



BRITISH COLUMBIA
COMMISSIONER FOR
TEACHER REGULATION

Commissioner's Rules for Disciplinary and Professional Conduct Inquiries

Pursuant to section 40 of the *Teachers Act*
July 2023

Commissioner’s Rules for Disciplinary and Professional Conduct Inquiries

These rules are made under section 40 of the *Teachers Act*, S.B.C. 2011 and in accordance with Ministerial Order M 004 – Commissioner’s Regulation.

If there is any discrepancy between these rules and the *Teachers Act*, the *Teachers Act* governs, and if there is any discrepancy between these rules and the Ministerial Order, the Ministerial Order governs.

DEFINITIONS

In these rules:

“Act” means the *Teachers Act*;

“address” includes

- (a) an email address,
- (b) a street address,
- (c) a postal address, if different from a street address, and
- (d) a facsimile address;

"authorized person" means

- (a) a person who holds a certificate of qualification or an independent school teaching certificate,
- (b) a person who holds a letter of permission issued under section 35 of the Act,
- (c) a former member as defined under section 43(1) of the Act, or
- (d) a former authorized person,

about whom a report or complaint is made or with respect to whom the commissioner initiates an investigation;

“citation” means a citation issued by the commissioner under section 56 of the Act;

“commissioner” means the commissioner appointed under section 2(1) or designated under section 2(5) of the Act;

“complaint” means a complaint as defined in section 39 [definitions] of the Act;

“complainant” means a person who made a complaint under section 39 of the Act;

“director” means the director of certification appointed under section 6 of the Act;

“discipline counsel” means counsel appointed by the commissioner under rule 37;

“investigation” means an investigation by the commissioner under section 47(1) of the Act;

“ministry” means the B.C. Ministry of Education;

“panel” means a panel established by the commissioner under section 57 of the Act;

“person under citation” means an authorized person with respect to whom a citation is issued;

“person under investigation” means an authorized person with respect to whom the commissioner is undertaking an investigation under section 47(1) of the Act;

“person under suspension” means an authorized person whose certificate of qualification, independent school teaching certificate or letter of permission, has been suspended under section 50 of the Act;

“person who made a report” means

- (a) a principal who sent a report to the commissioner under section 7 of the *Independent School Act* and the independent school authority that employs the authorized person with respect to whom the principal sent the report,
- (b) an independent school authority that sent a report to the commissioner under section 7.2 of the *Independent School Act*,
- (c) a superintendent of schools who sent a report to the commissioner under section 16 of the *School Act* and the board of education that employs the authorized person with respect to whom the superintendent of schools sent the report,
- (d) a board of education that sent a report to the commissioner under section 16.1 of the *School Act*, or
- (e) an authorized person who made a report under section 38 of the Act;

“report” means any of the following

- (a) a report about an authorized person made under section 16 or 16.1 of the *School Act*,
- (b) a report about an authorized person made under section 7 or 7.2 of the *Independent School Act*, or
- (c) a report about an authorized person made under section 38 of the Act;

“suspension” means a suspension of a certificate of qualification, independent school teaching certificate or letter of permission, before hearing, under section 50 of the Act.

GENERAL PROVISIONS

Address for service and sending notices

1. The commissioner may use any address shown for an authorized person in the register of certificate holders kept by the director of certification under section 78 of the Act as the last known address of an authorized person, unless the authorized person, in writing, requests the commissioner use another address.
2. The commissioner may use any address shown on a report or the last known address of a person who made a report as shown in the records of the director of certification to send any notices, correspondence or other documents required to be sent to the person who made a report.
3. The commissioner may use any address shown on a complaint to send any notices, correspondence or other documents required to be sent to the complainant.
4. If the commissioner is required to send a notice, correspondence or other document to any other person, the commissioner may use any address available to the commissioner.
5. If there is no address available to the commissioner for any person, the commissioner may send the notice, correspondence or other document in such manner as the commissioner deems best.
6. Any changes to an address must be provided to the commissioner, in writing, and until a change is provided in writing, any notices, correspondence or other documents sent in accordance with the above rules will be deemed to be validly sent.

Notice to the commissioner

7. An authorized person, complainant, person who made a report, or any other person who is required to file or submit a notice, complaint, report, document or other thing to the commissioner, must email it to: trb.intake@gov.bc.ca, fax it to 604-775-4858, or mail it to 201-828 8th Ave W, Vancouver, B.C. V5Z 1E2.

