case to case, depending on the nature and allegations received and potential risk to the public. Preliminary inquiries are not always required but may include obtaining additional information from the source, midwife or obtaining a copy of the midwifery record relevant to the alleged conduct.

Not all reports received result in a Registrar's investigation. Sometimes the College will take no action, and sometimes the College will write to the midwife to express its concerns and provide informal guidance. The College uses the Registrar's Investigation Decision Making Tool to assist in making fair and consistent decisions. This tool can be found on the College's website.

Who reviews the complaint to determine whether further action is needed?

The Inquires, Complaints, and Reports Committee (ICRC) is a statutory committee that investigates complaints and considers reports related to allegations of professional misconduct, incompetence, or incapacity. The ICRC is a screening committee for the Discipline Committee. It conducts a review of written material and meets to deliberate on a matter to determine if a matter should be referred to discipline for a hearing, or if some other remedial action is required in the public interest.

Every panel of the ICRC is composed of at least three people, some of whom are midwives, and at least one of whom is a public member of the College Council. All panel members confirm that they do not have a conflict of interest in the matter. The ICRC meeting is not open to the public, and neither the midwife nor the complainant is present at the review.

More information about the ICRC including the Terms of Reference for this Committee can be found on the College's website.

The ICRC has no authority to assess injury or award compensation to the complainant. That would be the subject of civil court proceedings. The ICRC does not have the ability to order that a midwife apologize or change medical records.

What are the different processes?

The College has two complaint streams: Alternative Dispute Resolution and the ICRC investigative complaints process. Other processes the ICRC is involved in include Registrar Investigations and Health Inquiries.

Alternative Dispute Resolution (ADR)

Some complaints are eligible to be processed through the ADR process. Both the midwife and the complainant must consent to participate for this process to go forward.

In ADR, a mediator will work with the midwife and the complainant to discuss the complaint and exchange ideas for resolving it in a manner that protects the public interest and satisfies both parties.

Resolutions are unique to each complaint so the College cannot predict what a resolution may look like. Some resolutions may include one or more of the following:

- Acknowledgment regarding the incident and the impact it had on the complainant, and/or an apology by the midwife
- An agreement by the midwife to implement changes or initiatives with a view to improving future care and/or to engage in additional education relating to a concern identified in the complaint
- An understanding or acknowledgment by the complainant that the midwife acted appropriately

Both the complainant and the midwife decide on the resolution and will sign an agreement outlining the resolution. The final copy of the agreement is provided to both parties after it is reviewed and ratified by either the Registrar or a panel of the ICRC to ensure the agreement is in the public interest. 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. A midwife must abide by the terms of the agreement.

ADR typically takes place through telephone or video conference and is arranged at a time that is mutually convenient to all parties. The midwife and complainant are expected to participate and attend any mediation discussions and either party may bring a representative with them. The mediator will work with all parties to discuss the complaint and exchange ideas for resolving it. Mediation can occur one-on-one with the midwife or together with the complainant depending on the parties' wishes.

There is no investigation of the complaint in this process.

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 midwife.

More information about ADR can be found in the ADR Policy available on the College website.

Timeline: A resolution must be reached within 60 days, with a possibility of a time extension to 120 days (if the Registrar or ICRC believes that it is in the public interest to do so).

ICRC Investigative Complaints Process

Complaints that are not eligible to be processed through ADR must be processed through the investigative complaints process.

The midwife will be asked to submit a copy of the relevant midwifery record to the College. A midwife is permitted to provide the health record to the College without the Client's consent.¹

Other investigative steps could include obtaining hospital or EMS records, witness statements, etc. if they are deemed relevant to the complaint. Occasionally, the ICRC may decide an expert opinion is required. The ICRC may engage a third-party or College-appointed investigator to conduct aspects of the investigation.

The midwife is asked to respond to the complaint within 30 days (although extensions may be granted). The midwife's response to the complaint is generally shared with the complainant for comment, particularly if it raises new information. The midwife is provided an opportunity to provide a further written submission on all information gathered in the investigation before the ICRC meets to deliberate and decide on the complaint.

