



LEGAL AID ONTARIO
AIDE JURIDIQUE ONTARIO

**QUALITY ASSURANCE PROGRAM
PROGRAMME D'ASSURANCE DE LA QUALITÉ**

**BETTER PRACTICES
OUTLINE OF COMPLAINTS GUIDELINES AND PROCEDURES**

Tuesday, November 27, 2001

NOTE: Although the QAP Steering Committee has not had an opportunity to review in detail the Complaint Notice, the Complaint Chart and the Complaint Form, the Client Consent Form and this Outline, it agrees in principle with these better practices recognizing, that they may not apply to all situations.

This document contains a detailed outline of the items that a clinic should think about including when designing their own complaints policy and procedure.

The Right to Complain

If a person seems dissatisfied while a caseworker is providing summary advice or brief services, the person should be told that there is a complaint process and given a brief outline of how the person can make a complaint.

At the time when an official relationship is being established with a client, that is, when a file is being opened, the caseworker who is reviewing the terms of the retainer should also advise the client that as part of the clinic's endeavour to do things better, it has established a complaint process if the client is unhappy with the service.

The client's right to complain should be stated in the retainer, a copy of which would be given to the client, or in an information sheet outlining the complaint procedure.

The Complaint Procedure should be:

- posted in plain view in the reception area;
- easy to read;
- easy to understand;
- fair and impartial.

The Clinic should consider whether it would be appropriate to have a complaint notice posted in other languages.

The Complaint Policy and Procedures should:

State who can complain:

- a former client;
- a current client;
- a person who has been refused clinic services; or
- anyone who is affected by clinic services.

Outline topics of complaints that will trigger the complaint process:

- how you were treated by a member of clinic staff, a clinic volunteer or a board member (quality of treatment);
- how your matter is being handled (quality of legal service);
- being refused service;
- the scope of the clinic's authority to utilize public funds for a particular purpose.

Outline how a person can complain:

- verbally (client, or former client);
- in writing (client, former client, or non-client).

State to whom a complaint can be made:

- a member of staff;
- the executive director;
- a board member who is on the complaints committee if the board has established a separate complaints committee (member's name and telephone number);
- the president of the board of directors (the president's name and telephone number).

State that a complaint should:

- be investigated by a person other than the person being complained about;
- be documented in writing by the person receiving the complaint, even when received verbally;

- state an expectation that the ED would report to the clinic board of directors on a periodic basis a pattern of complaints or general nature of complaints, even if resolved on at the staff level.

State the options that the complainant has:

- to have the complaint dealt with by staff or the executive director;
- to have the complaint dealt with by the clinic board (or complaints committee where established);
- to meet in person with the clinic board;
- to attend the meeting at which the complaint will be determined;
- to have the complaint forwarded to be reviewed by LAO CC if not satisfied with the result at the clinic board level. (Note: At this time the scope of the LAO CC is still to be determined depending on the terms of the MOU and the CSO Dispute Resolution Policy.)

Once a person has made a complaint, outline in a letter the complainant's rights:

- the right to make a complaint in writing, if made orally initially;
- the right to privacy/confidentiality within the clinic, however, in order that the board can investigate the complaint, it is necessary for the client to consent to confidential information being released by the clinic to the board (see Complaint Consent Form);
- the right to meet with the board if dissatisfied with the resolution at the staff level;
- the right to receive a copy of all reports relating to the complaint prepared on behalf of the clinic for the board;
- the right to know of the date, time and place of the committee or board meeting dealing with the complaint;
- the right to attend the meeting dealing with the complaint;
- the right to have someone speak on his/her behalf;
- the right to have a witness or present other evidence;
- the right to receive all decisions in writing;
- the right to request that the complaint be forwarded to the LAO CC for their review of the matter. (Note: At this time the scope of the LAO CC is still to be determined depending on the terms of the MOU and the CSO Dispute Resolution Policy.)

Other documents that should be included:

- all appendices referred to in a complaint policy or procedure should be attached to the policy or procedure;
- Complaint Procedure (if a separate document);
- Complaint Notice (to be posted in reception);
- Complaint Form (to be filled out by the complainant or staff);
- Complaint Consent Form;
(The client consent form should be as precise as possible and should include a notice that information provided to the board may be used by the clinic to pursue or defend any action that it feels is appropriate to follow up fully on the complaint. QAP has not included the wording of such a notice as it may involve labour issues that are beyond the scope of QAP. The clinic should be alert to the possibilities that action taken by the clinic resulting from a complaint could lead to a grievance or other labour issue, or a civil suit for wrongful dismissal, defamation or other damages which, if the client has not consented to the clinic using confidential information for such purposes, could put the clinic in a difficult position of being unable to defend itself adequately.)
- Complaint Information Sheet (if information is provided in a document separate from the retainer);
- any standardized letters developed to advise complainants of their rights and the complaint process and the time lines involved;
- CFC policy #4 Complaints;
- terms and conditions of the clinic's funding certificate which relate to client complaints.