Date of receipt

8. A notice, complaint, report, document or thing required to be filed, submitted or sent by a person to the commissioner will be deemed to have been received:
 - (a) if delivered in person, by a courier, or by mail, on the actual date of receipt by the commissioner's office; or
 - (b) if sent by facsimile or email, on the day received by the commissioner's office, except that any facsimile or email sent after 4:00 p.m. Pacific will be deemed received at 9:00 a.m. Pacific on the next business day.
9. A notice, document or thing required to be sent by the commissioner to a person:

- (a) if delivered in person, by registered mail, or by a courier who obtains a written confirmation of delivery, will be deemed to have been received on the date of delivery;
- (b) if sent by regular mail, will be deemed to have been received on the earlier of the date it is delivered or the fifth business day after the date it was sent; or
- (c) if sent by facsimile or email, will be deemed to have been received on the day sent, except that any facsimile or email sent after 4:00 p.m. Pacific will be deemed received at 9:00 a.m. Pacific on the next business day.

Documents

- 10. If an authorized person, complainant, person who made a report, or any other person submits documents to the commissioner, where possible the documents should be in a form that may be photocopied, electronically scanned, or otherwise reasonably easily reproduced.

Protecting privacy interests

- 11. In order to protect the privacy interests of a person about whom information may be disclosed in the course of a complaint, report, investigation or citation, the commissioner may make an order respecting the use or disclosure of that information by the person to whom it is disclosed including
 - (a) placing limits on or restricting the copying, scanning or any other duplication of that information, and
 - (b) expressly limiting its use to the preparation for and responding to a complaint, report, investigation or citation.

Legal representation

- 12. If an authorized person is represented by legal counsel, the authorized person must give the commissioner written notice of the name, address, telephone number and email address, if any, of the legal counsel. On receipt of that notice, any notices or documents that the commissioner is required to send to the authorized person will be sent to that legal counsel and will have the same effect as if sent to the authorized person.
- 13. If an authorized person's legal counsel withdraws as legal counsel, the legal counsel must immediately provide written notice to the commissioner.

Timelines

- 14. If a time or date for documents to be provided or an action to be taken is set by these rules or the commissioner, then the documents must be provided or the action taken within the time or by the date set.

15. If a person fails to provide documents or to take action within the time or by the date set by these rules or the commissioner, the commissioner may take such further action as the commissioner deems advisable.

Waiver or extension

16. At any time prior to the start of a hearing, a person may request that the commissioner extend a timeline or deadline, vary an order, or waive or vary a requirement set by these rules.
17. A request for extension of a timeline or deadline, waiver or variation must
 - (a) be in writing,
 - (b) set out the reasons for the request, and
 - (c) be made before the timeline or deadline expires.
18. The commissioner may, at the commissioner's discretion, request any other person to make submissions with respect to a request for extension, waiver or variation, prior to making a decision on the request.
19. On a request being made, the commissioner may extend a timeline or deadline, vary an order or vary or waive a requirement set by these rules. The commissioner may grant a request for an extension, waiver or variation before or after the timeline or deadline expires.
20. The commissioner, on the commissioner's own initiative, may waive or vary a requirement set by these rules, and may shorten or lengthen any time limits in these rules as the commissioner deems appropriate in the circumstances.
21. The commissioner will notify the person making the request and any other person the commissioner considers should be informed of a decision made under rule 19 and rule 20.

REPORTS AND COMPLAINTS

Form of reports and complaints

22. All complaints must be submitted using the complaint form:
(https://www2.gov.bc.ca/assets/gov/education/kindergarten-to-grade-12/teach/teacher-regulation/standards-for-educators/complaint_form.pdf).
23. All reports made under the *School Act* must be submitted using the School Act report form:
(https://www2.gov.bc.ca/assets/gov/education/kindergarten-to-grade-12/teach/teacher-regulation/standards-for-educators/report_commissioner_form_school_act.pdf).
24. All reports made under the *Independent School Act* must be submitted using the Independent School Act report form:

https://www2.gov.bc.ca/assets/gov/education/kindergarten-to-grade-12/teach/teacher-regulation/standards-for-educators/report_commissioner_form_ind_school_act.pdf).

25. All reports made under section 38 of the Act must be submitted using the section 38 report form:
https://www2.gov.bc.ca/assets/gov/education/kindergarten-to-grade-12/teach/teacher-regulation/standards-for-educators/report_commissioner_form_teachers_act.pdf).
26. Notwithstanding rules 22 to 25, the commissioner may accept a complaint or report which is not submitted on the applicable form.