After a thorough review of the materials gathered in the investigation, a panel of the ICRC will then meet to deliberate, decide on an appropriate outcome, and prepare written reasons for their decision (unless the ICRC decides to refer the matter to Discipline for a hearing).

The midwife and the complainant will both receive a copy of the ICRC's final decision. The Decision and Reasons document will advise of the outcome and explain the reasons why the ICRC made the decision that they did.

Timeline: The College aims to complete the complaints process within 150 days (about five months). While every effort is made to process the complaint in a timely manner, due to the complexity of some cases, and delays in obtaining records, this often takes longer. The College will provide status updates once the complaint has reached the 150-day and 210-day mark, and then monthly updates until the matter has been closed.

The midwife and the complainant may ask that the Health Professions Appeal and Review Board (HPARB) review the ICRC's decision. HPARB conducts a review of the ICRC's process and can only consider whether the College's investigation was adequate and whether the decision was reasonable. If the ICRC decides to refer the matter to the Discipline or Fitness to Practise Committee for a hearing, reasons are not provided, and the ICRC decision is not appealable to HPARB.

¹ *Personal Health Information Protection Act, 2004*

Registrar Investigations / Registrar Reports

This process is started when the Registrar receives information and has reasonable and probable grounds to believe a midwife has committed an act of professional misconduct and/or is incompetent. For this process to commence, the Registrar must seek the approval of the ICRC to commence an investigation.

Once approved by the ICRC, the College will notify the midwife in writing. The midwife will be provided with a copy of the Appointment of Investigators made pursuant to section 75(1)(a) of the Code. This document sets out the scope of the investigation – a Registrar’s Investigation is not an investigation into the midwife’s entire practice, but a specified concern. The College will usually provide the midwife with the information that the Registrar relied upon when making the decision to commence the investigation.

The College completes the investigation and will provide the midwife with the results of the investigation (called the Registrar’s Report). Like the complaints process, the investigation is a neutral fact gathering exercise which focuses on the discreet allegations set out in the Appointment of Investigator document. The midwife will be provided with 30 days to respond to the Report.

A panel of the ICRC will meet to consider the Report and the midwife’s response to decide if further investigation is required, and then decide on an appropriate outcome. The ICRC will prepare written reasons for their decision (unless the ICRC decides to refer the matter to Discipline for a hearing) and provide them to the midwife when finalized.

In this process, there is no appeal to HPARB, but midwives can appeal the decision through the courts.

Timeline: Every effort is made to complete the investigation in a timely manner, but there are no prescribed timelines for Registrar’s Investigations. Timelines vary due to the complexity of the matter.

ICRC (or Health) Inquiries

Occasionally, a complaint or Report may raise concerns about a midwife’s mental and physical capacity to practise the profession safely and effectively.

If the Registrar or ICRC believe a midwife may be incapacitated, they may refer a matter to a panel of the ICRC for a health inquiry. This panel will make inquiries to gather information and then determine if formal proceedings should be initiated. Examples of inquiries might include obtaining a report from health care practitioners who have treated the midwife or ordering an independent specialist examination of the midwife. After conducting these

inquiries and obtaining the midwife's comment on its report, the ICRC then determines if the concerns should be referred to the Fitness to Practise Committee for a hearing.

More information on this process can be found in the Jurisprudence Handbook available on the College's website.

What does an investigation look like?

The purpose of any investigation of the College is to gather impartial and neutral information relevant to a matter.

An investigation will include obtaining the relevant midwifery record and any relevant hospital or other health records. It may include interviews with people who may have witnessed the conduct or who can provide objective information about the concern, such as complainants, witnesses, or other health care practitioners. It will include responses from the midwife. Some investigations include obtaining an expert opinion on the issue at hand.

Sometimes College staff will gather information, and other times an investigative agent or College appointed investigators will gather this information. An investigator does not make judgements, assess credibility, or try to "prove the allegations" about a midwife.

Midwives are expected to cooperate with College investigations and are permitted to share the relevant midwifery records or other relevant information with the College without a client's consent.

How does the ICRC make decisions and what are the possible outcomes of a complaint processed through the ICRC complaints process or a Registrar's investigation (report)?

