

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

APPLICATION UNDER Rules 38 and 68 of the *Rules of Civil Procedure* and section 2(1) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, as amended

AND IN THE MATTER of a Decision of the Human Rights Tribunal of Ontario (HRTO File No. 2011-08667-I)

BETWEEN:

DR. RON KODAMA

Applicant

and

K.M.

Respondent

**FACTUM OF THE JOINT INTERVENERS
HIV & AIDS LEGAL CLINIC ONTARIO AND
MENTAL HEALTH LEGAL COMMITTEE**

PART I: OVERVIEW

1. The HIV & AIDS Legal Clinic Ontario (HALCO) and the Mental Health Legal Committee (MHLC) intervene jointly as friends of the Court pursuant to the order of the Honourable Justice J. Wilson dated February 13, 2015.¹

2. HALCO and the MHLC support the respondent K.M.'s position that the Inquiries, Complaints and Reports Committee (ICRC) did not "appropriately deal with" the substance of the human rights complaint pursuant to section 45.1 of the *Human Rights Code*² (*Code*). These interveners further support the position of the respondent K.M. that, even if the ICRC

¹ Order of the Honourable Justice J. Wilson, dated February 13, 2015

² *Human Rights Code*, R.S.O., 1990, c. H.19 (*Code*)

appropriately dealt with the human rights complaint, the Human Rights Tribunal of Ontario (HRTO) nonetheless reasonably exercised its discretion to consider K.M.'s application.

3. This approach is mandated by the quasi-constitutional status and paramountcy of human rights legislation and the need to foster the protection of human dignity through access to the remedies in the *Code*.

PART II: FACTS

4. These interveners adopt the facts as set out in the factum of the respondent K.M.

PART III: ISSUES AND ARGUMENT

5. These interveners will address issues (C) and (D) in the applicant's factum, namely:

(C) Did the ICRC "appropriately deal with" the substance of K.M.'s discrimination complaint for the purpose of section 45.1 of the Code? and

(D) If the ICRC appropriately dealt with the substance of K.M.'s complaint, did the HRTO nonetheless have discretion to hear the discrimination application?

C. Did the ICRC "appropriately deal with" the substance of K.M.'s discrimination complaint for the purpose of section 45.1 of the Code?

6. Section 45.1 of the *Code* provides that "the Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application".³

7. These interveners submit that the ICRC cannot "appropriately deal with" an allegation of discrimination under the *Code*. The HRTO must give territorial deference under section 45.1 of the *Code* only where:

(a) there is concurrent jurisdiction including remedial jurisdiction;

³ *Code*, section 45.1

- (b) the legal issues decided are essentially the same;
- (c) the parties and their privies have had the opportunity to know the case and to meet it; and
- (d) the application of issue estoppel will not work an injustice to the parties.⁴

8. The question of concurrent jurisdiction is a threshold issue.⁵ Concurrent jurisdiction requires both the authority to decide questions of law⁶ and the authority to grant the relief required.⁷ The substance of K.M.’s human rights application exceeds the jurisdiction of the ICRC because the ICRC lacks both the authority to make human rights decisions and to grant a personal remedy.

A. *The ICRC lacks jurisdiction to decide questions of law*

9. The ICRC did not “appropriately deal” with the substance of the respondent K.M.’s human rights application because the ICRC lacks jurisdiction to decide questions of law and therefore cannot interpret and apply an external statute such as the *Code*.

10. Statutory tribunals and administrative processes lack inherent jurisdiction; instead, the scope of their jurisdiction is established through enabling statutes.⁸ Administrative bodies empowered to decide questions of law “may presumptively go beyond the bounds of their enabling statute and decide issues of common law or statutory interpretation...”, particularly with respect to the *Code*, which is recognized as fundamental, quasi-constitutional law.⁹

⁴ *British Columbia (Workers’ Compensation Board) v. Figliola*, 2011 SCC 52, [2011] 3 S.C.R. 422, para. 37 (*Figliola*) **HALCO/ MHLC Authorities, tab 1**; *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19, [2013] 2 SCR 125, paras. 8, 53 to 58 (*Penner*) **HALCO/ MHLC Authorities, tab 2**

⁵ *Tranchemontagne v. Ontario (Director, Disability Support Program)*, 2006 SCC 14, [2006] 1 SCR 513, paras. 24 and 26 (*Tranchemontagne*) **HALCO/ MHLC Authorities, tab 3**

⁶ *Tranchemontagne*, paras. 16, 24 to 31 **HALCO/ MHLC Authorities, tab 3**

⁷ *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62, [2003] 3 SCR 3, paras. 23 to 25, 54 to 59 (*Doucet-Boudreau*) **HALCO/ MHLC Authorities tab 4**; *R. v. Conway*, 2010 SCC 22, [2010] 1 SCR 765, paras. 21 to 23, 78 to 82 **HALCO/ MHLC Authorities, tab 5**; *Penner*, paras. 31, 39, 41 to 47 **HALCO/ MHLC Authorities, tab 2**

⁸ *Tranchemontagne*, para. 16 **HALCO/ MHLC Authorities, tab 3**

⁹ *Tranchemontagne*, paras. 13, 25, 26, 31 to 36 **HALCO/ MHLC Authorities, tab 3**; *Figliola*, para. 21 **HALCO/ MHLC Authorities, tab 1**; *Nova Scotia (Workers’ Compensation Board) v. Martin*, 2003 SCC 54, [2003] 2 S.C.R. 504 (*Martin*) **HALCO/ MHLC Authorities, tab 6**

11. In the absence of explicit statutory authority to decide questions of law:

Implied jurisdiction must be discerned by looking at the statute as a whole. Relevant factors will include the statutory mandate of the tribunal in issue and whether deciding questions of law is necessary to fulfilling this mandate effectively; the interaction of the tribunal in question with other elements of the administrative system; whether the tribunal is adjudicative in nature; and practical considerations, including the tribunal's capacity to consider questions of law.¹⁰

12. Whether the ICRC can “appropriately deal” with the substance of a human rights application therefore depends on whether it (a) can decide questions of law and/or (b) has the authority to apply an external statute such as the *Code*.¹¹ If so, a tribunal may look beyond its enabling statute and “consider the whole issue before it”.¹²

13. The ICRC derives its jurisdiction from the *Regulated Health Professions Act, 1991 (RHPA)*;¹³ the *Health Professions Procedural Code (HPPC)*;¹⁴ the *Medicine Act, 1991*;¹⁵ and *Regulation 856/93 “Professional Misconduct”*.¹⁶ This legislation does not grant the ICRC authority to decide questions of law either explicitly or by implication. In fact, the *RHPA* and *HPPC* clearly circumscribe the ICRC's mandate, function and jurisdiction.

14. The mandate of the College of Physicians and Surgeons (CPSO) is to ensure that Ontarians have access to “qualified, skilled and competent” physicians and surgeons “as a matter of public interest”.¹⁷ The ICRC is a gatekeeper or screening body within the regulatory

¹⁰ *Martin*, para. 48, **HALCO/ MHLIC Authorities, tab 6**

¹¹ *Tranchemontagne*, paras. 24, 25, **HALCO/ MHLIC Authorities, tab 3**

¹² *Tranchemontagne*, paras. 13, 25, 26, 31 to 36; *Figliola*, para. 21, **HALCO/ MHLIC Authorities, tab 3**; *Code*, section 47(2)

¹³ *Regulated Health Professions Act, 1991*, S.O. 1991, C. 18 (*RHPA*)

¹⁴ *Health Professions Procedural Code, RHPA*, Schedule 2 (*HPPC*)

¹⁵ *Medicine Act, 1991*, S.O. 1991, Chap. 30, section 2(1)

¹⁶ *Medicine Act, 1991, O. Reg. 856/ 93 “Professional Misconduct”*

¹⁷ *HPPC*, sections 2.1, 3(1), 3(2)

scheme that is specifically tasked with investigating allegations of physician misconduct or incompetence.¹⁸

15. The ICRC is required to consider CPSO policy and the *Code* in conducting its investigations but it only screens complaints. It lacks jurisdiction to make “actual” or “unequivocal” findings of discrimination amounting to professional misconduct.¹⁹ It need only find that there is a reasonable prospect that an allegation can be established in order to refer the subject matter of a complaint to CPSO’s Discipline Committee.²⁰

16. The definition of “professional misconduct” in Regulation 856/93 is detailed and specific yet does not explicitly include “discrimination” amongst its listed acts of professional misconduct.²¹ Contravening a provincial law is “professional misconduct” only if the purpose of the provincial law is “to protect public health” or the contravention is relevant to the member’s suitability to practice.²²

17. Within the CPSO’s general mandate, the ICRC is granted a defined, limited role that is fact-based and investigative. Generally, the ICRC may ask that an investigator be appointed in respect of an allegation of misconduct or incompetence and receive the resulting investigative report,²³ but cannot make a finding of professional misconduct or incompetence.²⁴ Specifically:

¹⁸ *HPPC*, section 26; Please see *HH v RG*, 2013 CanLII 90297 (ON HPARB), para. 31: “The Committee performs a screening function, investigating complaints to determine whether they should be referred to the Discipline Committee and, if not, whether some lesser remediation is required.” **HALCO/ MHLC Authorities, tab 7** See also: *Batacharya v. The College of Midwives of Ontario*, 2012 ONSC 1072, paras. 2, 16, 18 **HALCO/ MHLC Authorities, tab 8**; *SM v. RE*, 2013 CanLII 78068 (ON HPARB), para. 36, **HALCO/ MHLC Authorities, tab 9**

¹⁹ *SM v. RE*, **HALCO/ MHLC Authorities, tab 9**; *HH v RG*, **HALCO/ MHLC Authorities, tab 7**

²⁰ *SM v. RE*, para. 37, **HALCO/ MHLC Authorities, tab 9**

²¹ *O. Reg. 856/ 93 “Professional Misconduct”*

²² *O. Reg. 856/ 93 “Professional Misconduct”*, section 1(1)(28)

²³ *HPPC*, sections 75 to 78.

²⁴ *Cyriac, Yau v. Bernstein, College of Physicians and Surgeons of Ontario*, 2015 ONSC 592 (Div. Ct.), paras. 55 to 57, **HALCO/ MHLC Authorities, tab 10**

- (a) When a complaint is received, the chair of the ICRC must select from its members a panel of at least three, one of whom must be a public member, to investigate the complaint. There is no requirement that any panel member have legal training and most panel members are physicians.²⁵
- (b) The CPSO Registrar must give the complainant notice of receipt of the complaint and a general explanation of CPSO processes and the ICRC's jurisdiction.²⁶ The Registrar must give the physician against whom the complaint is brought notice of the complaint within 14 days of its receipt.²⁷ The physician may make written submissions to the ICRC within 30 days of receiving notice of the complaint.²⁸ Neither the complainant nor the physician is permitted to appear directly before the ICRC.
- (c) The ICRC process is not adjudicative and is not subject to the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.²⁹ The ICRC does not convene a hearing; does not receive sworn statements; does not hear sworn examinations or cross-examinations of witnesses; cannot make credibility findings; typically conducts only a paper review; and does not make findings of fact.³⁰
- (d) The ICRC panel must investigate the complaint, consider the written submissions of the physician, and make reasonable efforts to consider all records and documents it considers relevant to the complaint.³¹ The ICRC panel must also consider all of its prior decisions respecting the physician, if such decisions exist.³²
- (e) ICRC investigations must be “adequate”, not exhaustive; the ICRC is only required to gather sufficient relevant information to enable it to assess the complaint.³³ A panel must dispose of a complaint within 150 days of the filing of the complaint.³⁴

²⁵ *HPPC*, sections 25(1), 25(2), 25(3). See also: <http://www.cpso.on.ca/About-Us/About-Council/Committees/Committee-Members>

²⁶ *HPPC*, section 25(5)

²⁷ *HPPC*, section 25(6)

²⁸ *HPPC*, section 25.2. As per section 25.2(2), the ICRC may specify a period of time of less than 30 days if the ICRC is of the opinion, on reasonable and probable grounds, that the conduct of the physician “exposes or is likely to expose his or her patients to harm or injury”.

²⁹ *Iacovelli v. College of Nurses of Ontario*, 2014 ONSC 7267 (Div. Ct.), paras. 17 to 19 (*Iacovelli*), **HALCO/ MHLC Authorities, tab 11**

³⁰ *Fielden v. Health Professions Appeal and Review Board* 2013 ONSC 4261 (Div. Ct.), para. 8 (*Fielden*) **HALCO/ MHLC Authorities, tab 12**; *Silverthorne v. Ontario College of Social Workers and Social Services Workers*, 2006 CanLII 10142 (Div. Ct.), para. 15 (*Silverthorne*) **HALCO/ MHLC Authorities, tab 13**; *SM v. RE*, paras. 36 and 38 **HALCO/ MHLC Authorities, tab 9**; *CW v SD*, 2014 CanLII 34086 (ON HPARB), para. 27 **HALCO/ MHLC Authorities, tab 14**; *RN v MM*, 2014 CanLII 2841 (ON HPARB), para. 25, **HALCO/ MHLC Authorities, tab 15**

³¹ *HPPC*, section 26(1)

³² *HPPC*, section 26(2)

³³ *HPPC*, section 33(1)(a) (emphasis added); *KP v JLDC*, 2012 CanLII 53485 (ON HPARB), paras. 15 to 18 **HALCO/ MHLC Authorities, tab 16**; *DM v LD*, 2014 CanLII 6701 (ON HPARB), paras. 21 to 29, **HALCO/ MHLC Authorities, tab 17**

³⁴ *HPPC*, section 28(1). The time for disposing of a complaint can be extended: *HPPC*, sections 28(3) to 28(9)

(f) The ICRC can decide to take no action with respect to a complaint that it determines to be frivolous, vexatious, made in bad faith, moot or an abuse of process.³⁵

(g) After conducting its investigation, the ICRC may refer allegations of misconduct or incompetence to the Discipline Committee of the CPSO.³⁶ In respect of such referrals, the ICRC may make interim orders directing that the physician's certificate of registration be suspended or subject to terms, conditions or limitations, and may do so with or without notice.³⁷

(h) The ICRC also conducts inquiries into whether a physician is incapacitated.³⁸ The ICRC may make inquiries and require a physician to submit to physical or mental examinations³⁹ but it cannot determine the question of incapacity. Its authority is limited to referring the matter to the Fitness to Practice Committee of the CPSO.⁴⁰

18. In conducting an investigation, the ICRC may review relevant CPSO policies. The CPSO policy respecting human rights in place when the ICRC reviewed K.M.'s complaint was entitled "*Physicians and the Ontario Human Rights Code*".⁴¹ This policy required physicians to comply with the *Code* when making decisions respecting the provision of medical services⁴² and made clear that compliance with the *Code* was to be considered when evaluating physician conduct.⁴³ The policy acknowledged, however, that the CPSO "does not have the expertise or the authority to make complex, new determinations of human rights law" and that the "Human Rights Commission and Tribunal have primary responsibility for interpreting and adjudicating

³⁵ HPPC, sections 26(4), 26(5)

³⁶ HPPC, section 36

³⁷ HPPC, section 37

³⁸ HPPC, sections 57 to 69

³⁹ HPPC, section 58 to 63

⁴⁰ HPPC, sections 61 to 69. *Iacovelli*, paras. 17 to 19, **HALCO/ MHLC Authorities, tab 11**

⁴¹ College of Physicians and Surgeons of Ontario, Policy Statement #5-08, "*Physicians and the Ontario Human Rights Code*" (this policy was effective from September 2008 to March 2015), **HALCO/ MHLC Authorities, tab 18**

⁴² CPSO, "*Physicians and the Ontario Human Rights Code*", p. 2, **HALCO/ MHLC Authorities, tab 18**

⁴³ CPSO, "*Physicians and the Ontario Human Rights Code*", p. 2, **HALCO/ MHLC Authorities, tab 18**

human rights matters”.⁴⁴ Concomitantly, the *Code* states explicitly that the HRTO has jurisdiction to determine all questions of fact or law that arise before it.⁴⁵

19. Nor is a decision by the ICRC not to refer a complaint to the Discipline Committee tantamount to a finding that the conduct complained of did not occur. CPSO policy indicates that *Code* compliance is only a factor to be considered by the College when evaluating physician conduct,⁴⁶ discrimination is not explicitly defined as misconduct sufficient to warrant discipline.⁴⁷ Moreover, subsection 36(2) of the *HPPC* provides that in deciding whether to refer an allegation of sexual abuse to the Discipline Committee, the ICRC is to take into account evidence of whether the health professional who is the subject of a complaint is likely to abuse patients in the future.⁴⁸ This permits the ICRC to avoid a finding of sexual abuse (which may also be sexual harassment contrary to the *Code*)⁴⁹ if the ICRC concludes that it is unlikely to be repeated.