INVESTIGATION

Notice of investigation

27. Within 30 days of providing notice under section 47(2)(a) of the Act, or as soon thereafter as is practicable, the commissioner will provide the person under investigation with a copy or a summary of the complaint or report, as the commissioner deems appropriate.
28. If the commissioner is of the opinion that the identity of a complainant, the person who made a report, or any other person referred to in the complaint, report or summary should not be disclosed, the commissioner may delete any information identifying the person prior to sending the complaint, report or summary to the person under investigation.

Giving evidence and production of documents

29. A person who is required to provide evidence or produce documents under section 48 of the Act must comply as soon as practicable and, in any event, by the date and time set by the commissioner.

Interviews

30. If the commissioner intends to interview a person under sections 48 or 49 of the Act, the commissioner may request an interview in writing or by telephone, and may, at the commissioner's discretion, hold interviews in person, by telephone, or by any electronic means.

Investigation report

31. The commissioner may provide to a person under investigation a copy of an investigation report that summarizes the facts of the investigation and sets out the evidence that may be relied on to establish those facts and provide the person under investigation with at least 28 days to respond in writing to the report.
32. On receipt and consideration of a written response to the report, if any, the commissioner may further investigate and may provide a supplemental report to the person under investigation. The commissioner will provide the person under investigation with at least 14 days to respond in writing to any supplemental report.

SUSPENSION BEFORE A HEARING

33. A person under suspension may request, in writing, that the commissioner provide the reasons for making the order of suspension and the commissioner must provide written reasons within 14 days. The commissioner may keep confidential any information identifying a student or other person, if the commissioner is of the opinion that the identity of the student or other person should not be disclosed.
34. At any time before a hearing, a person under suspension may request that a suspension be varied or rescinded. Such a request must
 - (a) be in writing,
 - (b) be addressed to the commissioner, and
 - (c) include reasons for the variation or rescission of the suspension.
35. The commissioner may consider the request to vary or rescind the suspension solely on the written request, or, at the discretion of the commissioner, may consider hearing the person under suspension by telephone or in person.
36. If the commissioner denies the request to vary or rescind the suspension before a hearing, the commissioner must provide written reasons to the person under suspension within 14 days.

DISCIPLINE COUNSEL

37. After issuing a citation under section 56 of the Act, the commissioner may appoint discipline counsel to represent the commissioner in the prosecution of the citation.

CITATIONS

Publication of a citation

38. After a citation has been sent to the person under citation, the commissioner may publish, on a website maintained by the ministry
 - (a) a notice of issuance of the citation, and
 - (b) within ten days of the date set for the hearing, a summary of the allegations in the citation.

Request for particulars of the citation

39. If a person under citation requests particulars of the allegation(s) in the citation or further detail of the material facts on which the citation is based, the person must make a request in writing to discipline counsel.
40. If not satisfied with the response of discipline counsel, the person under citation may apply, in writing, to the commissioner for an order for particulars.

41. The commissioner may summarily deny or grant the application for particulars, or may hold a pre-hearing conference before making a decision. In determining whether to grant or deny the request for particulars, the commissioner may consider, among other things, the timeliness of the request.

EVIDENCE

Disclosure of evidence

42. After a citation has been issued, and at least 28 days before the start of the hearing, discipline counsel must provide to the person under citation
 - (a) a list of every document relevant to the citation in the commissioner's possession or available to the commissioner in his files, whether or not discipline counsel intends to introduce that evidence at hearing, and
 - (b) a summary of the anticipated evidence of any person whom discipline counsel intends to call as a witness at the hearing.
43. Upon request of a person under citation, discipline counsel will, within a reasonable period of time, provide to the person under citation, or their counsel, a copy of any document described in rule 42(a).
44. After a citation has been issued, and at least 14 days before the start of the hearing, the person under citation must provide to discipline counsel
 - (a) a list of every document in his or her possession upon which he or she intends to rely at the hearing, and
 - (b) a summary of the anticipated evidence of any person whom the person under citation intends to call as a witness at the hearing.
45. Upon request of discipline counsel, a person under citation will, within a reasonable period of time, provide to discipline counsel a copy of any document described in rule 44(a).
46. There is a continuing obligation on discipline counsel and a person under citation to make disclosure, consistent with the obligations set out above, up to and during the hearing of the citation.