State the process involved:

- all staff should be familiar with the complaint procedure;
- a staff person with the ED's consent may attempt to resolve the complaint. If resolved a report will go to the executive director who in turn will report to the board or the complaints committee without revealing the client's identity or other confidential information;
- any staff member who is the subject-matter of the complaint will be advised of the complaint and allowed input;
- the executive director will try to resolve the complaint (unless the complaint is about the executive director)
⇒ if resolved a report will go to the board without revealing the client's identity or other confidential information;

- time frames should be established. Clinic staff and board should make every effort to meet the following timeframes:
 - initial timeline to advise the client that the complaint has been received and of the process involved: three working days,
 - timeline the ED has to resolve the matter once the ED has received all necessary information to deal with the complaint: ten working days,
 - timeline the board (including any complaints committee process) has to make a decision and report in writing to the complainant: ninety days,
 - A status report will be provided by the clinic to the complainant every thirty days;
- the client must sign a written consent allowing confidential information from his/her file to be released to the clinic board (including the complaints committee);
- the complaints committee or board will investigate the matter independently;
- the complaints committee, if established, will report to the clinic board;
- the clinic board will make a decision and communicate directly with the complainant stating its decision and its reasons;
- any staff member who is the subject-matter of the complaint will be advised of the board's decision and its reasons;
- the complainant is to be advised that if s/he is not satisfied with the board's decision a report will go to LAO CC for it to review (Please note – this is not an appeal process).

If a complaints committee is established by the board, state its composition (this can be in the bylaws) including:

- written terms of reference for a standing or *ad hoc* committee;
- the responsibilities of the committee (including having read and understood the complaints policy and procedures);
- the limit of the committee's authority;
- members on the committee (which should not include the executive director or any staff).

State the role of the complaints committee (if the board as a whole looks at complaints, its role would be similar except for reporting to the board):

- to independently investigate the complaint and evaluate the issues that may be raised by the complainant:
 - ⇒ by reviewing the complaint,

- ⇒ by requesting written client consent before the clinic discloses confidential information to the board,
- ⇒ by receiving a written report about the complaint from the clinic's perspective including the necessary background,
- ⇒ by requesting a written explanation of the staff person involved with the complaint and/or a memo from the ED;
- to invite the complainant to meet with the complaints committee or the board;
- to ensure that the complaints committee understands any legal issues that are raised, and where required, have a lawyer involved to assess the legal issues;
- to independently assess the complaint and whether there is validity to the concerns raised and to assess the clinic's role in handling the situation. (Although the executive director can provide information and answer questions, the ED should not be present during deliberation of the complaint.);
- to ask, if further information or explanation is required from the clinic, that the information be provided in a written memo;
- to assess whether the matters complained about are contrary to the clinic's mission statement or goals and objectives;
- to make a written report to the board outlining its findings, the reasons for its findings and recommendations.

In addition to the above the role of the board includes:

- to make a decision;
- to communicate with the complainant (not through the executive director) ensuring that the board:
 - ⇒ addresses the specific issues that were raised in the complaint,
 - ⇒ states its decision,
 - ⇒ provides reasons for its decision,
 - ⇒ advises that the complainant may request that the complaint be forwarded to the LAO CC for it to review if the complainant is not satisfied with the result;
- to take any action that may arise from its decision.

Identify some of the issues that the complaints committee or board might be asked to consider:

- the clinic not accepting a person as a client;
- the clinic not handling certain legal issues;
- a breach of confidentiality;

- a staff person not returning phone calls;
- a staff person not keeping the client apprised of what is happening;
- a staff person not following client instructions;
- a staff person missing an important deadline;
- a staff person not dealing with a matter in a timely fashion;
- a staff person not listening to the client;
- a staff person giving the client incorrect legal advice; or
- a staff person being rude or discourteous.

Identify possible determinations that the complaints committee or board could reach:

- that the complaint was frivolous and vexatious;
- that the complaint was not a breach of the clinic's policies;
- that the complaint is contrary to the clinic's mission statement, purpose, etc.;
- that certain disciplinary action should be contemplated;
- that certain measures should be taken to prevent similar situations from happening in the future.

Reporting a Potential E&O Claim

The complaints process might reveal an error or omission that could lead to a negligence claim. LAO provides professional liability insurance, or errors and omissions insurance (E&O) for clinic caseworkers. CSO acts as an adjuster for the insurer (which helps to keep costs down). The insurer requires all potential claims to be reported to its adjuster (the CSO) immediately. Since damages are not always ascertainable at the time a potential claim is discovered, it would be prudent to notify the insurer as soon as the clinic becomes aware of an error or omission that may lead to a potential claim.

A policy outlining the requirements of reporting a potential error or omission to the executive director and to the CSO should also be included in the office procedures manual. This policy could be part of the complaints policy or a separate policy.