20. A decision of the ICRC panel may be reviewed by the Health Professions Appeal and Review Board (HPARB) unless the decision is to refer the subject of the complaint to the Discipline Committee.⁵⁰ The complainant and the physician are parties to the review.⁵¹ In

⁴⁴ CPSO, “*Physicians and the Ontario Human Rights Code*”, p. 2, **HALCO/ MHLC Authorities, tab 18**. The new policy effective March 2015, titled Policy Statement #2-15 “*Professional Obligations and Human Rights*”, does not contain similar language. The new policy provides that all physicians must comply with the *Code* and have a duty to accommodate (pages 2-3). It also delineates when and how physicians may limit the provision of medical services on the basis of clinical competence or for reasons of conscience or religious beliefs (pages 3-5). **HALCO/ MHLC Authorities, tab 19**

⁴⁵ *Code*, section 39

⁴⁶ See paras. 15, 16 and 18, above; CPSO, “*Physicians and the Ontario Human Rights Code*”, p. 2, **HALCO/ MHLC Authorities, tab 18**

⁴⁷ *O. Reg. 856/93 “Professional Misconduct”*

⁴⁸ *HPPC*, section 36(2)

⁴⁹ *Code*, section 7

⁵⁰ *HPPC*, sections 29(1) to 29(4)

⁵¹ *HPPC*, section 29(5). The HPARB can decline to review the ICRC decision if it considers the request for review to be frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process: *HPPC*, sections 30(2), 30(3)

conducting its review, the HPARB receives all documents and things upon which the ICRC decision was based.⁵² This record must be disclosed to the parties, subject to exceptions.⁵³

21. The HPARB’s review of the ICRC is limited to fact-based reviews. Specifically the HPARB may consider (a) the adequacy of the investigation and/or (b) the reasonableness of the decision.⁵⁴ Parties before the HPARB receive an opportunity to make written and/or oral submissions and the HPARB may require the CPSO to send a representative (usually the investigator). Parties cannot question the College representative, however, or each other.⁵⁵

22. The HPARB may (a) confirm all or part of the ICRC’s decision, (b) make “appropriate” recommendations to the ICRC or (c) require the ICRC to do anything within its jurisdiction except request the Registrar to conduct an investigation.⁵⁶ Decisions of the HPARB in review of the ICRC may be judicially reviewed by the Divisional Court.⁵⁷

23. The Discipline Committee may order a range of penalties against a physician following a hearing, including revoking or suspending the physician’s certificate of registration; directing that the certificate be subject to terms, conditions or limitations; reprimanding the physician; or directing that the physician pay a fine of not more than \$35,000.00.⁵⁸ It lacks authority to grant

⁵² *HPPC*, section 32(1)

⁵³ *HPPC*, section 32(2). The HPARB may refuse to disclose records that implicate matters involving public security or if disclosure would prejudice a person involved in a criminal or civil proceeding: *HPPC*, section 32(3).

⁵⁴ *HPPC*, section 33(1)

⁵⁵ *HPPC*, section 33(2). Additional procedural provisions are found in sections 34(1), 43, 45, 47, 50 and 55 of the *HPPC* and specified provisions of the *Statutory Powers Procedure Act*, R.S.O. 1990, Chap. S.22 as set out in s.34(2) of the *HPPC*. See also *Health Professions Appeal and Review Board and Health Services Appeal and Review Board Consolidated Rules of Practice (May 1, 2013)*, Rules 2.8, 2.15 to 2.18, 9.2 to 9.4, 15, 17.1, 17.2, and pages 31, 34 (*HPARB/HSARB Consolidated Rules*).

⁵⁶ *HPPC*, section 35(1).

⁵⁷ *HPPC*, section 70. See also: *HPARB/HSARB Consolidated Rules*, Rules 17.1 and 17.2.

⁵⁸ *HPPC*, section 51(2). These interveners appreciate that under sections 51(2)(5.1) and (5.2) of the *HPPC*, the Discipline Committee may order a health professional to reimburse the College for the funding of therapy and counselling for victims of sexual abuse but assert that this does not approach the scope or range of remedies available through the HRTO process.

a personal remedy to a claimant, however. Even if the ICRC had referred K.M.'s complaint to discipline and a finding of discrimination amounting to professional misconduct had resulted, the Discipline Committee, like the ICRC, could not have ordered a personal remedy for K.M.

B. The ICRC did not determine the allegation of discrimination

24. These interveners also submit that in the specific context of K.M.'s case, the ICRC did not determine the allegation of discrimination and therefore did not "appropriately deal with" the substance of K.M.'s complaint.

25. K.M. complained to the CPSO alleging discrimination in the provision of health care he received from Dr. Kodama. The ICRC declined to refer the complaint to the Discipline Committee. Instead, the ICRC issued a caution to Dr. Kodama regarding the quality of his communications with K.M.⁵⁹ Specifically, the ICRC explained that it was "faced with divergent information" and "therefore cannot say with any certainty what transpired".⁶⁰ The ICRC also observed that Dr. Kodama "failed to display the level of sensitivity required by the situation," that "he was less than clear or effective in communicating his intentions and recommendations to the patient" and that a physician would be expected "to show extra concern and compassion in such a situation."⁶¹

26. In reaching its decision, the ICRC made no specific findings about what Dr. Kodama said to K.M., and therefore made no finding as to whether discriminatory conduct occurred.⁶²

⁵⁹ *Kodama v. K.M.*, Decision of the ICRC, dated January 2011, pp. 1, 4 to 6, **HALCO/ MHLC Authorities, tab 20**

⁶⁰ *Kodama v. K.M.* (ICRC), p. 4, **HALCO/ MHLC Authorities, tab 20**

⁶¹ *Kodama v. K.M.* (ICRC), pp. 4, 5, **HALCO/ MHLC Authorities, tab 20**

⁶² *Kodama v. K.M.*, (ICRC), p. 4, **HALCO/ MHLC Authorities, tab 20**; *Kodama v. K.M.*, HRTO Decision, dated April 11, 2014, paras. 13, 81, **HALCO/ MHLC Authorities, tab 21**

27. Further, the ICRC found that Dr. Kodama did not *intend* to discriminate,⁶³ a consideration that is irrelevant to whether discrimination occurred. In *Eldridge*,⁶⁴ the Supreme Court held that it is discriminatory conduct that must be prevented, not the underlying attitude or motive. In its decision, the ICRC did not even reference the *Code*.

28. A finding that the ICRC did in fact decide the question of discrimination would suggest that the regulation of health professionals commands a different standard for human rights determinations. This would run contrary to *Tranchemontagne*, which held that “it is undesirable for a tribunal to limit itself to some of the law while shutting its eyes to the rest of the law.”⁶⁵

C. *The ICRC does not have jurisdiction to order human rights remedies*

29. Even if the ICRC has authority to decide questions of law, its jurisdiction is not *concurrent* unless it shares authority with the HRTO to grant individual redress for human rights violations, the remedy sought by K.M. The availability of responsive remedies is a crucial factor.⁶⁶

30. K.M. sought financial and other remedies from the HRTO pursuant to section 45.2 of the *Code*.⁶⁷ The *Code* empowers the (HRTO) with broad remedial powers.⁶⁸ For example, the HRTO has jurisdiction to order the discriminating party to do anything that would “promote compliance with” the *Code*.⁶⁹

⁶³ *Kodama v. K.M.*, (ICRC), p. 4, **HALCO/ MHLC Authorities, tab 20**

⁶⁴ *Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624, para. 62 (*Eldridge*), **HALCO/ MHLC Authorities, tab 22**

⁶⁵ *Tranchemontagne*, para. 26, **HALCO/ MHLC Authorities, tab 3**

⁶⁶ *Penner*, paras. 53 to 58, **HALCO/ MHLC Authorities, tab 2**; *Doucet-Boudreau*, paras. 23 to 25, 54 to 59 **HALCO/ MHLC Authorities, tab 4**

⁶⁷ *Kodama v. K.M.* (HRTO), para. 15, **HALCO/ MHLC Authorities, tab 21**; *Code*, section 45.2

⁶⁸ *Code*, sections 34, 35, 45.2, 45.3x

⁶⁹ *Code*, section 45.2

31. The legislature has accorded the *Code* – “the law of the people” – broad application and requires administrative bodies to apply it.⁷⁰ However, it is important to distinguish between the jurisdiction to “apply” the *Code* and the result that the application will preclude a personal remedy for the individual facing discrimination. The paramountcy of the *Code* is not respected unless a party has access to an appropriate remedy for discrimination. The *Code*, as fundamental, quasi-constitutional law must also be interpreted in a liberal and purposive manner with a view towards protecting human rights broadly.⁷¹ Any interpretation of concurrent jurisdiction that forecloses examination of a tribunal’s remedial jurisdiction undermines this approach.

32. The Supreme Court in *Tranchemontagne* mandated administrative tribunals with the authority to decide questions of law to consider the *Code* in their decision-making.⁷² This is because the *Code* is fundamental law. It does not follow that when a tribunal applies the *Code* in its decision-making, the HRTO is for that reason precluded from making a remedial order under the *Code*.

33. The result in *Figliola* does not preclude this view. Rather, the Court in *Figliola* was not required to consider the issue of remedial jurisdiction on the facts before it. This is because the Review Division had the authority to decide whether a policy capping chronic pain awards was contrary to the B.C. *Human Rights Code* as well as the jurisdiction to order the relief sought – to disregard the policy and order a higher quantum of compensation.⁷³

⁷⁰ *Tranchemontagne*, para. 33, HALCO/ MHLC Authorities, tab 3

⁷¹ *Tranchemontagne*, para. 33, HALCO/ MHLC Authorities, tab 3

⁷² *Tranchemontagne*, paras. 13, 25, 26, 31 to 36, HALCO/ MHLC Authorities, tab 3

⁷³ *Figliola*, para. 71, HALCO/ MHLC Authorities, tab 1

34. In *Tranchemontagne*, the Court found that the Social Benefits Tribunal (SBT) had the authority to determine whether the *ODSPA* provision restricting eligibility for social assistance was discriminatory contrary to the *Code*.⁷⁴ Specifically, had the SBT make a finding of discrimination it would also have the jurisdiction to order the relief sought – payment of social assistance.⁷⁵

35. As noted above,⁷⁶ the ICRC's jurisdiction is very narrow. It cannot make findings of professional misconduct or incompetence nor may it grant personal remedies to the complainant. It may only refer an allegation of misconduct to the Discipline Committee; refer the physician to a panel of the ICRC for incapacity proceedings; issue a written caution or require the physician to appear before the ICRC to be cautioned; require a physician to participate in a professional education program; or take action that is not inconsistent with the *RHPA*, the *HPPC*, or the *CPSO* by-laws.⁷⁷ Competency upgrading programs and cautions are not sanctions. They are advisory and non-punitive in nature and are not recorded in the public register.⁷⁸

⁷⁴ *Tranchemontagne*, para. 40, **HALCO/ MHLC Authorities, tab 3**

⁷⁵ *Ontario Disability Support Program Act, 1997*, S.O. 1997, c. 25, Sch. B, sections 26, 29(3).

⁷⁶ See paras. 15 and 17, above

⁷⁷ *HPPC*, sections 26(1), 27(1)

⁷⁸ *Fielden*, para. 10 **HALCO/ MHLC Authorities, tab 12**; *Silverthorne*, para. 16 **HALCO/ MHLC Authorities, tab 13**; *Modi v. Ontario (Health Professions Board)*, 1996 CanLII 11773 (Div. Ct.), pp. 21 to 22, and 26 to 28 **HALCO/ MHLC Authorities, tab 25**; *D.L.M. v. S.E.-S.*, 2010 CanLII 70389 (ON HPARB), para. 37, **HALCO/ MHLC Authorities, tab 26**. Decisions of the ICRC to caution a physician and to order a physician to participate in a remediation or education program are not made available on the *CPSO* public register. A proposal under consideration would, if approved, require the *CPSO* to include such decisions in the public register:

<http://www.cpso.on.ca/policies-publications/complaints/the-complaints-process>

36. The applicant Dr. Kodama refers to the Divisional Court's decision in *Trozzi*⁷⁹ as authority for the proposition that when human rights legislation is considered under the *RHPA*, an application should not be subsequently determined by the HRTO. There can be no such general rule because concurrent jurisdiction turns on the nature of the relief sought in any particular case and whether the decision-maker has the jurisdiction to make that order.

37. In Ms. Trozzi's appeal from the College of Nurses Registration Committee, the HPARB had authority to decide whether her right under the *Code* to accommodation on the ground of disability had been breached by the attachment of conditions to her registration.⁸⁰ The operation of the *Code* was a proper consideration under the *RHPA* in that case and the HPARB had jurisdiction to order the relief sought: varying the conditions of practice.⁸¹

38. In the present case, even if the ICRC, the Discipline Committee and the HPARB had authority under the *RHPA* to determine whether there was discrimination contrary to the *Code*, they lacked concurrent jurisdiction if there was no authority under the *RHPA* to grant the relief sought by K.M., namely remedies under section 45.2(1) of the *Code*.⁸²

39. Discretion to dismiss pursuant to section 45.1 of the *Code* can only be exercised if the conditions in *Figliola*, as modified by *Penner*, are met. The question of whether there is concurrent jurisdiction cannot be answered in the affirmative unless the prior tribunal has the jurisdiction to grant the remedy sought in the HRTO application. In K.M.'s case, because there was no concurrent jurisdiction, the HRTO could exercise discretion to determine the application under section 45.1.

⁷⁹ *College of Nurses v. Trozzi*, 2011 ONSC 4614 (Div. Ct.) (*Trozzi*), **HALCO/ MHLC Authorities, tab 27**

⁸⁰ *Trozzi*, para. 31,32, **HALCO/ MHLC Authorities, tab 27**

⁸¹ *Trozzi*, para. 31, 32, **HALCO/ MHLC Authorities, tab 27**

⁸² *Kodama v. K.M.* (HRTO), para. 15, **HALCO/ MHLC Authorities, tab 21**

40. D. *The RHPA is not a complete code* Nor does the *RHPA* create an exhaustive code for determining human rights complaints against health professionals – it contains no express statement to this effect. The absence of a means of attaining effective redress through the *RHPA* does not support an implied intention to create an exhaustive code as “where there is a right, there ought to be a remedy.”⁸³

41. Unlike the procedure established under the *Code*, the *RHPA* disciplinary process does not include any personal redress for human rights complainants. While the *RHPA* tasks the Minister with ensuring that individuals are “treated with sensitivity and respect in their dealings with health professionals”,⁸⁴ the disciplinary process focuses solely on the appropriate sanctions to be levied against members. Redress for the complainant, compensation or otherwise, falls outside of the *RHPA* process, as do systemic remedies.

II. If the ICRC appropriately dealt with the substance of K.M.’s complaint, did the HRTO nonetheless have discretion to hear the discrimination application?

42. In the alternative, these interveners submit that even if the ICRC is found to have made a determination relating to K.M.’s complaint of discrimination, the HRTO nonetheless properly exercised its discretion to hear his application. The HRTO’s discretion must be exercised in a manner that promotes access to justice and fairness.

⁸³ *Doucet-Boudreau*, paras. 23 to 25, 54 to 59 **HALCO/ MHLC Authorities, tab 4**; *Hopkins v. Kay*, 2015 ONCA 112, paras. 31-33 **HALCO/ MHLC Authorities, tab 23**; *Pleau v. Canada (A.G.)*, 1999 NSCA 159, paras. 48, 50-52, **HALCO/ MHLC Authorities, tab 24**. See also paragraphs 13 to 23, above.

⁸⁴ *RHPA*, s. 3

43. These interveners support the position of K.M. that *Figliola* and the subsequent Supreme Court decision in *Penner* do not create separate lines of authority. *Penner* arguably overrules *Figliola* or restricts its application to its facts.⁸⁵ The Federal Court has noted that:

Finally, it is clear that *Penner* takes precedence over *Figliola*. As such, decision-makers retain residual discretion to refuse to give effect to the principle of finality where that would work unfairness. The *Penner* majority espoused this view and the *Figliola* majority never clearly said that finality must override fairness.⁸⁶

44. The applicant Dr. Kodama asserts that “*Figliola* confers very little discretion under s. 45.1”, that “statutory estoppel” aims to ensure finality and supports dismissal of HRTO applications.⁸⁷ The applicant distinguishes this discretion from that to be exercised by civil courts with inherent jurisdiction to consider a common law doctrine.⁸⁸

45. With respect, the Supreme Court in *Figliola* does not create a new doctrine called “statutory estoppel,” and in fact makes no mention of this term. The Supreme Court’s task was one of statutory interpretation, clarifying the considerations appropriate to the exercise of discretion under section 27(1)(f) of the B.C. *Human Rights Code*. The majority states that its “task is not to define the word [“appropriately”], it is to define it in its statutory context so that ... the legislature’s intentions can be respected”.⁸⁹ The Court clearly stated that the legislature intended to create a “statutory reflection of the collective principles underlying the doctrines [of

⁸⁵ *Carroll v. Canada (Attorney General)*, 2015 FC 287, paras. 112 to 127 (*Carroll*), **HALCO/ MHLC Authorities, tab 28**; *Lawless (Litigation guardian of) v. Conseil scolaire Fransaskois*, 2014 SKQB 23, paras. 46 and 47, **HALCO/ MHLC Authorities, tab 29**; *Murray v. Canada (Human Rights Commission)*, 2014 FC 139, paras. 50, 93 and 94, **HALCO/ MHLC Authorities, tab 30**; *R. v. Thompson*, 2014 ONCA 43, paras. 82 to 84, **HALCO/ MHLC Authorities, tab 31**; *Guergis v. Novak*, 2013 ONCA 449, paras. 17 to 19, **HALCO/ MHLC Authorities, tab 32**; *Richmond Hill Naturalists v. Corsica Developments Inc.*, 2013 ONSC 7894 (Div. Ct.), paras. 28, 31, 36, **HALCO/ MHLC Authorities, tab 33**; *See contra: Khapar v. Air Canada*, 2014 FC 138, paras. 111, 122; **HALCO/ MHLC Authorities, tab 34**

⁸⁶ *Carroll*, para. 126, **HALCO/ MHLC Authorities, tab 28**

⁸⁷ Factum of the Applicant Dr. Kodama dated October 8, 2014, para. 68

⁸⁸ Factum of the Applicant Dr. Kodama dated October 8, 2014, paras. 68 to 70

⁸⁹ *Figliola*, para. 41, **HALCO/ MHLC Authorities, tab 1**

issue estoppel, collateral attack and abuse of process] ... all in the name of fairness”.⁹⁰ This cannot be taken to mean that the Court created a new doctrine of statutory estoppel that narrows discretion to the consideration of finality to the exclusion of fairness.