Expert evidence

47. Discipline counsel or the person under citation may call an expert to give evidence of the expert's opinion at the hearing if they deliver the following to the opposing party at least 45 days before the start of the hearing:
 - (a) a summary of the expert's evidence;

- (b) a statement of the facts and assumptions upon which the expert's opinion is based;
and
 - (c) a statement of the expert's qualifications.
48. Instead of calling an expert to give evidence, either discipline counsel or the person under citation may introduce a report stating the opinions of an expert if they deliver the following to the opposing party at least 45 days before the start of the hearing:
- (a) a copy of the expert's report;
 - (b) a statement of the facts and assumptions upon which the expert's opinion is based;
 - (c) a statement of the expert's qualifications; and
 - (d) notification that the expert's report is being delivered under this rule.
49. Discipline counsel or a person under citation may respond to a summary of an expert's evidence or to an expert report if they deliver the following to the opposing party at least 14 days before the hearing:
- (a) a written summary of the expert's opinion, if the party intends to call the expert to give evidence at the hearing, or an expert report;
 - (b) a statement of the facts and assumptions upon which the expert's opinion is based;
and
 - (c) a statement of the expert's qualifications.
50. A statement of qualifications in an expert's report is proof that the expert has those qualifications unless there is evidence to the contrary.
51. When an expert report has been delivered to discipline counsel or a person under citation, either can, at least 14 days prior to the hearing date, require the party relying on the report to make the author of it available for cross examination at the hearing, provided the party making the request pays for the cost of the expert's attendance, including reasonable costs of transportation, accommodation and fees.
52. The reasonableness of an expert's fees and costs for attendance at a hearing will be determined summarily by the commissioner unless there is an agreement reached between the parties.

PRE-HEARING CONFERENCES

53. At any time after issuing a citation, and before a hearing begins, either discipline counsel or the person under citation may request in writing that the commissioner set a pre-hearing conference, or the commissioner may, on the commissioner's own initiative, set a pre-hearing conference.

54. The commissioner must give notice to the parties to attend a pre-hearing conference, in person or by telephone, on the date, time and location set by the commissioner.
55. Notice of a pre-hearing conference must be given at least 14 days before the date set for it, unless otherwise ordered by the commissioner.
56. A person under citation may request, in writing, that a different method, date, time or location be set for the pre-hearing conference, and that request must
 - (a) be in writing,
 - (b) be made at least five days before the scheduled pre-hearing conference, and
 - (c) set out the basis for the request and preferred alternatives.
57. If the commissioner does not grant a request made under rule 56, then the pre-hearing conference will be held as scheduled.
58. If a person under citation or their legal counsel, if any, does not attend the pre-hearing conference as scheduled, the commissioner may make any order that could have been made had they attended it, without any further notice to the person under citation.
59. At a pre-hearing conference the commissioner may make any order considered appropriate to facilitate a hearing and the just and timely resolution of one or more matters relating to the citation and, without limitation, may make orders:
 - (a) respecting the necessity or desirability of amendments to the citation;
 - (b) consolidating all or part of a citation with another citation, or ordering separate hearings for different allegations made in a citation;
 - (c) requiring that a hearing be conducted in person, by telephone or other electronic means, in writing, or any combination of those;
 - (d) setting, adjourning or rescheduling dates, times and location for a hearing;
 - (e) setting the same or different hearing dates for the findings under section 63 of the Act and the consequences under section 64 of the Act if any;
 - (f) imposing time limitations and terms and conditions on the exchange of documents, expert reports, admissions, agreed statements of facts, witness lists, written summaries of each witness's anticipated evidence, and written submissions;
 - (g) directing that the evidence of any witness be given by affidavit or other means;
 - (h) imposing measures to protect the interests of a person who is under the age of 19 or any other witness who may require or may have requested measures to protect them while giving evidence or being cross-examined;

- (i) directing that the public be excluded during all or part of the evidence of a witness or witnesses; and
 - (j) restricting public access to the commissioner's records or documents and to a panel's records or documents.
60. At a pre-hearing conference, the commissioner may review compliance with any orders already made and make any further orders to ensure the hearing is ready to proceed.
61. Prior to the hearing, the commissioner must set out all orders made at any pre-hearing conference or otherwise, in writing, and must send a copy
- (a) to the person under citation,
 - (b) to discipline counsel, and
 - (c) to the hearing panel.

HEARING DATES

Setting the hearing date

62. The commissioner must set the manner, date and location of the hearing, at or without a pre-hearing conference, and give the person under citation at least 28 days' notice of the hearing, unless the person under citation consents to a shorter notice period.

Adjournment of hearing date

63. A request to change the date or location of a hearing may be made by the person under citation or discipline counsel, and must
- (a) be in writing,
 - (b) set out the reasons for the request, and
 - (c) be delivered to the commissioner and the other party to the proceeding.
64. A request for a change under rule 63 must be made as soon as the reason for the change is known to the person making the request. A failure to make the request as soon as practicable may be a factor when the commissioner considers the request.