Every panel of the ICRC uses a tool called the ICRC Risk Assessment Framework to aid them in making fair, consistent, and transparent decisions considering the seriousness of the issues raised. The ICRC determines if a concern should be referred to the Discipline Committee for a hearing, and if not, whether any remedial action is necessary to improve the midwife's future practice. In doing so, the ICRC will also consider other aggravating and mitigating factors along with any previous decisions the College has made involving the midwife. This tool can be found on the College's website.

The ICRC may choose to do one or more of the following:

- Take no further action
- Offer advice and recommendations to the midwife
- Require the midwife to complete further education (called a Specified Continuing Education or Remediation Program (SCERP))
- Require the midwife to appear before a panel of the ICRC to receive an oral caution

- Refer specified allegations of professional misconduct and/or incompetence to the Discipline Committee
- Refer the matter to another panel of the ICRC for incapacity proceedings

Dispositions at the ICRC level (from offering advice and recommendations to requiring that a midwife complete a SCERP or receive an oral caution) are remedial dispositions and do not impose restrictions on a midwife's certificate of registration. Each remedial outcome is related to the issues of the matter and is intended to improve a midwife's future practice and to ensure they are practising according to the standards. The ICRC does not make findings of professional misconduct; only the Discipline Committee can do that.

Are the decisions public?

Some decisions of the ICRC are public. Details of decisions that result in an oral caution, SCERP, acknowledgments & undertakings (while in effect only), specified allegations when there is a referral to the Discipline Committee, and referrals to the Fitness to Practise Committee are required to be posted on a midwife's page of the public register.

What will the outcome be?

College staff cannot speculate on an outcome as every complaint is different and is assessed by the ICRC when considering the information before them. Staff is not involved in the decision-making process, only the ICRC is.

However, the College can advise that historically:

- The ICRC has [referred few matters to the Discipline Committee for a formal hearing](#). The ICRC will consider a referral when there is a serious concern **and** there is enough evidence to support a finding of professional misconduct or incompetence. Some examples are serious clinical standards involving severe morbidity or mortality or serious ethical concerns.
- If a remedial outcome is likely to prevent the concerns from happening again, the ICRC is likely to take this approach.
- The ICRC has taken no action and issued advice and recommendations for a large percentage of matters.
- The ICRC deals with Inquires rarely and has never had a Fitness to Practice hearing.

The College's annual reports provide information and statistics on the number of complaints and reports received by the College and the ICRC's outcomes can be found in the College's [Annual Report](#) and [College Performance Measurement Framework](#) (CPMF) Report. The College's website posts information about each discipline hearing.

How do midwives find out the status of a matter?

Once a midwife has retained a lawyer, all communication about a matter is sent directly to their legal counsel. This correspondence includes providing status letters on complaints matters after the complaint has been open for 150, 210 and every 30 days after until the matter is closed. Midwives should contact their lawyer for questions about their specific complaint.

Midwives can reference College materials to find out information about complaints and investigations. College staff is also able to answer questions pertaining to the College processes, and the legislation that governs midwives.

Tips for midwives involved in a complaint or investigation:

- Remain calm and carry on. The College recognizes that being involved in a complaint or College investigation is stressful and may seem like a lengthy process. Midwives should remember that the concerns brought forth are allegations, and the process is designed to be fair and transparent. ICRC outcomes are meant to be remedial.
- A midwife who is the subject of an open complaint or investigation is not “in trouble” with the College, and it does not mean a midwife is not in good standing with the College. Once a decision is made by the ICRC, communication about the decision will explain the outcome and how it affects a midwife’s registration or information posted on the College’s public register.
- Once the complaint or investigation process has started, midwives should refrain from contacting or discussing the matter with the client or involved party.
- Midwives should consider that their response to the complaint or investigation will be reviewed by laypersons, (for example, the complainant or public members of the ICRC) who may have no medical background. Using clear and understandable language will ensure the midwife’s response is understandable to all.
- If a midwife has reflected on their actions and/or taken steps to improve their practise because of the complaint or investigation, they should describe this in their response.



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