46. In any event, discussion of the discretion to dismiss a human rights complaint must now incorporate the Supreme Court’s clarification of the doctrine of issue estoppel in *Penner*. When *Figliola* was decided, *Penner* had not been heard or decided. The doctrine of issue estoppel had yet to allow for consideration of the purpose, process and stakes of the prior proceeding.⁹¹ The dissenting opinion in *Figliola* (written by Cromwell J., who would later, with Karakatsanis J., write the majority decision in *Penner*) recognized a legislative intention to confer a more open-ended discretion that went beyond common law doctrines, mandating consideration of “whether giving the earlier proceeding final and binding effect will work an injustice...”⁹²

47. In *Penner*, the majority of the Supreme Court returned to the policy of fairness, writing:

There is also a general policy concern linked to the purpose of the legislative scheme which governs the prior proceeding. To apply issue estoppel based on a proceeding in which a party reasonably expected that little was at stake risks inducing future litigants to either avoid the proceeding altogether or to participate more actively and vigorously than would otherwise make sense.⁹³

48. HALCO and the MHLC’s core client groups are in frequent contact with health care professionals, disproportionately so in comparison to the general public. Both client groups face continuing marginalization and stereotyping, and the scope for discriminatory conduct against them is very broad. Further, in the psychiatric context, it is of special importance that

⁹⁰ *Figliola*, para. 25, **HALCO/ MHLC Authorities, tab 1**

⁹¹ *Penner*, para. 42, **HALCO/ MHLC Authorities, tab 2**

⁹² *Figliola*, paras. 81, 84, 94 and 95, **HALCO/ MHLC Authorities, tab 1**. See also: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, para. 80. **HALCO/ MHLC Authorities, tab 35**

⁹³ *Penner*, para. 42, **HALCO/ MHLC Authorities, tab 2**

interactions between mental health consumers/psychiatric survivors and regulated health professionals often occur in circumstances of psychiatric detention and the forced administration of unwanted medical treatment.⁹⁴

49. Of particular significance to these interveners is that the ICRC and other CPSO Committees cannot grant personal remedies available to litigants in the HRTO process.⁹⁵ This is crucially important where the interests at stake are of two historically disadvantaged groups that face persistent and pervasive societal barriers, including discrimination.⁹⁶

50. The view that section 45.1 of the *Code* would preclude an application to the HRTO where a matter has been considered by the ICRC narrows remedial options and negatively impacts access to justice and procedural fairness. It forces persons alleging discrimination to choose between obtaining a personal remedy for discriminatory conduct and engaging the professional regulatory process to protect the public. It also unfairly advantages regulated health professionals who, even when found to have engaged in discriminatory professional misconduct, will be shielded from personal liability.

51. Moreover, if, as suggested by the applicant, *Penner* only makes civil proceedings and not HRTO proceedings available after a regulatory complaint has been dealt with, a well-resourced party may still bring a civil action against a physician and obtain a personal remedy for discrimination contrary to the *Code*.⁹⁷ Civil proceedings, however, are not readily

⁹⁴ *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 SCR 625, paras. 35 to 38 (*Winko*) **HALCO/ MHLC Authorities, tab 36**; *Mental Health Act*, R.S.O. 1990, c. M.7, section 20

⁹⁵ *Tranchemontagne*, paragraphs 16, 24 to 27, 40 to 42, **HALCO/ MHLC Authorities, tab 3**

⁹⁶ *Winko*, paras. 35 to 38, **HALCO/ MHLC Authorities, tab 36**

⁹⁷ *Code*, section 46.1

accessible to most individuals, whereas the HRTO process is much more accessible.⁹⁸ The need for meaningful and comprehensive access to justice for marginalized individuals requires access to human rights remedies within the administrative law context.

PART IV: REQUESTED ORDERS

52. HALCO and the MHLC respectfully request that the application be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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Ryan Peck

Mercedes Perez

Amy Wah

Lawyers for the intervener Mental Health
Legal Committee

Lawyers for the intervener HIV & AIDS
Legal Clinic Ontario

⁹⁸ A similar access to justice assessment (as between injunctive proceedings and applications to the Consent and Capacity Board) was made by the Supreme Court of Canada in *Cuthbertson v. Rasouli*, 2013 SCC 53, [2013] 3 S.C.R. 341, paras. 114 to 115, **HALCO/ MHLC Authorities, tab 37**.

SCHEDULE “A”

Authorities Referred To

- | Tab⁹⁹ | Authority |
|-------------------------|---|
| 1. | <i>British Columbia (Workers’ Compensation Board) v. Figliola</i> , 2011 SCC 52, [2011] 3 S.C.R. 422 |
| 2. | <i>Penner v. Niagara (Regional Police Services Board)</i> , 2013 SCC 19, [2013] 2 SCR 125 |
| 3. | <i>Tranchemontagne v. Ontario (Director, Disability Support Program)</i> , 2006 SCC 14, [2006] 1 SCR 513 |
| 4. | <i>Doucet-Boudreau v. Nova Scotia (Minister of Education)</i> , 2003 SCC 62, [2003] 3 SCR 3 |
| 5. | <i>R. v. Conway</i> , 2010 SCC 22, [2010] 1 SCR 765 |
| 6. | <i>Nova Scotia (Workers’ Comensation Board) v. Martin</i> , 2003 SCC 54, [2003] 2 SCR 504 |
| 7. | <i>HH v RG</i> , 2013 CanLII 90297 (ON HPARB) |
| 8. | <i>Batacharya v. The College of Midwives of Ontario</i> , 2012 ONSC 1072 |
| 9. | <i>SM v. RE</i> , 2013 CanLII 78068 (ON HPARB) |
| 10. | <i>Cyriac, Yau v. Bernstein, College of Physicians and Surgeons of Ontario</i> , 2015 ONSC 592 (Div. Ct.) |
| 11. | <i>Iacovelli v. College of Nurses of Ontario</i> , 2014 ONSC 7267 (Div. Ct.) |
| 12. | <i>Fielden v. Health Professions Appeal and Review Board</i> , 2013 ONSC 4261 (Div. Ct.) |
| 13. | <i>Silverthorne v. Ontario College of Social Workers and Social Services Workers</i> , 2006 CanLII 10142 (Div. Ct.) |
| 14. | <i>CW v SD</i> , 2014 CanLII 34086 (ON HPARB) |
| 15. | <i>RN v MM</i> , 2014 CanLII 2841 (ON HPARB) |
| 16. | <i>KP v JLDC</i> , 2012 CanLII 53485 (ON HPARB) |

⁹⁹ In HALCO/ MHLC Book of Authorities

17. *DM v LD*, 2014 CanLII 6701 (ON HPARB)
18. College of Physicians and Surgeons of Ontario, Policy Statement #5-08, “*Physicians and the Ontario Human Rights Code*”
19. College of Physicians and Surgeons of Ontario, Policy Statement #2-15, “*Professional Obligations and Human Rights*”
20. *Kodama v. K.M.*, Decision of the ICRC, dated January 2011
21. *Kodama v. K.M.*, Human Rights Tribunal Ontario Decision, dated April 11, 2014
22. *Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624
23. *Hopkins v. Kay*, 2015 ONCA 112
24. *Pleau v. Canada (A.G.)*, 1999 NSCA 159
25. *Modi v. Ontario (Health Professions Board)*, 1996 CanLII 11773 (Div. Ct.)
26. *D.L.M. v. S.E.-S.*, 2010 CanLII 70389 (ON HPARB)
27. *College of Nurses v. Trozzi*, 2011 ONSC 4614 (Div. Ct.)
28. *Carroll v. Canada (Attorney General)*, 2015 FC 287
29. *Lawless (Litigation guardian of) v. Conseil scolaire Fransaskois*, 2014 SKQB 23
30. *Murray v. Immigration and Refugee Board*, 2014 FC 139
31. *R. v. Thompson*, 2014 ONCA 43
32. *Guergis v. Novak*, 2013 ONCA 449
33. *Richmond Hill Naturalists v. Corsica Developments Inc.*, 2013 ONSC 7894 (Div. Ct.)
34. *Khapar v. Air Canada*, 2014 FC 138
35. *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460
36. *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 SCR 625
37. *Cuthbertson v. Rasouli*, 2013, SCC 53, [2013] 3 S.C.R. 341

SCHEDULE “B”

Relevant Statutes and Regulations

Tab¹⁰⁰

1. *Human Rights Code*, R.S.O., 1990, c. H. 19, Part I, and sections 34, 35, 45.1, 45.2, 45.3, 46.1, 47(2)
2. *Regulated Health Professions Act, 1991*, S.O. 1991, C. 18, section 3
3. Schedule 2, *Health Professions Procedural Code, Regulated Health Professions Act, 1991*, S.O. 1991, Chap. 18, sections 13(1), 25(1) to 25(6), 25.2, 26(1) to 26(5), 28(1) to 28(9), 29(1) to 29(5), 30(2), 30(3), 32(1) to 32(3), 33(1), 33(2), 34(1), 34(2), 35(1), 36, 37, 43, 45, 47, 50, 55, 57 to 69, 70, 75 to 78
4. *Medicine Act, 1991*, S.O. 1991, c. 30, section 2(1)
5. *Medicine Act, 1991, Ontario Regulation 856/93 “Professional Misconduct”*
6. *Health Professions Appeal and Review Board and Health Services Appeal and Review Board Consolidated Rules of Practice* (May 1, 2013), Rules 2.8, 2.15 to 2.18, 9.2 to 9.4, 15, 17.1, 17.2, and pages 31, 34.
7. *Ontario Works Act, 1997*, S.O. 1997, c. 25, Sch. A, sections 26 and 67
8. *Ontario Disability Support Program Act, 1997*, S.O. 1997, c. 25, Sch. B, sections 5, 26, 29 and 31
9. *Human Rights Code*, RSBC 1996, c. 210, section 27(1)(f)
10. *Mental Health Act*, R.S.O. 1990, c. M.7, section 20
11. *Statutory Powers Procedure Act*, R.S.O. 1990, Chap. S.22

¹⁰⁰ In Schedule B of this factum

Human Rights Code, R.S.O., 1990, Ch. H. 19

PART I

FREEDOM FROM DISCRIMINATION

Services

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 1; 1999, c. 6, s. 28 (1); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (1); 2012, c. 7, s. 1.

Accommodation

2. (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2 (1); 1999, c. 6, s. 28 (2); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (2); 2012, c. 7, s. 2 (1).

Harassment in accommodation

(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2 (2); 1999, c. 6, s. 28 (3); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (3); 2012, c. 7, s. 2 (2).

Contracts

3. Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 3; 1999, c. 6, s. 28 (4); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (4); 2012, c. 7, s. 3.

Accommodation of person under eighteen

4. (1) Every sixteen or seventeen year old person who has withdrawn from parental control has a right to equal treatment with respect to occupancy of and contracting for accommodation without discrimination because the person is less than eighteen years old. R.S.O. 1990, c. H.19, s. 4 (1).

Idem

(2) A contract for accommodation entered into by a sixteen or seventeen year old person who has withdrawn from parental control is enforceable against that person as if the person were eighteen years old. R.S.O. 1990, c. H.19, s. 4 (2).

Employment

5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (1); 1999, c. 6, s. 28 (5); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (5); 2012, c. 7, s. 4 (1).

Harassment in employment

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (2); 1999, c. 6, s. 28 (6); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (6); 2012, c. 7, s. 4 (2).

Vocational associations

6. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 6; 1999, c. 6, s. 28 (7); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (7); 2012, c. 7, s. 5.

Sexual harassment

Harassment because of sex in accommodation

7. (1) Every person who occupies accommodation has a right to freedom from harassment because of sex, sexual orientation, gender identity or gender expression by the landlord or agent of the landlord or by an occupant of the same building. R.S.O. 1990, c. H.19, s. 7 (1); 2012, c. 7, s. 6 (1).

Harassment because of sex in workplaces

(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex, sexual orientation, gender identity or gender expression by his or her employer or agent of the employer or by another employee. R.S.O. 1990, c. H.19, s. 7 (2); 2012, c. 7, s. 6 (2).

Sexual solicitation by a person in position to confer benefit, etc.

(3) Every person has a right to be free from,

(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or

(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person. R.S.O. 1990, c. H.19, s. 7 (3).

Reprisals

8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing. R.S.O. 1990, c. H.19, s. 8.

Infringement prohibited

9. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part. R.S.O. 1990, c. H.19, s. 9.

[...]

Application by person

34. (1) If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal for an order under section 45.2,

(a) within one year after the incident to which the application relates; or

(b) if there was a series of incidents, within one year after the last incident in the series. 2006, c. 30, s. 5.

Late applications

(2) A person may apply under subsection (1) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. 2006, c. 30, s. 5.

Form

(3) An application under subsection (1) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.

Two or more persons

(4) Two or more persons who are each entitled to make an application under subsection (1) may file the applications jointly, subject to any provision in the Tribunal rules that authorizes the Tribunal to direct that one or more of the applications be considered in a separate proceeding. 2006, c. 30, s. 5.

Application on behalf of another

(5) A person or organization, other than the Commission, may apply on behalf of another person to the Tribunal for an order under section 45.2 if the other person,

- (a) would have been entitled to bring an application under subsection (1); and
- (b) consents to the application. 2006, c. 30, s. 5.

Participation in proceedings

(6) If a person or organization makes an application on behalf of another person, the person or organization may participate in the proceeding in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Consent form

(7) A consent under clause (5) (b) shall be in a form specified in the Tribunal rules. 2006, c. 30, s. 5.

Time of application

(8) An application under subsection (5) shall be made within the time period required for making an application under subsection (1). 2006, c. 30, s. 5.

Application

(9) Subsections (2) and (3) apply to an application made under subsection (5). 2006, c. 30, s. 5.

Withdrawal of application

(10) An application under subsection (5) may be withdrawn by the person on behalf of whom the application is made in accordance with the Tribunal rules. 2006, c. 30, s. 5.

Where application barred

(11) A person who believes that one of his or her rights under Part I has been infringed may not make an application under subsection (1) with respect to that right if,

- (a) a civil proceeding has been commenced in a court in which the person is seeking an order under section 46.1 with respect to the alleged infringement and the proceeding has not been finally determined or withdrawn; or

(b) a court has finally determined the issue of whether the right has been infringed or the matter has been settled. 2006, c. 30, s. 5.

Final determination

(12) For the purpose of subsection (11), a proceeding or issue has not been finally determined if a right of appeal exists and the time for appealing has not expired. 2006, c. 30, s. 5.

Application by Commission

35. (1) The Commission may apply to the Tribunal for an order under section 45.3 if the Commission is of the opinion that,

(a) it is in the public interest to make an application; and

(b) an order under section 45.3 could provide an appropriate remedy. 2006, c. 30, s. 5.

Form

(2) An application under subsection (1) shall be in a form approved by the Tribunal. 2006, c. 30, s. 5.

Effect of application

(3) An application made by the Commission does not affect the right of a person to make an application under section 34 in respect of the same matter. 2006, c. 30, s. 5.

Applications dealt with together

(4) If a person or organization makes an application under section 34 and the Commission makes an application under this section in respect of the same matter, the two applications shall be dealt with together in the same proceeding unless the Tribunal determines otherwise. 2006, c. 30, s. 5.

[...]

Dismissal in accordance with rules

45.1 The Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application. 2006, c. 30, s. 5.

Orders of Tribunal: applications under s. 34

45.2 (1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.
3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act. 2006, c. 30, s. 5.

Orders under par. 3 of subs. (1)

- (2) For greater certainty, an order under paragraph 3 of subsection (1),
 - (a) may direct a person to do anything with respect to future practices; and
 - (b) may be made even if no order under that paragraph was requested. 2006, c. 30, s. 5.

