

Help Me Help You: Self-Represented Litigants in Professional Discipline Proceedings

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The adversarial process assumes that litigants are represented by counsel: each party fends for themselves, an adjudicator maintains detached independence, and the truth emerges. In practice, that system requires all parties to be familiar with the litigation process and their rights within it. A vexing question in any adjudicative forum is how to level the playing field for those who do not have a lawyer – self-represented litigants – without compromising hearing fairness or the independence of the other hearing participants.

Ontario's Divisional Court recently weighed in on administrative tribunals' obligations to self-represented litigants in the context of a professional discipline proceeding. In *Hirtle*, [\[1\]](#) the appellant nurse argued that a College of Nurses of Ontario hearing panel provided him with inadequate assistance as a self-represented party and thereby breached procedural fairness. Thanks to its institutionalized approach to self-represented litigants, in particular a memo that guides all self-represented members through the hearing process, the College was well-positioned to respond to the appellant's argument. The Court dismissed the appeal. Citing, among other things, the standardized information provided by the College in advance of a hearing, it found that the tribunal had discharged its obligations to the appellant and that the appellant had received the opportunity to fairly present his defence.

An important feature of the *Hirtle* decision is the Court's adoption of the *Statement of Principles on Self-Represented Litigants and Accused Persons* (the "**Statement of Principles**"), as modified for professional discipline proceedings.[\[2\]](#) Established by the Canadian Judicial Council, the Statement of Principles provides guidelines on the roles and responsibilities of all hearing participants. Self-represented litigants are responsible for familiarizing themselves with relevant legal practices and procedures and for preparing their own case, but other participants – tribunal staff, panels, opposing counsel, and independent legal counsel – have a limited obligation to help.

Hirtle presents an opportunity to revisit regulators' practices for dealing with self-represented litigants while having regard to the Statement of Principles. In particular, regulators should consider how best to disseminate legal information to those involved in its proceedings. Doing so will reduce exposure to allegations of procedural unfairness while enhancing access to justice. We anticipate that any upfront work will pay long term dividends because self-represented litigants who feel that they have been treated fairly are less likely to encumber resources with pre-hearing motions, in-hearing issues, and appeals. To cite the *Hirtle* example, the informational memo employed by the College of Nurses of Ontario at the pre-hearing stage went a long way towards undercutting the appellant's argument that the hearing panel did not provide him with sufficient assistance.

This article will highlight the guidance from the Statement of Principles and the *Hirtle* decision that is most applicable to self-regulated professions and provide recommendations on how regulators might review their approach to self-represented litigants. However, as recognized by the Court in *Hirtle*, "[T]here is no one single approach".[\[3\]](#) Solutions will vary by regulator and must consider a given administrative body's unique membership, statistical information about self-represented litigants, legislative framework, technical interface, and experience to date with self-represented litigants.

Guidance from the Statement of Principles and Hirtle

The Statement of Principles seeks to achieve equal access to the justice system through the promotion of opportunities for all persons to understand and meaningfully present their case. All participants in the justice system are accountable for understanding and fulfilling their roles which, in turn, promotes procedural fairness.

The Statements of Principles contains a wealth of proactive steps that regulators can take to ensure their complaints, discipline, and capacity processes are accessible to unrepresented parties. They recommend, for instance, that traditional hearing processes be supplemented where possible to enhance accessibility, informality, and timeliness of case resolution. Mechanisms can include case management, alternative dispute resolution procedures, and informal settlement conferences presided over by a tribunal adjudicator.[\[4\]](#)

A regulator's responsibility to help a self-represented party is not unqualified. The Statement of Principles allocates to self-represented litigants responsibility for orienting themselves with the legal process and preparing their own case.[\[5\]](#) *Hirtle* adds, "How far an adjudicator must go is a matter of discretion, depending on many factors".[\[6\]](#) There is no obligation to assist a self-represented person who is disrespectful, frivolous, unreasonable, vexatious, abusive, or making no reasonable effort to prepare their own case.[\[7\]](#)

The Statement of Principles' origin as a document directed at civil and criminal proceedings means that it cannot be adopted wholesale into the realm of professional discipline. *Hirtle* characterized the Statement of Principles as relevant guidance to be considered "bearing in mind the particular circumstances of this case."[\[8\]](#) Indeed, the Court distinguished the appellant from a self-represented party in court proceedings because certain assumptions could be made by virtue of his College membership, including his professional obligations and level of education.[\[9\]](#) Regulators' strategies for self-represented litigants should take into account those characteristics that distinguish their members from the general population. For instance, relative to court administrators, tribunals engaged in professional discipline may be able to rely more heavily on written self-help materials.[\[10\]](#)

Recommendations to Improve Practices

In *Hirtle*, the College of Nurses of Ontario successfully argued that the Court should consider the assistance it provided to the appellant both before and during the hearing. The Court agreed. Key takeaways from the decision include the importance of developing both pre- and in-hearing practices that provide sufficient assistance to self-represented litigants, including those outlined below:

1. **Warn of the seriousness of the proceeding:** Regulators should alert self-represented litigants to the seriousness of investigation processes and capacity and discipline proceedings and advise of their general consequences. Self-represented litigants should be urged to retain counsel and provided with resources to find representation, such as the Law Society of Ontario referral service.[\[11\]](#) Regulators should consider providing this information in writing so that the record can be relied upon in the event of a future motion or appeal. Regulators may wish to include this information directly in its originating process or provide it separately. Regardless, self-represented litigants should receive it as a matter of course.
2. **Inform about legal principles and procedure:** The Court in *Hirtle* spoke approvingly of the College of Nurses' memo that sets out foundational information needed by self-represented litigants to defend a case. It included topics such as the burden of proof, calling witnesses, the ability to admit or deny allegations, and the distinction between submissions and evidence.[\[12\]](#) We suggest going a step further and making available fillable templates for common documents, such as draft orders and case conference/pre-hearing conference memos.[\[13\]](#) As a best practice, regulators should consider making such information widely accessible (such as by publishing materials on their website) and, where appropriate, sending materials directly to the self-represented litigant and confirming receipt. This last step will pre-empt the argument, raised in *Hirtle*, [\[14\]](#) that a self-represented litigant did see or receive the regulator's materials.
3. **Provide in-hearing assistance:** Adjudicators should be aware of the challenges faced by self-represented litigants and ensure

the process is adequately explained on the record at the commencement of any hearing.^[15] The Statement of Principles provides that the adjudicator may, as appropriate, explain and confirm parties' understanding of process and procedure, make referrals to agencies providing legal assistance, provide information about the law and evidentiary requirements, allow for flexible procedures, and question witnesses.^[16] Throughout the hearing, participants should be mindful of affording self-represented litigants a fair opportunity to present their case. Self-represented litigants should not be denied relief based on a minor or easily rectified deficiency in their case.^[17] Nor should procedural or evidentiary rules be used to unjustly hinder the legal interests of self-represented litigants.^[18]

4. **Educate adjudicators and staff:** The Statement of Principles endorses "educational programs for judges and court administrators on broad-based methods of assisting and managing the cases of self-represented persons".^[19] Accordingly, regulators should consider educating the panel members that preside over hearings and the administrative staff that run them on issues specific to self-represented litigants. Education packages may include multi-step protocols and scripts for commonly experienced situations.^[20] A fair process will improve the experience of a particular member, reduce the risk that hearings will be bogged down, and improve the public's perception of the regulator's administration of justice.

Self-represented litigants are a permanent feature in a system designed without them in mind. A few steps can go a long way towards recognizing this reality while preserving both institutional resources and the integrity of the discipline process.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

^[1] *Hirtle v College of Nurses of Ontario*, 2022 ONSC 1479 [*Hirtle*].

^[2] A set of principles for dealing with self-represented litigants in the context of criminal or civil court proceedings, adopted by the Canadian Judicial Council in 2006 and endorsed by the courts (see *Girao v Cunningham*, 2020 ONCA 260, at para 149; and *Pintea v Johns*, 2017 SCC 23, at para 4):

<https://cjc-ccm.ca/sites/default/files/documents/2020/Final-Statement-of-Principles-SRL.pdf>

^[3] *Hirtle*, *supra* note 1, at para 61.

^[4] Statement of Principles, Section A, "Promoting Rights of Access", Principle 2; Section B, "Promoting Equal Justice", Principle 3.

^[5] Statement of Principles, Section C, "Responsibilities of the Participants in the Justice System", For Self-Represented Persons, Principles 1, 2.

^[6] *Hirtle*, *supra* note 1, at para 61.

^[7] Statement of Principles, Section C, "Responsibilities of the Participants in the Justice System", For Self-Represented Persons, Principle 3.

^[8] *Hirtle*, *supra* note 1, at para 55.

[9] *Hirtle, supra* note 1, at para 65.

[10] Statement of Principles, Section A, “Promoting Rights of Access”, Commentary 1-4.

[11] See <https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/law-society-referral-service>.

[12] *Hirtle, supra* note 1, at para 68.

[13] Statement of Principles, Section C, “Responsibilities of the Participants in the Justice System”, For Both the Judiciary and Court Administrators, Principles 2, 3.

[14] *Hirtle, supra* note 1, at para 65.

[15] Statement of Principles, Section B, “Promoting Equal Justice”, Principle 4.

[16] *Ibid; Hirtle, supra* note 1, at para 58.

[17] Statement of Principles, Section B, “Promoting Equal Justice”, Principle 2.

[18] Statement of Principles, Section C, “Responsibilities of the Participants in the Justice System”, For Others, Principle 3.

[19] Statement of Principles, Section C, “Responsibilities of the Participants in the Justice System”, For Others, Principle 3.

[20] Statement of Principles, Section C, “Responsibilities of the Participants in the Justice System”, Commentary 3-4.

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