Orders of Tribunal: applications under s. 35

45.3 (1) If, on an application under section 35, the Tribunal determines that any one or more of the parties to the application have infringed a right under Part I, the Tribunal may make an order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act. 2006, c. 30, s. 5.

Same

(2) For greater certainty, an order under subsection (1) may direct a person to do anything with respect to future practices. 2006, c. 30, s. 5.

Matters referred to Commission

45.4 (1) The Tribunal may refer any matters arising out of a proceeding before it to the Commission if, in the Tribunal's opinion, they are matters of public interest or are otherwise of interest to the Commission. 2006, c. 30, s. 5.

Same

(2) The Commission may, in its discretion, decide whether to deal with a matter referred to it by the Tribunal. 2006, c. 30, s. 5.

[...]

Civil remedy

46.1 (1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under Part I of another party to the proceeding, the court may make either of the following orders, or both:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect. 2006, c. 30, s. 8.

Same

(2) Subsection (1) does not permit a person to commence an action based solely on an infringement of a right under Part I. 2006, c. 30, s. 8.

[...]

Act binds Crown

47. (1) This Act binds the Crown and every agency of the Crown. R.S.O. 1990, c. H.19, s. 47 (1).

Act has primacy over other Acts

(2) Where a provision in an Act or regulation purports to require or authorize conduct that is a contravention of Part I, this Act applies and prevails unless the Act or regulation specifically provides that it is to apply despite this Act. R.S.O. 1990, c. H.19, s. 47 (2).

*Regulated Health Professions Act, 1991, S.O. 1991, Chap. 18***CONTENTS**

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Interpretation

1. (1) In this Act,

“Advisory Council” means the Health Professions Regulatory Advisory Council; (“Conseil consultatif”)

“Board” means the Health Professions Appeal and Review Board under the *Ministry of Health and Long-Term Care Appeal and Review Boards Act, 1998*; (“Commission”)

“certificate of authorization” means a certificate of authorization issued under this Act or the Code; (“certificat d’autorisation”)

“Code” means the Health Professions Procedural Code in Schedule 2; (“Code”)

“College” means the College of a health profession or group of health professions established or continued under a health profession Act; (“ordre”)

“Council” means the Council of a College; (“conseil”)

“health profession” means a health profession set out in Schedule 1; (“profession de la santé”)

“health profession Act” means an Act named in Schedule 1; (“loi sur une profession de la santé”)

“health profession corporation” means a corporation incorporated under the *Business Corporations Act* that holds a valid certificate of authorization issued under this Act or the Code; (“société professionnelle de la santé”)

“member” means a member of a College; (“membre”)

“Minister” means the Minister of Health and Long-Term Care; (“ministre”)

“personal information” means personal information within the meaning of the *Freedom of Information and Protection of Privacy Act*. (“renseignements personnels”) 1991, c. 18, s. 1 (1); 1998, c. 18, Sched. G, s. 1; 2000, c. 42, Sched., s. 29; 2006, c. 19, Sched. L, s. 11 (2); 2007, c. 10, Sched. M, s. 1; 2009, c. 33, Sched. 18, s. 17 (2).

Hearing not required unless referred to

(2) Nothing in this Act shall be construed to require a hearing to be held within the meaning of the *Statutory Powers Procedure Act* unless the holding of a hearing is specifically referred to. 1991, c. 18, s. 1 (2).

Administration of Act

2. The Minister is responsible for the administration of this Act. 1991, c. 18, s. 2.

Duty of Minister

3. It is the duty of the Minister to ensure that the health professions are regulated and coordinated in the public interest, that appropriate standards of practice are developed and maintained and that individuals have access to services provided by the health professions of their choice and that they are treated with sensitivity and respect in their dealings with health professionals, the Colleges and the Board. 1991, c. 18, s. 3.

Code

4. The Code shall be deemed to be part of each health profession Act. 1991, c. 18, s. 4.

Powers of Minister

5. (1) The Minister may,

(a) inquire into or require a Council to inquire into the state of practice of a health profession in a locality or institution;

(b) review a Council's activities and require the Council to provide reports and information;

(c) require a Council to make, amend or revoke a regulation under a health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*;

(d) require a Council to do anything that, in the opinion of the Minister, is necessary or advisable to carry out the intent of this Act, the health profession Acts, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*. 1991, c. 18, s. 5 (1); 2009, c. 26, s. 24 (1).

Council to comply with Minister's request

(2) If the Minister requires a Council to do anything under subsection (1), the Council shall, within the time and in the manner specified by the Minister, comply with the requirement and submit a report. 1991, c. 18, s. 5 (2).

Regulations

(3) If the Minister requires a Council to make, amend or revoke a regulation under clause (1) (c) and the Council does not do so within sixty days, the Lieutenant Governor in Council may make, amend or revoke the regulation. 1991, c. 18, s. 5 (3).

Idem

(4) Subsection (3) does not give the Lieutenant Governor in Council authority to do anything that the Council does not have authority to do. 1991, c. 18, s. 5 (4).

Expenses of Colleges

(5) The Minister may pay a College for expenses incurred in complying with a requirement under subsection (1). 1991, c. 18, s. 5 (5).

College supervisor

5.0.1 (1) The Lieutenant Governor in Council may appoint a person as a College supervisor, on the recommendation of the Minister, where the Minister considers it appropriate or necessary and where, in the Minister's opinion, a Council has not complied with a requirement under subsection 5 (1). 2009, c. 26, s. 24 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted: (See: 2014, c. 14, Sched. 2, ss. 9, 13)

College supervisor

1. (1) The Lieutenant Governor in Council may appoint a person as a College supervisor, on the recommendation of the Minister, where the Minister considers it appropriate or necessary. 2014, c. 14, Sched. 2, s. 9.

Factors to be considered

(2) In deciding whether to make a recommendation under subsection (1), the Minister may consider any matter he or she considers relevant, including, without limiting the generality of the foregoing,

(a) the quality of the administration and management, including financial management, of the College;

(b) the administration of this Act or the health profession Act as they relate to the health profession; and

(c) the performance of other duties and powers imposed on the College, the Council, the committees of the College, or persons employed, retained or appointed to administer this Act, the health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*. 2009, c. 26, s. 24 (2).

Notice

(3) At least 30 days before recommending to the Lieutenant Governor in Council that a College supervisor be appointed, the Minister shall give the College a notice of his or her intention to make the recommendation and in the notice advise the College that it may make written submissions to the Minister. 2009, c. 26, s. 24 (2).

Review of submissions

(4) The Minister shall review any submissions made by the College and if the Minister makes a recommendation to the Lieutenant Governor in Council to appoint a College supervisor, the Minister shall provide the College's submissions, if any, to the Lieutenant Governor in Council. 2009, c. 26, s. 24 (2).

Term of office

(5) The appointment of a College supervisor is valid until terminated by order of the Lieutenant Governor in Council. 2009, c. 26, s. 24 (2).

Powers of College supervisor

(6) Unless the appointment provides otherwise, a College supervisor has the exclusive right to exercise all the powers of a Council and every person employed, retained or appointed for the purposes of the administration of this Act, a health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*. 2009, c. 26, s. 24 (2).

Same

(7) The Lieutenant Governor in Council may specify the powers and duties of a College supervisor appointed under this section and the terms and conditions governing those powers and duties. 2009, c. 26, s. 24 (2).

Additional powers of College supervisor

(8) If, under the order of the Lieutenant Governor in Council, the Council continues to have the right to act respecting any matters, any such act of Council is valid only if approved in writing by the College supervisor. 2009, c. 26, s. 24 (2).

Right of access

(9) A College supervisor has the same rights as a Council and the Registrar in respect of the documents, records and information of the College. 2009, c. 26, s. 24 (2).

Report to Minister

(10) A College supervisor shall report to the Minister as required by the Minister. 2009, c. 26, s. 24 (2).

Minister's directions

(11) The Minister may issue one or more directions to a College supervisor regarding any matter within the jurisdiction of the supervisor, or amend a direction. 2009, c. 26, s. 24 (2).

Directions to be followed

(12) A College supervisor shall carry out every direction of the Minister. 2009, c. 26, s. 24 (2).

Fair Access to Regulated Professions Act, 2006 not applicable

5.1 The *Fair Access to Regulated Professions Act, 2006* does not apply to any College. 2006, c. 31, s. 35 (1).

Ontario Labour Mobility Act, 2009 not applicable

5.2 The *Ontario Labour Mobility Act, 2009*, except sections 21 to 24, does not apply to any College. 2009, c. 24, s. 33 (1).

Reports**Annual report**

6. (1) Each College and the Advisory Council shall report annually to the Minister on its activities and financial affairs. 1998, c. 18, Sched. G, s. 2 (1).

(2) Repealed: 2007, c. 10, Sched. M, s. 2 (1).

Audited financial statement

(3) Each College's annual report shall include an audited financial statement. 1998, c. 18, Sched. G, s. 2 (2).

Content and form

(4) The Minister may specify the content and form of the annual reports submitted by the College and the Advisory Council and, where the Minister has done so, the annual reports shall contain that content and be in that form. 2007, c. 10, Sched. M, s. 2 (2).

Minister may publish information

(5) The Minister may, in every year, publish information from the annual reports of the Colleges. 2007, c. 10, Sched. M, s. 2 (2).

No personal information

(6) Information from the annual reports published by the Minister shall not include any personal information. 2007, c. 10, Sched. M, s. 2 (2).

Additional audits

(7) The College and the Advisory Council shall be subject, at any time, to any other audits relating to any aspect of its affairs as the Minister may determine to be appropriate, conducted by an auditor appointed by or acceptable to the Minister. 2009, c. 26, s. 24 (3).

Auditor to submit results

(8) The auditor shall submit the results of any audit performed under subsection (7) to the Minister and the College. 2009, c. 26, s. 24 (3).

Advisory Council

7. (1) The Advisory Council is established under the name Health Professions Regulatory Advisory Council in English and Conseil consultatif de réglementation des professions de la santé in French.

Composition

(2) The Advisory Council shall be composed of at least five and no more than seven persons who shall be appointed by the Lieutenant Governor in Council on the Minister's recommendation.

Chair and vice-chair

(3) The Lieutenant Governor in Council shall designate one member of the Advisory Council to be the chair and one to be the vice-chair. 1991, c. 18, s. 7.

Qualification of members

8. A person may not be appointed as a member of the Advisory Council if the person,

(a) is employed under Part III of the *Public Service of Ontario Act, 2006* or by a Crown agency as defined in the *Crown Agency Act*; or

(b) is or has been a member of a Council or College. 1991, c. 18, s. 8; 2006, c. 35, Sched. C, s. 116 (1).

Terms of members

9. (1) Members of the Advisory Council shall be appointed for terms of two years. 1991, c. 18, s. 9 (1).

Replacement members

(2) A person appointed to replace a member of the Advisory Council before the member's term expires shall hold office for the remainder of the term. 1991, c. 18, s. 9 (2).

Reappointments

(3) Members of the Advisory Council are eligible for reappointment. 1991, c. 18, s. 9 (3).

(4) Repealed: 2007, c. 10, Sched. M, s. 3.

Remuneration and expenses

10. The members of the Advisory Council shall be paid the remuneration and expenses the Lieutenant Governor in Council determines. 1991, c. 18, s. 10.

Duties of the Advisory Council

11. (1) The Advisory Council's duties are to advise the Minister and no other person on any issue from the matters described in clauses (2) (a) to (f), but only if the Minister decides to refer the issue to the Advisory Council in writing, seeking its advice, and in no other circumstances. 2009, c. 26, s. 24 (4).

Matters that may be referred

- (2) The matters that the Minister may refer to the Advisory Council are,
- (a) whether unregulated professions should be regulated;
 - (b) whether regulated professions should no longer be regulated;
 - (c) suggested amendments to this Act, a health profession Act or a regulation under any of those Acts and suggested regulations under any of those Acts;
 - (d) matters concerning the quality assurance programs undertaken by Colleges;
 - (e) each College's patient relations program and its effectiveness; and
 - (f) any matter the Minister considers desirable to refer to the Advisory Council relating to the regulation of the health professions. 2009, c. 26, s. 24 (4).

Referrals to the Advisory Council

12. (1) The Minister may refer any issue within the matters described in clauses 11 (2) (a) to (e) to the Advisory Council that a Council or person asks the Minister to refer, and the Minister may refer any other issue to the Advisory Council that the Minister determines is appropriate. 2009, c. 26, s. 24 (5).

Advice for Minister only

(2) Unless the Minister or this Act provides otherwise, the Advisory Council shall provide its advice to the Minister and no other person, and shall not provide advice on any issue other than the issue referred to it by the Minister. 2009, c. 26, s. 24 (5).

Form and manner

(3) If the Minister refers an issue to the Advisory Council for advice, the Advisory Council shall provide its advice to the Minister only in the form and manner specified by the Minister. 2009, c. 26, s. 24 (5).

Notice of amendments to Councils

13. (1) If the Minister refers a suggested amendment to this Act, a health profession Act or a regulation under any of those Acts or a suggested regulation under any of those Acts to the Advisory Council, the Minister shall give notice of the suggestion to the Council of every College within ten days after referring it.

Submissions to Advisory Council

(2) A Council may make written submissions to the Advisory Council with respect to a suggestion within forty-five days after receiving the Minister's notice of the suggestion or within any longer period the Advisory Council may specify. 1991, c. 18, s. 13.

Function is advisory only

14. The function of the Advisory Council is advisory only and no failure to refer a matter or to comply with any other requirement relating to a referral renders anything invalid. 1991, c. 18, s. 14.

Procedure

15. (1) The Advisory Council shall sit in Ontario where and when the chair designates.

Idem

(2) The Advisory Council shall conduct its proceedings in the manner it considers appropriate. 1991, c. 18, s. 15.

Employees

16. (1) Such employees as are considered necessary for the proper conduct of the affairs of the Advisory Council may be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 35, Sched. C, s. 116 (2).

Experts

(2) The Advisory Council may engage experts or professional advisors to assist it. 1991, c. 18, s. 16 (2).

Secretary

17. (1) The Advisory Council shall appoint one of its employees as the Secretary.

Duties

(2) The Secretary's duties are,

(a) to keep a record of matters that the Minister has referred to the Advisory Council;

(b) to have the custody and care of the records and documents of the Advisory Council;

(c) to give written notice of suggested amendments to this Act, a health profession Act or a regulation under any of those Acts and suggested regulations under any of those Acts that have been referred to the Advisory Council to persons who have filed, with the Secretary, a request to be notified; and

(d) to carry out the functions and duties assigned by the Minister or the Advisory Council.
1991, c. 18, s. 17.

Health Professions Board

18.-23. Repealed: 1998, c. 18, Sched. G, s. 3.

Investigations and expert advice

24. (1) Repealed: 1998, c. 18, Sched. G, s. 4.

Investigators

(2) The Board may engage persons who are not public servants employed under Part III of the *Public Service of Ontario Act, 2006* to carry out investigations under paragraph 3 of subsection 28 (5) of the Code. 2006, c. 35, Sched. C, s. 116 (3); 2007, c. 10, Sched. M, s. 4 (1).

Experts

(3) The Board may engage persons who are not public servants employed under Part III of the *Public Service of Ontario Act, 2006* to provide expert or professional advice in connection with a registration hearing, complaint review or registration review. 2006, c. 35, Sched. C, s. 116 (3).

Independence of experts

(4) A person engaged under subsection (3) shall be independent of the parties, and, in the case of a complaint review, of the Inquiries, Complaints and Reports Committee. 2007, c. 10, Sched. M, s. 4 (2).

Advice disclosed

(5) The nature of any advice, including legal advice, given by a person engaged under subsection (3) shall be made known to the parties and they may make submissions with respect to the advice. 1991, c. 18, s. 24 (5).

25. Repealed: 1998, c. 18, Sched. G, s. 5.

26. Repealed: 2007, c. 10, Sched. M, s. 5.

Prohibitions**Controlled acts restricted**

27. (1) No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,

(a) the person is a member authorized by a health profession Act to perform the controlled act;
or

(b) the performance of the controlled act has been delegated to the person by a member described in clause (a). 1991, c. 18, s. 27 (1); 1998, c. 18, Sched. G, s. 6.

Controlled acts

(2) A “controlled act” is any one of the following done with respect to an individual:

1. Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis.

2. Performing a procedure on tissue below the dermis, below the surface of a mucous membrane, in or below the surface of the cornea, or in or below the surfaces of the teeth, including the scaling of teeth.

3. Setting or casting a fracture of a bone or a dislocation of a joint.

4. Moving the joints of the spine beyond the individual’s usual physiological range of motion using a fast, low amplitude thrust.

5. Administering a substance by injection or inhalation.

6. Putting an instrument, hand or finger,

i. beyond the external ear canal,

- ii. beyond the point in the nasal passages where they normally narrow,
- iii. beyond the larynx,
- iv. beyond the opening of the urethra,
- v. beyond the labia majora,
- vi. beyond the anal verge, or
- vii. into an artificial opening into the body.

7. Applying or ordering the application of a form of energy prescribed by the regulations under this Act.

8. Prescribing, dispensing, selling or compounding a drug as defined in the *Drug and Pharmacies Regulation Act*, or supervising the part of a pharmacy where such drugs are kept.

9. Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers.

10. Prescribing a hearing aid for a hearing impaired person.

11. Fitting or dispensing a dental prosthesis, orthodontic or periodontal appliance or a device used inside the mouth to protect teeth from abnormal functioning.

12. Managing labour or conducting the delivery of a baby.

13. Allergy challenge testing of a kind in which a positive result of the test is a significant allergic response. 1991, c. 18, s. 27 (2); 2007, c. 10, Sched. L, s. 32.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by the Statutes of Ontario, 2007, chapter 10, Schedule R, subsection 19 (1) by adding the following paragraph:

14. Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.

See: 2007, c. 10, Sched. R, ss. 19 (1), 20 (2).

Exemptions

(3) An act by a person is not a contravention of subsection (1) if the person is exempted by the regulations under this Act or if the act is done in the course of an activity exempted by the regulations under this Act. 1991, c. 18, s. 27 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 27 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule R, subsection 19 (2) by adding the following subsection:

Same

(4) Despite subsection (1), a member of the Ontario College of Social Workers and Social Service Workers is authorized to perform the controlled act set out in paragraph 14 of subsection (2), in compliance with the *Social Work and Social Service Work Act, 1998*, its regulations and by-laws. 2007, c. 10, Sched. R, s. 19 (2).

See: 2007, c. 10, Sched. R, ss. 19 (2), 20 (2).

Delegation of controlled act

28. (1) The delegation of a controlled act by a member must be in accordance with any applicable regulations under the health profession Act governing the member's profession.

Idem

(2) The delegation of a controlled act to a member must be in accordance with any applicable regulations under the health profession Act governing the member's profession. 1991, c. 18, s. 28.

Exceptions

29. (1) An act by a person is not a contravention of subsection 27 (1) if it is done in the course of,

(a) rendering first aid or temporary assistance in an emergency;

(b) fulfilling the requirements to become a member of a health profession and the act is within the scope of practice of the profession and is done under the supervision or direction of a member of the profession;

(c) treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment;

(d) treating a member of the person's household and the act is a controlled act set out in paragraph 1, 5 or 6 of subsection 27 (2); or

(e) assisting a person with his or her routine activities of living and the act is a controlled act set out in paragraph 5 or 6 of subsection 27 (2).

Counselling

(2) Subsection 27 (1) does not apply with respect to a communication made in the course of counselling about emotional, social, educational or spiritual matters as long as it is not a communication that a health profession Act authorizes members to make. 1991, c. 18, s. 29.

Treatment, etc., where risk of harm

30. (1) No person, other than a member treating or advising within the scope of practice of his or her profession, shall treat or advise a person with respect to his or her health in circumstances in which it is reasonably foreseeable that serious bodily harm may result from the treatment or advice or from an omission from them. 1991, c. 18, s. 30 (1); 2007, c. 10, Sched. M, s. 6.

Exception

(2) Subsection (1) does not apply with respect to treatment by a person who is acting under the direction of or in collaboration with a member if the treatment is within the scope of practice of the member's profession. 1991, c. 18, s. 30 (2).

Delegation

(3) Subsection (1) does not apply with respect to an act by a person if the act is a controlled act that was delegated under section 28 to the person by a member authorized by a health profession Act to do the controlled act. 1991, c. 18, s. 30 (3).

Counselling

(4) Subsection (1) does not apply with respect to counselling about emotional, social, educational or spiritual matters. 1991, c. 18, s. 30 (4).

Exceptions

(5) Subsection (1) does not apply with respect to anything done by a person in the course of,

(a) rendering first aid or temporary assistance in an emergency;

(b) fulfilling the requirements to become a member of a health profession if the person is acting within the scope of practice of the profession under the supervision or direction of a member of the profession;

(c) treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment;

(d) treating a member of the person's household; or

(e) assisting a person with his or her routine activities of living. 1991, c. 18, s. 30 (5).

Exemption

(6) Subsection (1) does not apply with respect to an activity or person that is exempted by the regulations. 1991, c. 18, s. 30 (6).

Dispensing hearing aids

31. No person shall dispense a hearing aid for a hearing impaired person except under a prescription by a member authorized by a health profession Act to prescribe a hearing aid for a hearing impaired person. 1991, c. 18, s. 31.

Dental devices, etc.

32. (1) No person shall design, construct, repair or alter a dental prosthetic, restorative or orthodontic device unless,

(a) the technical aspects of the design, construction, repair or alteration are supervised by a member of the College of Dental Technologists of Ontario or the Royal College of Dental Surgeons of Ontario; or

(b) the person is a member of a College mentioned in clause (a).

Employers

(2) A person who employs a person to design, construct, repair or alter a dental prosthetic, restorative or orthodontic device shall ensure that subsection (1) is complied with.

Supervisors

(3) No person shall supervise the technical aspects of the design, construction, repair or alteration of a dental prosthetic, restorative or orthodontic device unless he or she is a member of the College of Dental Technologists of Ontario or the Royal College of Dental Surgeons of Ontario.

Denturists

(4) This section does not apply with respect to the design, construction, repair or alteration of removable dentures for the patients of a member of the College of Denturists of Ontario if the member does the designing, construction, repair or alteration or supervises their technical aspects.

Exceptions

(5) This section does not apply with respect to anything done in a hospital as defined in the *Public Hospitals Act* or in a clinic associated with a university's faculty of dentistry or the denturism program of a college of applied arts and technology. 1991, c. 18, s. 32.

Restriction of title "doctor"

33. (1) Except as allowed in the regulations under this Act, no person shall use the title "doctor", a variation or abbreviation or an equivalent in another language in the course of providing or offering to provide, in Ontario, health care to individuals. 1991, c. 18, s. 33 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 33 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule P, subsection 20 (1) by adding the following subsections:

Same

(1.1) Subsection (1) does not apply to a person who is a member of the College of Naturopaths of Ontario. 2007, c. 10, Sched. P, s. 20 (1).

Naturopathic doctor

(1.2) A member referred to in subsection (1.1) shall not use the title "doctor" in written format without using the phrase, "naturopathic doctor", immediately following his or her name. 2007, c. 10, Sched. P, s. 20 (1).

See: 2007, c. 10, Sched. P, ss. 20 (1), 21 (2).

Idem

(2) Subsection (1) does not apply to a person who is a member of,

(a) the College of Chiropractors of Ontario;

(b) the College of Optometrists of Ontario;

(c) the College of Physicians and Surgeons of Ontario;

(d) the College of Psychologists of Ontario; or

(e) the Royal College of Dental Surgeons of Ontario. 1991, c. 18, s. 33 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 33 is amended by the Statutes of Ontario, 2006, chapter 27, subsection 18 (1) by adding the following subsection:

Same

(2.1) Subsection (1) does not apply to a person who is a member of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario and who holds a certificate of registration that entitles the member to use the title “doctor”. 2006, c. 27, s. 18 (1).

See: 2006, c. 27, ss. 18 (1), 20 (2).

Definition

(3) In this section,

“abbreviation” includes an abbreviation of a variation. 1991, c. 18, s. 33 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Psychotherapist title

33.1 (1) Despite section 8 of the *Psychotherapy Act, 2007*, a person who holds a certificate of registration authorizing him or her to perform the controlled act of psychotherapy and is a member of one of the following Colleges may use the title “psychotherapist” if he or she complies with the conditions in subsections (2), (3) and (4):

1. The College of Nurses of Ontario.
2. The College of Occupational Therapists of Ontario.
3. The College of Physicians and Surgeons of Ontario.
4. The College of Psychologists of Ontario. 2009, c. 26, s. 24 (6).

Oral identification

(2) A person mentioned in subsection (1) shall not describe himself or herself orally as a “psychotherapist” to any person unless the member also mentions the full name of the College where he or she is a member and identifies himself or herself as a member of that College or identifies himself or herself using the title restricted to those who are members of the health profession to which the member belongs. 2009, c. 26, s. 24 (6).

Written identification

(3) A person mentioned in subsection (1) shall not use the title “psychotherapist” in writing in a way that identifies the member as a psychotherapist on a name tag, business card or any document, unless the member sets out his or her full name in writing, immediately followed by at least one of the following, followed in turn by “psychotherapist”:

1. The full name of the College where he or she is a member.
2. The name of the health profession that the member practises.
3. The restricted title that the member may use under the health profession Act governing the member's profession. 2009, c. 26, s. 24 (6).

In accordance with regulations

(4) A person mentioned in subsection (1) shall use the title "psychotherapist" in accordance with the regulations made under subsection (5). 2009, c. 26, s. 24 (6).

Regulations

(5) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council of a College mentioned in paragraphs 1 to 4 of subsection (1) may make regulations governing the use of title "psychotherapist" by members of the College. 2009, c. 26, s. 24 (6).

See: 2009, c. 26, ss. 24 (6), 27 (2).

Holding out as a College

34. (1) No corporation shall falsely hold itself out as a body that regulates, under statutory authority, individuals who provide health care.

Idem

(2) No individual shall hold himself or herself out as a member, employee or agent of a body that the individual falsely represents as or knows is falsely represented as regulating, under statutory authority, individuals who provide health care. 1991, c. 18, s. 34.

Holding out as a health profession corporation

34.1 (1) No corporation shall hold itself out as a health profession corporation unless it holds a valid certificate of authorization. 2000, c. 42, Sched., s. 30.

Same

(2) No person shall hold himself or herself out as a shareholder, officer, director, agent or employee of a health profession corporation unless the corporation holds a valid certificate of authorization. 2000, c. 42, Sched., s. 30.

Miscellaneous

Exemption, aboriginal healers and midwives

35. (1) This Act does not apply to,

(a) aboriginal healers providing traditional healing services to aboriginal persons or members of an aboriginal community; or

(b) aboriginal midwives providing traditional midwifery services to aboriginal persons or members of an aboriginal community.

Jurisdictions of Colleges

(2) Despite subsection (1), an aboriginal healer or aboriginal midwife who is a member of a College is subject to the jurisdiction of the College.

Definitions

(3) In this section,

“aboriginal healer” means an aboriginal person who provides traditional healing services; (“guérisseur autochtone”)

“aboriginal midwife” means an aboriginal person who provides traditional midwifery services. (“sage-femme autochtone”) 1991, c. 18, s. 35.

Confidentiality

36. (1) Every person employed, retained or appointed for the purposes of the administration of this Act, a health profession Act or the *Drug and Pharmacies Regulation Act* and every member of a Council or committee of a College shall keep confidential all information that comes to his or her knowledge in the course of his or her duties and shall not communicate any information to any other person except,

(a) to the extent that the information is available to the public under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*;

(b) in connection with the administration of this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*, including, without limiting the generality of this, in connection with anything relating to the registration of members, complaints about members, allegations of members’ incapacity, incompetence or acts of professional misconduct or the governing of the profession;

(c) to a body that governs a profession inside or outside of Ontario;

(d) as may be required for the administration of the *Drug Interchangeability and Dispensing Fee Act*, the *Healing Arts Radiation Protection Act*, the *Health Insurance Act*, the *Independent Health Facilities Act*, the *Laboratory and Specimen Collection Centre Licensing Act*, the *Ontario Drug Benefit Act*, the *Coroners Act*, the *Controlled Drugs and Substances Act* (Canada) and the *Food and Drugs Act* (Canada);

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (d) is repealed and the following substituted: (See: 2014, c. 14, Sched. 2, ss. 10, 13)

(d) as may be required for the administration of the *Drug Interchangeability and Dispensing Fee Act*, the *Healing Arts Radiation Protection Act*, the *Health Insurance Act*, the *Health Protection and Promotion Act*, the *Independent Health Facilities Act*, the *Laboratory and Specimen Collection Centre Licensing Act*, the *Ontario Drug Benefit Act*, the *Coroners Act*, the *Controlled Drugs and Substances Act* (Canada) and the *Food and Drugs Act* (Canada);

(d.1) for a prescribed purpose, to a public hospital that employs or provides privileges to a member of a College, where the College is investigating a complaint about that member or where the information was obtained by an investigator appointed pursuant to subsection 75 (1) or (2) of the Code, subject to the limitations, if any, provided for in regulations made under section 43;

(d.2) for a prescribed purpose, to a person other than a public hospital who belongs to a class provided for in regulations made under section 43, where a College is investigating a complaint about a member of the College or where the information was obtained by an investigator appointed pursuant to subsection 75 (1) or (2) of the Code, subject to the limitations, if any, provided for in the regulations;

(e) to a police officer to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

(f) to the counsel of the person who is required to keep the information confidential under this section;

(g) to confirm whether the College is investigating a member, if there is a compelling public interest in the disclosure of that information;

(h) where disclosure of the information is required by an Act of the Legislature or an Act of Parliament;

(i) if there are reasonable grounds to believe that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons; or

(j) with the written consent of the person to whom the information relates. 2007, c. 10, Sched. M, s. 7 (1).

Reports required under Code

(1.1) Clauses (1) (c) and (d) do not apply with respect to reports required under section 85.1 or 85.2 of the Code. 1993, c. 37, s. 1. 1998, c. 18, Sched. G, s. 7 (2).

Definition

(1.2) In clause (1) (e),

“law enforcement proceeding” means a proceeding in a court or tribunal that could result in a penalty or sanction being imposed. 1998, c. 18, Sched. G, s. 7 (2); 2007, c. 10, Sched. M, s. 7 (2).

Limitation

(1.3) No person or member described in subsection (1) shall disclose, under clause (1) (e), any information with respect to a person other than a member. 1998, c. 18, Sched. G, s. 7 (2); 2007, c. 10, Sched. M, s. 7 (3).

No requirement

(1.4) Nothing in clause (1) (e) shall require a person described in subsection (1) to disclose information to a police officer unless the information is required to be produced under a warrant. 1998, c. 18, Sched. G, s. 7 (2); 2007, c. 10, Sched. M, s. 7 (4).

Confirmation of investigation

(1.5) Information disclosed under clause (1) (g) shall be limited to the fact that an investigation is or is not underway and shall not include any other information. 2007, c. 10, Sched. M, s. 7 (5).

Not compellable

(2) No person or member described in subsection (1) shall be compelled to give testimony in a civil proceeding with regard to matters that come to his or her knowledge in the course of his or her duties. 1991, c. 18, s. 36 (2).

Evidence in civil proceedings

(3) No record of a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*, no report, document or thing prepared for or statement given at such a proceeding and no order or decision made in such a proceeding is admissible in a civil proceeding other than a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act* or a proceeding relating to an order under section 11.1 or 11.2 of the *Ontario Drug Benefit Act*. 1991, c. 18, s. 36 (3); 1996, c. 1, Sched. G, s. 27 (2).

Collection of personal information by College

36.1 (1) At the request of the Minister, a College shall collect information directly from members of the College as is reasonably necessary for the purpose of Ministry health human resources planning. 2007, c. 10, Sched. M, s. 8.

Unique identifiers

(2) A unique identifier shall be assigned by the Minister or a person designated by the Minister for each member of a College from whom information is collected under subsection (1). 2009, c. 26, s. 24 (7).

Form and manner

(2.1) The unique identifier shall be in the form and manner specified by the Minister. 2009, c. 26, s. 24 (7).

Members to provide information

(3) A member of a College who receives a request for information for the purpose of subsection (1) shall provide the information to the College within the time period and in the form and manner specified by the College. 2007, c. 10, Sched. M, s. 8.

Disclosure to Minister

(4) A College shall disclose the information collected under subsection (1) to the Minister within the time period and in the form and manner specified by the Minister. 2007, c. 10, Sched. M, s. 8.

Use by Minister

(5) The Minister may use and disclose the information only for the purpose set out under subsection (1), and shall not use or collect personal information if other information will serve the purpose, and shall not use or collect more personal information than is necessary for the purpose. 2007, c. 10, Sched. M, s. 8.

Reports

(6) The Minister may publish reports and other documents using information provided to him or her by a College under this section for the purpose set out in subsection (1), and for that purpose only, but the Minister shall not include any personal information about a member of a College in such reports or documents. 2007, c. 10, Sched. M, s. 8.

Notice required by s. 39 (2) of FIPPA

(7) If the Minister requires a College to collect personal information from its members under subsection (1), the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* is given by,

- (a) a public notice posted on the Ministry's website; or
- (b) any other public method that may be prescribed. 2007, c. 10, Sched. M, s. 8.

Same

(8) If the Minister publishes a notice referred to under subsection (7), the Minister shall advise the College of the notice and the College shall also publish a notice about the collection on the College's website within 20 days of receiving the advice from the Minister. 2007, c. 10, Sched. M, s. 8.

Definitions

(9) In this section,

“health human resources planning” means ensuring the sufficiency and appropriate distribution of health providers; (“planification des ressources humaines en santé”)

“information” includes personal information; (“renseignements”)

“Ministry” means the Ministry of Health and Long-Term Care. (“ministère”) 2007, c. 10, Sched. M, s. 8.

Onus of proof to show registration

37. (1) A person who is charged with an offence to which registration under a health profession Act would be a defence shall be deemed, in the absence of evidence to the contrary, to have not been registered. 1991, c. 18, s. 37.

Onus of proof to show certificate of authorization

(2) A person who is charged with an offence to which holding a certificate of authorization would be a defence shall be deemed, in the absence of evidence to the contrary, to have not been issued a certificate of authorization. 2000, c. 42, Sched., s. 31; 2007, c. 10, Sched. M, s. 9 (1).

Injunctions

(3) Subsections (1) and (2) apply, with necessary modifications, to a person who is the subject of an application under section 87 of the Code. 2007, c. 10, Sched. M, s. 9 (2).

Immunity

38. No action or other proceeding for damages shall be instituted against the Crown, the Minister, a College supervisor appointed under section 5.0.1 or his or her staff, an employee of the Crown, the Advisory Council, a College, a Council, or a member, officer, employee, agent or appointee of the Advisory Council, a College, a Council, a committee of a Council or a panel of a committee of a Council for an act done in good faith in the performance or intended performance of a duty or in the exercise or the intended exercise of a power under this Act, a health profession Act, the *Drug and Pharmacies Regulation Act* or a regulation or a by-law under those Acts or for any neglect or default in the performance or exercise in good faith of the duty or power. 1991, c. 18, s. 38; 1998, c. 18, Sched. G, s. 8; 2007, c. 10, Sched. M, s. 10; 2009, c. 26, s. 24 (8).

Service

39. (1) A notice or decision to be given to a person under this Act, the *Drug and Pharmacies Regulation Act* or a health profession Act may be given by mail or by fax. 2007, c. 10, Sched. M, s. 11.

When notice or decision given by mail received

(2) If a notice or decision is sent by mail addressed to a person at the person's last known address, there is a rebuttable presumption that it was received by the person on the fifth day after mailing. 2007, c. 10, Sched. M, s. 11.

When notice or decision given by fax received

(3) If a notice or decision is sent by fax to a person at the person's last known fax number, there is a rebuttable presumption that it was received by the person,

(a) on the day it was faxed, if faxed after midnight and before 4 p.m.; or

(b) on the following day, if faxed at any other time. 2007, c. 10, Sched. M, s. 11.

Offences

40. (1) Every person who contravenes subsection 27 (1) or 30 (1) is guilty of an offence and on conviction is liable,

(a) for a first offence, to a fine of not more than \$25,000, or to imprisonment for a term of not more than one year, or both; and

(b) for a second or subsequent offence, to a fine of not more than \$50,000, or to imprisonment for a term of not more than one year, or both. 2007, c. 10, Sched. M, s. 12.

Same

(2) Every individual who contravenes section 31, 32 or 33 or subsection 34 (2), 34.1 (2) or 36 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 12.

Same

(3) Every corporation that contravenes section 31, 32 or 33 or subsection 34 (1), 34.1 (1) or 36 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 12.

Responsibility of employment agencies

41. Every person who procures employment for an individual and who knows that the individual cannot perform the duties of the position without contravening subsection 27 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence, and not more than \$50,000 for a second or subsequent offence. 1991, c. 18, s. 41; 2007, c. 10, Sched. M, s. 13.

Responsibility of employers

42. (1) The employer of a person who contravenes subsection 27 (1) while acting within the scope of his or her employment is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence, and not more than \$50,000 for a second or subsequent offence. 1991, c. 18, s. 42 (1); 2007, c. 10, Sched. M, s. 14 (1).

Responsibility of directors of corporate employers

(2) In addition, if the employer described in subsection (1) is a corporation, every director of the corporation who approved of, permitted or acquiesced in the contravention is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence, and not more than \$50,000 for a second or subsequent offence. 1991, c. 18, s. 42 (2); 2007, c. 10, Sched. M, s. 14 (2).

Exception

(3) Subsection (2) does not apply with respect to a corporation that operates a public hospital within the meaning of the *Public Hospitals Act* or to a corporation to which Part III of the *Corporations Act* applies. 1991, c. 18, s. 42 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out “Part III of the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”. See: 2010, c. 15, ss. 241 (1), 249.

No limitation

42.1 Section 76 of the *Provincial Offences Act* does not apply to a prosecution under this Act, the *Drug and Pharmacies Regulation Act* or a health profession Act. 2007, c. 10, Sched. M, s. 15.

Regulations

43. (1) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations,

- (a) prescribing forms of energy for the purposes of paragraph 7 of subsection 27 (2);
- (b) exempting a person or activity from subsection 27 (1) or 30 (1);
- (c) attaching conditions to an exemption in a regulation made under clause (b);
- (d) allowing the use of the title “doctor”, a variation or abbreviation or an equivalent in another language;
- (e) respecting health profession corporations;
- (f) governing the issue, renewal, suspension, revocation and expiration of certificates of authorization;
- (g) governing the names of health profession corporations;

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following clauses: (See: 2014, c. 14, Sched. 2, ss. 11, 13)

- (g.1) prescribing purposes and providing for limitations for the purposes of clauses 36 (1) (d.1) and (d.2);
- (g.2) providing for classes of persons for the purposes of clause 36 (1) (d.2);
- (h) specifying in greater detail the things that shall be provided by or performed by a College under sections 15 to 22.11 of the Code;
 - (h.1) for the purposes of clause 36.1 (7) (b), prescribing alternative methods of giving the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act*;

Note: Clause (h.1) was enacted as clause (h) in the source law, the Statutes of Ontario, 2007, chapter 10, Schedule M, subsection 16 (1). The clause is renumbered in this consolidation to distinguish it from existing clause (h), enacted by the Statutes of Ontario, 2006, chapter 31, subsection 35 (2).

(h.2) prescribing information as information that is to be posted on a College website for the purposes of section 3.1 of the Code;

Note: Clause (h.2) was enacted as clause (i) in the source law, the Statutes of Ontario, 2007, chapter 10, Schedule M, subsection 16 (2). The clause is renumbered in this consolidation to distinguish it from existing clause (i), enacted by the Statutes of Ontario, 2006, chapter 31, subsection 35 (2).

(i) governing reports and certificates to be provided to the Fairness Commissioner, appointed under the *Fair Access to Regulated Professions Act, 2006*, including their form, their manner of preparation, making them available to the public and requiring a College to provide such reports and certificates;

(j) governing other information to be provided to the Fairness Commissioner and requiring persons to provide that information;

(k) governing audits, including specifying audit standards and the scope of audits;

(l) prescribing a longer period in respect of a College for the purpose of section 22.23 of the Code;

(m) defining, for the purposes of sections 22.3 and 22.15 to 22.23 of the Code, any word or expression that is used in those sections but not defined in this Act. 1991, c. 18, s. 43 (1); 2000, c. 42, Sched., s. 33; 2006, c. 31, s. 35 (2); 2007, c. 10, Sched. M, s. 16; 2009, c. 24, s. 33 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following clause:

(n) prescribing for the purposes of subsection 2 (2) of the Code, the provisions of the *Not-for-Profit Corporations Act, 2010* that apply to a College.

See: 2010, c. 15, ss. 241 (2), 249.

Scope of regulations

(2) A regulation may be general or particular in its application. 1991, c. 18, s. 43 (2).

Definition

(3) In clause (1) (d),

“abbreviation” includes an abbreviation of a variation. 1991, c. 18, s. 43 (3).

Regulations

43.1 Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations governing funding under programs required under section 85.7 of the Code, including regulations,

(a) prescribing the maximum amount or a means of establishing the maximum amount of funding that may be provided for a person in respect of a case of sexual abuse;

(b) prescribing the period of time during which funding may be provided for a person in respect of a case of sexual abuse. 1993, c. 37, s. 3.

Expert committees

43.2 The Lieutenant Governor in Council may make regulations,

(a) establishing one or more expert committees for the purposes of this Act, the Code and health profession Acts;

(b) specifying the functions, duties, powers and membership of an expert committee;

(c) requiring an expert committee to provide reports and information to the Minister and providing for the content of such reports and information;

(d) requiring information to be provided by a College or Council to an expert committee, and governing the content of the information and the form and manner and time within which the information is to be provided to the committee. 2009, c. 26, s. 24 (9).

References to health professionals

44. A reference in an Act or regulation to a person described in Column 1 of the Table shall be deemed to be a reference to a person described opposite in Column 2. 1991, c. 18, s. 44.

45. Omitted (amends or repeals other Acts). 1991, c. 18, s. 45.

46. Omitted (revokes regulations). 1991, c. 18, s. 46.

47., 48. Omitted (amends or repeals other Acts). 1991, c. 18, ss. 47, 48.

49. Omitted (provides for coming into force of provisions of this Act). 1991, c. 18, s. 49.

50. Omitted (enacts short title of this Act). 1991, c. 18, s. 50.

TABLE

	Column 1	Column 2
1.	person registered as a chiropodist under the <i>Chiropody Act</i>	member of the College of Chiropodists of Ontario
2.	person registered as a dental technician under the <i>Dental Technicians Act</i>	member of the College of Dental Technologists of Ontario
3.	person licensed as a denture therapist under the <i>Denture Therapists Act</i>	member of the College of Denturists of Ontario
4.	person registered as a chiropractor under the <i>Drugless Practitioners Act</i>	member of the College of Chiropractors of Ontario
5.	person registered as a masseur under the <i>Drugless Practitioners Act</i>	member of the College of Massage Therapists of Ontario
6.	Repealed. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the <i>Legislation Act, 2006</i> – December 31, 2011.	
7.	person registered as a physiotherapist under the <i>Drugless Practitioners Act</i>	member of the College of Physiotherapists of Ontario
Note: On a day to be named by proclamation of the Lieutenant Governor, the Table is amended by the Statutes of Ontario, 2007, chapter 10, Schedule P, subsection 20 (2) by adding the following item:		
7.1	person registered under the <i>Drugless Practitioners Act</i>	member of the College of Naturopaths of Ontario
See: 2007, c. 10, Sched. P, ss. 20 (2), 21 (2).		

8.	person registered as a dental hygienist under Part II of the <i>Health Disciplines Act</i>	member of the College of Dental Hygienists of Ontario
9.	person licensed under Part II of the <i>Health Disciplines Act</i>	member of the Royal College of Dental Surgeons of Ontario
10.	person licensed under Part III of the <i>Health Disciplines Act</i>	member of the College of Physicians and Surgeons of Ontario
11.	person who is the holder of a certificate issued under Part IV of the <i>Health Disciplines Act</i>	member of the College of Nurses of Ontario
12.	person licensed under Part V of the <i>Health Disciplines Act</i>	member of the College of Optometrists of Ontario
13.	person licensed under Part VI of the <i>Health Disciplines Act</i>	member of the Ontario College of Pharmacists
14.	Person registered under the <i>Ophthalmic Dispensers Act</i>	member of the College of Opticians of Ontario
15.	person registered under the <i>Psychologists Registration Act</i>	member of the College of Psychologists of Ontario
16.	person registered under the <i>Radiological Technicians Act</i>	member of the College of Medical Radiation Technologists of Ontario

1991, c. 18, Table; See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

SCHEDULE 1
SELF GOVERNING HEALTH PROFESSIONS

<i>Health Profession Acts</i>	<i>Health Profession</i>
Audiology and Speech-Language Pathology Act, 1991	Audiology and Speech-Language Pathology
Chiropody Act, 1991	Chiropody
Chiropractic Act, 1991	Chiropractic
Dental Hygiene Act, 1991	Dental Hygiene
Dental Technology Act, 1991	Dental Technology
Dentistry Act, 1991	Dentistry
Denturism Act, 1991	Denturism
Dietetics Act, 1991	Dietetics
Note: On April 1, 2015, the day named by proclamation of the Lieutenant Governor, Schedule 1 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule Q, section 14 by adding the following:	
Homeopathy Act, 2007	Homeopathy
See: 2007, c. 10, Sched. Q, ss. 14, 15 (2).	
Kinesiology Act, 2007	Kinesiology
Massage Therapy Act, 1991	Massage Therapy
Medical Laboratory Technology Act, 1991	Medical Laboratory Technology
Medical Radiation Technology Act, 1991	Medical Radiation Technology
Medicine Act, 1991	Medicine
Midwifery Act, 1991	Midwifery
Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 1 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule P, subsection 20 (3) by adding the following:	
Naturopathy Act, 2007	Naturopathy

See: 2007, c. 10, Sched. P, ss. 20 (3), 21 (2).	
Nursing Act, 1991	Nursing
Occupational Therapy Act, 1991	Occupational Therapy
Opticianry Act, 1991	Opticianry
Optometry Act, 1991	Optometry
Pharmacy Act, 1991	Pharmacy
Physiotherapy Act, 1991	Physiotherapy
Psychology Act, 1991	Psychology
Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 1 is amended by the Statutes of Ontario, 2007, chapter 10, Schedule R, subsection 19 (3) by adding the following:	
Psychotherapy Act, 2007	Psychotherapy
2. See: 2007, c. 10, Sched. R, ss. 19 (3), 20 (2).	
Respiratory Therapy Act, 1991	Respiratory Therapy
Traditional Chinese Medicine Act, 2006	Traditional Chinese Medicine

1991, c. 18, Sched. 1; 1998, c. 18, Sched. G, s. 9; 2006, c. 27, s. 18 (2); 2007, c. 10, Sched. O, s. 14.

SCHEDULE 2
HEALTH PROFESSIONS PROCEDURAL CODE

Note: This Code is deemed by section 4 of the *Regulated Health Professions Act, 1991* to be part of each health profession Act.

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Interpretation

1. (1) In this Code,

“alternative dispute resolution process” means mediation, conciliation, negotiation, or any other means of facilitating the resolution of issues in dispute; (“processus de règlement extrajudiciaire des différends”)

“Board” means the Health Professions Appeal and Review Board under the *Ministry of Health and Long-Term Care Appeal and Review Boards Act, 1998*; (“Commission”)

“by-laws” means by-laws made by the Council; (“règlements administratifs”)

“certificate of authorization” means a certificate of authorization issued under the *Regulated Health Professions Act, 1991* or this Code; (“certificat d’autorisation”)

“certificate of registration” means a certificate of registration issued by the Registrar; (“certificat d’inscription”)

“Council” means the Council of the College; (“conseil”)

“drug” means drug as defined in subsection 117(1) of the *Drug and Pharmacies Regulation Act*; (“médicament”)

“health profession corporation” means a corporation incorporated under the *Business Corporations Act* that holds a valid certificate of authorization issued under the *Regulated Health Professions Act, 1991* or this Code; (“société professionnelle de la santé”)

“incapacitated” means, in relation to a member, that the member is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the member’s certificate of registration be subject to terms, conditions or limitations, or that the member no longer be permitted to practise; (“frappé d’incapacité”)

“member” means a member of the College; (“membre”)

“Minister” means the Minister of Health and Long-Term Care; (“ministre”)

“patient relations program” means a program to enhance relations between members and patients; (“programme de relations avec les patients”)

“prescribed” means prescribed in the regulations; (“prescrit”)

“quality assurance program” means a program to assure the quality of the practice of the profession and to promote continuing evaluation, competence and improvement among the members; (“programme d’assurance de la qualité”)

“Registrar” means the Registrar of the College; (“registrateur”)

“registration” means the issuance of a certificate of registration. (“inscription”) 1991, c. 18, Sched. 2, s. 1 (1); 1998, c. 18, Sched. G, s. 10; 2000, c. 42, Sched., s. 34; 2006, c. 19, Sched. L, s. 11 (2); 2007, c. 10, Sched. M, s. 17; 2009, c. 26, s. 24 (10).

Hearing not required unless referred to

(2) Nothing in the Health Profession Act or this Code shall be construed to require a hearing to be held within the meaning of the *Statutory Powers Procedure Act* unless the holding of a hearing is specifically referred to. 1991, c. 18, Sched. 2, s. 1 (2).

Sexual abuse of a patient

(3) In this Code,

“sexual abuse” of a patient by a member means,

- (a) sexual intercourse or other forms of physical sexual relations between the member and the patient,
- (b) touching, of a sexual nature, of the patient by the member, or
- (c) behaviour or remarks of a sexual nature by the member towards the patient. 1993, c. 37, s. 4.

Exception

(4) For the purposes of subsection (3),

“sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided. 1993, c. 37, s. 4.

Exception, spouses

(5) If the Council has made a regulation under clause 95 (1) (0.a), conduct, behaviour or remarks that would otherwise constitute sexual abuse of a patient by a member under the definition of “sexual abuse” in subsection (3) do not constitute sexual abuse if,

- (a) the patient is the member’s spouse; and

(b) the member is not engaged in the practice of the profession at the time the conduct, behaviour or remark occurs. 2013, c. 9, s. 1 (1).

Definition

(6) For the purposes of subsection (5),

“spouse”, in relation to a member, means,

(a) a person who is the member’s spouse as defined in section 1 of the *Family Law Act*, or

(b) a person who has lived with the member in a conjugal relationship outside of marriage continuously for a period of not less than three years. 2013, c. 9, s. 1 (1).

Statement of purpose, sexual abuse provisions

1.1 The purpose of the provisions of this Code with respect to sexual abuse of patients by members is to encourage the reporting of such abuse, to provide funding for therapy and counselling for patients who have been sexually abused by members and, ultimately, to eradicate the sexual abuse of patients by members. 1993, c. 37, s. 5.

College

College is body corporate

2. (1) The College is a body corporate without share capital with all the powers of a natural person. 1991, c. 18, Sched. 2, s. 2 (1).

Corporations Act

(2) The *Corporations Act* does not apply in respect to the College. 1991, c. 18, Sched. 2, s. 2 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Not-for-Profit Corporations Act, 2010

(2) The *Not-for-Profit Corporations Act, 2010* does not apply to the College, except as may be prescribed by regulation made under clause 43 (1) (n) of the *Regulated Health Professions Act, 1991*. 2010, c. 15, s. 241 (3).

See: 2010, c. 15, ss. 241 (3), 249.

Duty of College

2.1 It is the duty of the College to work in consultation with the Minister to ensure, as a matter of public interest, that the people of Ontario have access to adequate numbers of qualified, skilled and competent regulated health professionals. 2008, c. 18, s. 1.

Objects of College

3. (1) The College has the following objects:

1. To regulate the practice of the profession and to govern the members in accordance with the health profession Act, this Code and the *Regulated Health Professions Act, 1991* and the regulations and by-laws.
2. To develop, establish and maintain standards of qualification for persons to be issued certificates of registration.
3. To develop, establish and maintain programs and standards of practice to assure the quality of the practice of the profession.
4. To develop, establish and maintain standards of knowledge and skill and programs to promote continuing evaluation, competence and improvement among the members.
 - 4.1 To develop, in collaboration and consultation with other Colleges, standards of knowledge, skill and judgment relating to the performance of controlled acts common among health professions to enhance interprofessional collaboration, while respecting the unique character of individual health professions and their members.
5. To develop, establish and maintain standards of professional ethics for the members.
6. To develop, establish and maintain programs to assist individuals to exercise their rights under this Code and the *Regulated Health Professions Act, 1991*.
7. To administer the health profession Act, this Code and the *Regulated Health Professions Act, 1991* as it relates to the profession and to perform the other duties and exercise the other powers that are imposed or conferred on the College.
8. To promote and enhance relations between the College and its members, other health profession colleges, key stakeholders, and the public.
9. To promote inter-professional collaboration with other health profession colleges.
10. To develop, establish, and maintain standards and programs to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues.

11. Any other objects relating to human health care that the Council considers desirable. 1991, c. 18, Sched. 2, s. 3 (1); 2007, c. 10, Sched. M, s. 18; 2009, c. 26, s. 24 (11).

Duty

(2) In carrying out its objects, the College has a duty to serve and protect the public interest. 1991, c. 18, Sched. 2, s. 3 (2).

College website

3.1 (1) The College shall have a website, and shall include on its website information as may be prescribed in regulations made under clause 43 (1) (h.2) of the *Regulated Health Professions Act, 1991*. 2007, c. 10, Sched. M, s. 19.

Paper or electronic form

(2) Upon request and, if required by the College, the payment of a reasonable fee, the College shall provide the information required to be posted under subsection (1) in paper or electronic form. 2007, c. 10, Sched. M, s. 19.

Council

4. The College shall have a Council that shall be its board of directors and that shall manage and administer its affairs. 1991, c. 18, Sched. 2, s. 4.

Terms

5. (1) No term of a Council member who is elected shall exceed three years.

Multiple terms

(2) A person may be a Council member for more than one term but no person who is elected may be a Council member for more than nine consecutive years. 1991, c. 18, Sched. 2, s. 5.

Quorum

6. A majority of the members of the Council constitute a quorum. 1991, c. 18, Sched. 2, s. 6.

Meetings

7. (1) The meetings of the Council shall be open to the public and reasonable notice shall be given to the members of the College, to the Minister, and to the public. 2007, c. 10, Sched. M, s. 20 (1).

Exclusion of public

(2) Despite subsection (1), the Council may exclude the public from any meeting or part of a meeting if it is satisfied that,

(a) matters involving public security may be disclosed;

(b) financial or personal or other matters may be disclosed of such a nature that the harm created by the disclosure would outweigh the desirability of adhering to the principle that meetings be open to the public;

(c) a person involved in a criminal proceeding or civil suit or proceeding may be prejudiced;

(d) personnel matters or property acquisitions will be discussed;

(e) instructions will be given to or opinions received from the solicitors for the College; or

(f) the Council will deliberate whether to exclude the public from a meeting or whether to make an order under subsection (3). 1991, c. 18, Sched. 2, s. 7 (2); 2007, c. 10, Sched. M, s. 20 (2).

Orders preventing public disclosure

(3) In situations in which the Council may exclude the public from meetings, it may make orders it considers necessary to prevent the public disclosure of matters disclosed in the meeting, including banning publication or broadcasting of those matters. 1991, c. 18, Sched. 2, s. 7 (3).

Grounds noted in minutes

(4) If the Council excludes the public from a meeting or makes an order under subsection (3), it shall have its grounds for doing so noted in the minutes of the meeting. 2007, c. 10, Sched. M, s. 20 (3).

Remuneration and expenses

8. Council members appointed by the Lieutenant Governor in Council shall be paid, by the Minister, the expenses and remuneration the Lieutenant Governor in Council determines. 1991, c. 18, Sched. 2, s. 8; 2006, c. 19, Sched. L, s. 10 (1).

Employees

9. (1) The Council may employ persons it considers advisable.

Registrar

(2) The Council shall appoint one of its employees as the Registrar. 1991, c. 18, Sched. 2, s. 9.

Committees

10. (1) The College shall have the following committees:

1. Executive Committee.
2. Registration Committee.
3. Inquiries, Complaints and Reports Committee.
4. Discipline Committee.
5. Fitness to Practise Committee.
6. Quality Assurance Committee.
7. Patient Relations Committee. 1991, c. 18, Sched. 2, s. 10 (1); 2007, c. 10, Sched. M, s. 21 (1).

Transitional

(1.1) For greater certainty, where, at the time subsection 21 (1) of Schedule M to the *Health System Improvements Act, 2007* comes into force, any matter that is before the Board based on anything done by the Committee formerly known as the Complaints Committee shall proceed as if the Board had the authority to do anything it could have done before the coming into force of sections 30 to 32 of that Schedule. 2007, c. 10, Sched. M, s. 21 (2).

Same

(1.2) Where a regulation made under the *Regulated Health Professions Act, 1991* or a health profession Act that was made before the coming into force of subsection 21 (1) of Schedule M to the *Health System Improvements Act, 2007* refers to the Complaints Committee, the reference shall be deemed to be to the Inquiries, Complaints and Reports Committee. 2009, c. 26, s. 24 (12).

Appointment

(2) The Council shall appoint the members of the committees. 1991, c. 18, Sched. 2, s. 10 (2).

Composition

(3) The composition of the committees shall be in accordance with the by-laws. 1991, c. 18, Sched. 2, s. 10 (3); 1998, c. 18, Sched. G, s. 11.

Annual reports

11. (1) Each committee named in subsection 10 (1) shall monitor and evaluate their processes and outcomes and shall annually submit a report of its activities to the Council in a form acceptable to the Council. 2007, c. 10, Sched. M, s. 22.

Exclusions from reports

(2) The Inquiries, Complaints and Reports Committee shall not submit a report that contains information, other than information of a general statistical nature, relating to,

(a) a referral by the Inquiries, Complaints and Reports Committee to the Discipline or Fitness to Practise Committee until a panel of the Discipline or Fitness to Practise Committee disposes of the matter;

(b) an approval for the Registrar to appoint an investigator until the investigation is completed and reported by the Registrar and the Inquiries, Complaints and Reports Committee decides not to make a referral with respect to the matter to the Discipline Committee or, if the Inquiries, Complaints and Reports Committee makes a referral with respect to the matter to the Discipline Committee, until a panel of the Discipline Committee disposes of the matter; or

(c) an interim order made by the Inquiries, Complaints and Reports Committee in respect of a member until a panel of the Discipline Committee disposes of the matter. 2007, c. 10, Sched. M, s. 22.

Executive Committee's exercise of Council's powers

12. (1) Between the meetings of the Council, the Executive Committee has all the powers of the Council with respect to any matter that, in the Committee's opinion, requires immediate attention, other than the power to make, amend or revoke a regulation or by-law.

Report to Council

(2) If the Executive Committee exercises a power of the Council under subsection (1), it shall report on its actions to the Council at the Council's next meeting. 1991, c. 18, Sched. 2, s. 12.

Members

13. (1) A person registered by the College is a member.

Suspended members

(2) A person whose certificate of registration is suspended is not a member. 1991, c. 18, Sched. 2, s. 13.

Note: On a day to be named by proclamation of the Lieutenant Governor, Schedule 2 is amended by adding the following section:

Professional liability insurance

13.1 (1) No member of a College in Ontario shall engage in the practice of the health profession unless he or she is personally insured against professional liability under a professional liability insurance policy or belongs to a specified association that provides the member with personal protection against professional liability. 2009, c. 26, s. 24 (13).

Insurance requirements

(2) A member mentioned in subsection (1) shall comply with the requirements respecting professional liability insurance or protection against professional liability specified by the College and prescribed in the regulations made under the health profession Act governing the member's health profession or set out in the by-laws. 2009, c. 26, s. 24 (13).

Professional misconduct

(3) In addition to the grounds set out in subsection 51 (1), a panel of the Discipline Committee shall find that a member has committed an act of professional misconduct if the member fails to comply with subsection (1) or (2). 2009, c. 26, s. 24 (13).

See: 2009, c. 26, ss. 24 (13), 27 (2).

Continuing jurisdiction

14. (1) A person whose certificate of registration is revoked or expires or who resigns as a member continues to be subject to the jurisdiction of the College for professional misconduct or incompetence referable to the time when the person was a member and may be investigated under section 75. 2007, c. 10, Sched. M, s. 23 (1).

Idem

(2) A person whose certificate of registration is suspended continues to be subject to the jurisdiction of the College for incapacity and for professional misconduct or incompetence referable to the time when the person was a member or to the period of the suspension and may be investigated under section 75. 1991, c. 18, Sched. 2, s. 14 (2); 2007, c. 10, Sched. M, s. 23 (2).

Registration

15. (1) If a person applies to the Registrar for registration, the Registrar shall,

(a) register the applicant; or

(b) refer the application to the Registration Committee. 1991, c. 18, Sched. 2, s. 15 (1).

Referrals to Registration Committee

(2) The Registrar shall refer an application for registration to the Registration Committee if the Registrar,

(a) has doubts, on reasonable grounds, about whether the applicant fulfils the registration requirements;

(a.1) is of the opinion that terms, conditions or limitations should be imposed on a certificate of registration of the applicant and the applicant is an individual described in subsection 22.18 (1);

(b) is of the opinion that terms, conditions or limitations should be imposed on a certificate of registration of the applicant and the applicant does not consent to the imposition; or

(c) proposes to refuse the application. 1991, c. 18, Sched. 2, s. 15 (2); 1993, c. 37, s. 6; 2009, c. 24, s. 33 (3).

Notice to applicant

(3) If the Registrar refers an application to the Registration Committee, he or she shall give the applicant notice of the statutory grounds for the referral and of the applicant's right to make written submissions under subsection 18 (1). 1991, c. 18, Sched. 2, s. 15 (3).

Terms, etc., attached on consent

(4) If the Registrar is of the opinion that a certificate of registration should be issued to an applicant with terms, conditions or limitations imposed and the applicant consents to the imposition, the Registrar may do so with the approval of a panel of the Registration Committee selected by the chair for the purpose. 1991, c. 18, Sched. 2, s. 15 (4).

Panels for consent

(5) Subsections 17 (2) and (3) apply with respect to the panel mentioned in subsection (4). 1991, c. 18, Sched. 2, s. 15 (5).

Disclosure of application file

16. (1) The Registrar shall give an applicant for registration, at his or her request, all the information and a copy of each document the College has that is relevant to the application.

Exception

(2) The Registrar may refuse to give an applicant anything that may, in the Registrar's opinion, jeopardize the safety of any person. 1991, c. 18, Sched. 2, s. 16.

Panels

17. (1) An application for registration referred to the Registration Committee or an application referred back to the Registration Committee by the Board shall be considered by a panel selected by the chair from among the members of the Committee. 1991, c. 18, Sched. 2, s. 17 (1); 2007, c. 10, Sched. M, s. 24 (1).

Composition of panels

(2) A panel shall be composed of at least three persons, at least one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council. 2007, c. 10, Sched. M, s. 24 (2).

Quorum

(3) Three members of a panel constitute a quorum. 1991, c. 18, Sched. 2, s. 17 (3).

Consideration by panel

18. (1) An applicant may make written submissions to the panel within thirty days after receiving notice under subsection 15 (3) or within any longer period the Registrar may specify in the notice.

Orders by panel

(2) After considering the application and the submissions, the panel may make an order doing any one or more of the following:

1. Directing the Registrar to issue a certificate of registration.
2. Directing the Registrar to issue a certificate of registration if the applicant successfully completes examinations set or approved by the panel.
3. Directing the Registrar to issue a certificate of registration if the applicant successfully completes additional training specified by the panel.
4. Directing the Registrar to impose specified terms, conditions and limitations on a certificate of registration of the applicant and specifying a limitation on the applicant's right to apply under subsection 19 (1).
5. Directing the Registrar to refuse to issue a certificate of registration.

Idem

(3) A panel, in making an order under subsection (2), may direct the Registrar to issue a certificate of registration to an applicant who does not meet a registration requirement unless the requirement is prescribed as a non-exemptible requirement.

Order on consent

(4) The panel may, with the consent of the applicant, direct the Registrar to issue a certificate of registration with the terms, conditions and limitations specified by the panel imposed. 1991, c. 18, Sched. 2, s. 18.

Application for variation

19. (1) A member may apply to the Registration Committee for an order directing the Registrar to remove or modify any term, condition or limitation imposed on the member's certificate of registration as a result of a registration proceeding. 1991, c. 18, Sched. 2, s. 19 (1).

Limitations

(2) The right to apply under subsection (1) is subject to any limitation in the order imposing the term, condition or limitation or to which the member consented and to any limitation made under subsection (7) in the disposition of a previous application under this section. 1991, c. 18, Sched. 2, s. 19 (2).

Panels

(3) An application to the Registration Committee under subsection (1) or an application referred back to the Registration Committee by the Board shall be considered by a panel selected by the chair from among the members of the Committee. 1991, c. 18, Sched. 2, s. 19 (3); 2007, c. 10, Sched. M, s. 25 (1).

Idem

(4) Subsections 17 (2) and (3) apply with respect to the panel mentioned in subsection (3). 1991, c. 18, Sched. 2, s. 19 (4).

Submissions

(5) An applicant may make written submissions to the panel. 1991, c. 18, Sched. 2, s. 19 (5).

Orders

(6) After considering the application and the submissions, the panel may make an order doing any one or more of the following:

1. Refusing the application.
2. Directing the Registrar to remove any term, condition or limitation imposed on the certificate of registration.
3. Directing the Registrar to modify terms, conditions or limitations on the certificate of registration. 1991, c. 18, Sched. 2, s. 19 (6); 2007, c. 10, Sched. M, s. 25 (2).

Limitations on applications

(7) When an application has been disposed of under this section, the applicant may not make a new application under subsection (1) within six months of the disposition without leave of the Registrar. 2007, c. 10, Sched. M, s. 25 (3).

Registrar's leave

(8) The Registrar may only give leave for a new application to be made under subsection (7) if the Registrar is satisfied that there has been a material change in circumstances that justifies the giving of the leave. 2007, c. 10, Sched. M, s. 25 (3).

Notice of orders

20. (1) A panel shall give the applicant notice of an order it makes under subsection 18 (2) or 19 (6) and written reasons for it if the order,

(a) directs the Registrar to refuse to issue a certificate of registration;

(b) directs the Registrar to issue a certificate of registration if the applicant successfully completes examinations or additional training;

(c) directs the Registrar to impose terms, conditions and limitations on a certificate of registration of the applicant; or

(d) refuses an application for an order removing or modifying any term, condition or limitation imposed on a certificate of registration. 1991, c. 18, Sched. 2, s. 20 (1).

Contents of notice

(2) A notice under subsection (1) shall inform the applicant of the order and of the provisions of section 19 and of subsections 21 (1) and (2). 1991, c. 18, Sched. 2, s. 20 (2); 2007, c. 10, Sched. M, s. 26.

Appeal to Board

21. (1) An applicant who has been given a notice under subsection 20 (1) of an order may require the Board to hold a review of the application and the documentary evidence in support

of it, or a hearing of the application, by giving the Board and the Registration Committee notice in accordance with subsection (2).

Requirements of notice

(2) A notice under subsection (1) shall be a written notice, given within thirty days after the notice under subsection 20 (1) was given, specifying whether a review or a hearing is required.

Order, etc., to Board

(3) If the Registration Committee receives a notice that an applicant requires a hearing or review, it shall, within fifteen days after receiving the notice, give the Board a copy of the order made with respect to the application, the reasons for it and the documents and things upon which the decision to make the order was based.

When order may be carried out

(4) An order of a panel, notice of which is required under subsection 20 (1), may be carried out only when,

(a) the applicant has given the Registrar notice that the applicant will not be requiring a review or hearing;

(b) thirty-five days have passed since the notice of the order was given under subsection 20 (1) without the applicant requiring a review or hearing; or

(c) the Board has confirmed the order. 1991, c. 18, Sched. 2, s. 21.

Registration hearings or reviews

22. (1) This section applies to a hearing or review by the Board required by an applicant under subsection 21 (1). 1991, c. 18, Sched. 2, s. 22 (1).

Procedural provisions

(2) The following provisions apply with necessary modifications to a hearing or review:

1. Subsection 38 (4) (exclusion from panel).
2. Section 42 (disclosure of evidence).
3. Section 43 (no communication by panel members).
4. Section 50 (members of panel who participate).
5. Section 55 (release of evidence). 1991, c. 18, Sched. 2, s. 22 (2).

Idem

(3) The following provisions also apply with necessary modifications to a hearing:

1. Section 45 (hearings open).
2. Section 47 (sexual misconduct witnesses).
3. Section 48 (transcript of hearings). 1991, c. 18, Sched. 2, s. 22 (3).

Same

(3.1) The following provisions of the *Statutory Powers Procedure Act* also apply with necessary modifications to a review by the Board:

1. Section 21.1 (correction of errors).
2. Section 25.1 (rules). 1998, c. 18, Sched. G, s. 12.

Findings of fact

(4) The findings of fact in a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15, 15.1, 15.2 and 16 of the *Statutory Powers Procedure Act*. 1991, c. 18, Sched. 2, s. 22 (4); 2007, c. 10, Sched. M, s. 27 (1).

Idem

(5) The findings of fact in a review shall be based exclusively on the application and documentary evidence admissible or matters that may be noticed under sections 15, 15.1, 15.2 and 16 of the *Statutory Powers Procedure Act*. 1991, c. 18, Sched. 2, s. 22 (5); 2007, c. 10, Sched. M, s. 27 (2).

Disposal by Board

(6) The Board shall, after the hearing or review, make an order doing any one or more of the following:

1. Confirming the order made by the panel.
2. Requiring the Registration Committee to make an order directing the Registrar to issue a certificate of registration to the applicant if the applicant successfully completes any examinations or training the Registration Committee may specify.
3. Requiring the Registration Committee to make an order directing the Registrar to issue a certificate of registration to the applicant and to impose any terms, conditions and limitations the Board considers appropriate.

4. Referring the matter back to the Registration Committee for further consideration by a panel, together with any reasons and recommendations the Board considers appropriate. 1991, c. 18, Sched. 2, s. 22 (6); 2007, c. 10, Sched. M, s. 27 (3).

Idem

(7) The Board may make an order under paragraph 3 of subsection (6) only if the Board finds that the applicant substantially qualifies for registration and that the panel has exercised its powers improperly. 1991, c. 18, Sched. 2, s. 22 (7).

Limitation on order

(8) The Board, in making an order under subsection (6), shall not require the Registration Committee to direct the Registrar to issue a certificate of registration to an applicant who does not meet a registration requirement that is prescribed as a non-exemptible requirement. 1991, c. 18, Sched. 2, s. 22 (8).

Parties

(9) The College and the applicant are parties to a hearing or review. 1991, c. 18, Sched. 2, s. 22 (9).

Definitions

22.1 In this section and sections 22.2 to 22.14,

“audit” means an audit required under section 22.8; (“vérification”)

“auditor” means an auditor appointed under section 22.8; (“vérificateur”)

“Fairness Commissioner” means the Fairness Commissioner appointed under the *Fair Access to Regulated Professions Act, 2006*; (“commissaire à l’équité”)

“fair registration practices report” means a report required under section 22.7; (“rapport sur les pratiques d’inscription équitables”)

“internationally trained individual” means an individual who has been trained in a country other than Canada to practise a health profession and who has applied for, or who intends to apply for, registration by a College; (“particulier formé à l’étranger”)

“personal information” has the same meaning as in the *Freedom of Information and Protection of Privacy Act*; (“renseignements personnels”)

“record” means a record as defined in the *Freedom of Information and Protection of Privacy Act*; (“document”)

“regulations” means the regulations made under clauses 43 (1) (h) to (k) of the *Regulated Health Professions Act, 1991*. (“règlements”) 2006, c. 31, s. 35 (3).

Fair registration practices: general duty

22.2 The College has a duty to provide registration practices that are transparent, objective, impartial and fair. 2006, c. 31, s. 35 (3).

Information

22.3 The College shall provide information on its website with respect to the requirements for registration, the procedures for applying for registration and the amount of time that the registration process usually takes. 2009, c. 24, s. 33 (4).

Qualifications

22.4 (1) The College shall make information publicly available on what documentation of qualifications must accompany an application and what alternatives may be acceptable to the College if an applicant cannot obtain the required documentation for reasons beyond his or her control. 2006, c. 31, s. 35 (3).

Same

(2) If the College makes its own assessment of qualifications, it shall do so in a way that is transparent, objective, impartial and fair and, if it relies on a third party to assess qualifications, it shall take reasonable measures to ensure that the third party makes the assessment in a way that is transparent, objective, impartial and fair. 2006, c. 31, s. 35 (3).

Same

(3) The College shall ensure that individuals assessing qualifications and making registration decisions or reviewing decisions have received training that includes, where appropriate,

(a) training on how to assess such qualifications and make such decisions;

(b) training in any special considerations that may apply in the assessment of applications and the process for applying those considerations. 2006, c. 31, s. 35 (3).

Functions

22.5 (1) It is the function of the Fairness Commissioner to,

(a) assess the registration practices of a College based on its obligations under this Code and the regulations;

- (b) specify audit standards, the scope of audits, times when fair registration practices reports and auditors' reports shall be filed, the form of all required reports and certificates and the information that they must contain;
- (c) establish eligibility requirements that a person must meet to be qualified to conduct audits;
- (d) establish a roster of persons who in the opinion of the Fairness Commissioner have satisfied the eligibility requirements established under clause (c);
- (e) consult with Colleges on the cost, scope and timing of audits;
- (f) monitor third parties relied on by a College to assess the qualifications of individuals applying for registration by the College to help ensure that assessments are based on the obligations of the College under this Code and the regulations;
- (g) advise a College or third parties relied on by a College to assess qualifications with respect to matters related to registration practices under this Code and the regulations;
- (h) provide advice and recommendations to the Minister, including advice and recommendations that a College do or refrain from doing any action respecting a contravention by a College if the Fairness Commissioner determines that the College has failed to comply with any requirement imposed on it by sections 22.2 to 22.11; and
- (i) perform such other functions as may be assigned by the Lieutenant Governor in Council. 2006, c. 31, s. 35 (3).

Scope

- (2) A matter specified under clause (1) (b) or established under clause (1) (c) or (d) may be general or specific in its application and may be limited as to time and place. 2006, c. 31, s. 35 (3).

Same

- (3) The Fairness Commissioner shall give notice to the College of all matters specified under clause (1) (b) and established under clauses (1) (c) and (d) and the notice may be given in the manner he or she considers appropriate. 2006, c. 31, s. 35 (3).

Review of practices

- 22.6** (1) The College shall undertake reviews of its registration practices at such times as the Fairness Commissioner may specify to ensure that the registration practices are transparent, objective, impartial and fair. 2006, c. 31, s. 35 (3).

Same

(2) The review shall include an analysis of,

(a) the extent to which the requirements for registration are necessary for or relevant to the practice of the profession;

(b) the efficiency and timeliness of decision-making; and

(c) the reasonableness of the fees charged by the College in respect of applications. 2006, c. 31, s. 35 (3).

Reports

(3) The College shall file a copy of the results of the review with the Fairness Commissioner within 30 days after the completion of the review. 2006, c. 31, s. 35 (3).

Fair registration practices reports

22.7 (1) The College shall prepare a fair registration practices report annually or at such other times as the Fairness Commissioner may specify. 2006, c. 31, s. 35 (3).

Same

(2) The College may combine its fair registration practices report with such other report of the College as the Fairness Commissioner may permit and in such case an audit shall be confined to those parts of the report that relate to registration practices. 2006, c. 31, s. 35 (3).

Other reports

(3) The Fairness Commissioner may require that the College provide the Fairness Commissioner with reports or information relating to the College's compliance with sections 15 to 22.11 and the regulations and the College shall prepare and file the reports with, or provide the information to, the Fairness Commissioner. 2006, c. 31, s. 35 (3).

Same

(4) Reports and information required under subsection (3) are in addition to the reports required under subsection (1) and section 22.8. 2006, c. 31, s. 35 (3).

Audits

22.8 (1) Every three years or at such other times as the Fairness Commissioner may specify, the Fairness Commissioner shall give notice to the College that an audit must be conducted in respect of its registration practices and of its compliance with this Code and the regulations. 2006, c. 31, s. 35 (3).

Notice of audit

(2) The Fairness Commissioner shall give the notice required by subsection (1) at least 90 days before the audit is to begin and the notice shall state,

(a) that the College must choose and appoint an auditor from the roster established by the Fairness Commissioner by the date specified in the notice;

(b) that if the College fails to choose and appoint an auditor by the date specified in the notice that the Fairness Commissioner will choose the auditor;

(c) the scope of the audit and the standards that will apply;

(d) the date by which the audit must be completed; and

(e) that the College is responsible for the payment of the auditor's fees and expenses. 2006, c. 31, s. 35 (3).

Choice of auditor

(3) The College shall, by the date specified in the notice, choose and appoint an auditor from the roster established by the Fairness Commissioner and notify the Fairness Commissioner of its choice. 2006, c. 31, s. 35 (3).

Failure to choose

(4) If the College fails to notify the Fairness Commissioner of the name of the auditor it has chosen and appointed by the date specified in the notice, the Fairness Commissioner shall choose the auditor and notify the College of his or her choice and the auditor shall be deemed to have been appointed by the College. 2006, c. 31, s. 35 (3).

Auditor's duties

(5) The auditor chosen and appointed under subsection (3) or (4) shall begin the audit promptly, shall conduct it in accordance with the scope of the audit and the audit standards set out in the notice under subsection (2) and shall complete it by the date set out in the notice. 2006, c. 31, s. 35 (3).

Collection of personal information

(6) An auditor may collect personal information, directly or indirectly, only for the purpose of an audit required under this section, but an auditor shall not retain any personal information after completing the audit and shall not include any personal information in any draft report or final report submitted in accordance with this section. 2006, c. 31, s. 35 (3).

Duty to furnish information

(7) A College shall co-operate with the auditor and shall,

(a) produce such records for, and provide such other information to, the auditor regarding its registration practices and any other matters related to compliance by the College with its obligations under sections 15 to 22.11 and the regulations as are reasonably necessary for the auditor to perform his or her duties under this Code, including any reports required from the College under section 22.6, 22.7 or 22.9 or the regulations; and

(b) provide the auditor with any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a record in readable form. 2006, c. 31, s. 35 (3).

Limitation

(8) Despite subsection (7), a College may refuse access to a record if,

(a) the record or any information in the record is subject to a legal privilege that restricts disclosure of the record or the information; or

(b) an Act of Ontario or of Canada or a court order prohibits disclosure of the record or any information in the record in the circumstances. 2006, c. 31, s. 35 (3).

Draft report

(9) The auditor shall prepare a draft report on the audit and provide a copy of it to the College, together with a notice that the College may, within 30 days, make submissions to the auditor on the draft report. 2006, c. 31, s. 35 (3).

Same

(10) The auditor shall consider the submissions, if any, made by the College and may make any changes the auditor considers appropriate before finalizing the report. 2006, c. 31, s. 35 (3).

Auditor's reports

(11) The auditor shall make a final report on the audit and shall file it with the Fairness Commissioner and provide a copy to the College to which the audit relates. 2006, c. 31, s. 35 (3).

Auditor's certificate

(12) The auditor shall file a certificate with the Fairness Commissioner certifying that the auditor made the audit in accordance with this Act and the regulations and that he or she has provided a copy of the auditor's report to the College. 2006, c. 31, s. 35 (3).

When audit is complete

(13) An audit is complete when the auditor has provided a copy of the final report to the College to which the audit relates and has filed with the Fairness Commissioner the final report and the certificate referred to in subsection (12) and, if the College made submissions to the auditor on the draft report, a copy of the submissions made by the College. 2006, c. 31, s. 35 (3).

Filing with Minister

(14) The Fairness Commissioner shall provide the Minister of Health and Long-Term Care with a copy of all auditors' reports within a reasonable time after receiving them. 2006, c. 31, s. 35 (3).

Auditor's fees and expenses

(15) The College shall pay the auditor's fees and expenses. 2006, c. 31, s. 35 (3).

Filing of reports by College

22.9 (1) The College shall file its fair registration practices reports with the Fairness Commissioner by the dates specified by the Fairness Commissioner. 2006, c. 31, s. 35 (3).

Report available to public

(2) The College shall make reports filed under subsection (1) available to the public. 2006, c. 31, s. 35 (3).

Form of reports

22.10 (1) Reports and certificates required by sections 22.7 and 22.8 and under the regulations shall be in the form and contain the information specified by the Fairness Commissioner or as may be specified in the regulations. 2006, c. 31, s. 35 (3).

Restriction on personal information

(2) Despite subsection (1), no report prepared by the College, the Fairness Commissioner or an auditor under sections 22.6 to 22.8 shall contain personal information. 2006, c. 31, s. 35 (3).

Certification of report

22.11 (1) A fair practices registration report shall include a statement certifying that all the information required to be provided in the report has been provided and that the information is accurate. 2006, c. 31, s. 35 (3).

Signature

(2) A person with authority to sign on behalf of the College shall sign the statement required by subsection (1). 2006, c. 31, s. 35 (3).

Offences

22.12 (1) A person is guilty of an offence who,

(a) furnishes false or misleading information in a fair registration practices report or other report or record filed with the Fairness Commissioner under this Code or otherwise provides false or misleading information to the Fairness Commissioner or to a person employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006*;

(b) obstructs the Fairness Commissioner or a person employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006* in exercising powers or performing duties under this Code;

(c) furnishes false or misleading information to an auditor;

(d) obstructs, fails to co-operate with or assist an auditor; or

(e) contravenes subsection (2). 2006, c. 31, s. 35 (3).

Same, intimidation

(2) No person shall intimidate, coerce, penalize or discriminate against another person because that person,

(a) has co-operated or may co-operate with the Fairness Commissioner, an auditor or a person employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006* in exercising powers or performing duties under this Code; or

(b) has provided, or may provide, records or other information in the course of an audit or other activity or proceeding under this Code in respect of fair registration practices. 2006, c. 31, s. 35 (3).

Penalties

(3) Every person who is guilty of an offence under subsection (1) is liable on conviction,

(a) to a fine of not more than \$50,000; or

(b) if the person is a corporation, to a fine of not more than \$100,000. 2006, c. 31, s. 35 (3); 2009, c. 33, Sched. 18, s. 29 (1).

Consent to prosecution

(4) No prosecution for an offence under subsection (1) shall be instituted except with the consent in writing of the Attorney General. 2006, c. 31, s. 35 (3); 2009, c. 33, Sched. 18, s. 29 (2).

Immunity

22.13 (1) No proceeding shall be commenced against the Fairness Commissioner or anyone employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006* for any act done or omitted in good faith in the execution or intended execution of his or her duties under this Code. 2006, c. 31, s. 35 (3).

Testimony

(2) Neither the Fairness Commissioner nor anyone employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006* is a competent or compellable witness in a civil proceeding outside this Code in connection with anything done under this Code. 2006, c. 31, s. 35 (3).

Limitation on powers

22.14 Neither the Fairness Commissioner nor anyone employed by the Fairness Commissioner or providing services under an agreement referred to in subsection 16 (3) of the *Fair Access to Regulated Professions Act, 2006*,

(a) has power to influence a registration decision by the College or Registration Committee, to provide representation or advice to an applicant or potential applicant for registration in respect of a registration decision or to otherwise involve himself or herself in a registration decision or any review decision on behalf of an applicant or potential applicant for registration;

(b) has status at any proceeding of a College, the Registration Committee, the Board, a court or other tribunal in relation to any matter arising from an application for registration; or

(c) has the power to act as legal counsel or agent for any person in a proceeding described in clause (b) or in preparing for the proceeding. 2006, c. 31, s. 35 (3).

Definitions

22.15 (1) In this section and in sections 22.16 to 22.23,

“Agreement on Internal Trade” means the Agreement on Internal Trade signed in 1994 by the governments of Canada, the provinces of Canada, the Northwest Territories and the Yukon Territory, as amended from time to time; (“Accord sur le commerce intérieur”)

“occupational standards”, in relation to a certificate of registration, means the knowledge, skills and judgment that an individual must possess in order to be issued the certificate of registration, as established by the College, and against which the College measures the qualifications of an applicant for registration when assessing whether the applicant is qualified to practise the profession to the extent permitted by the certificate of registration; (“normes professionnelles”)

“out-of-province certificate” means a certificate, licence, registration, or other form of official recognition that,

(a) attests to an individual being qualified to practise the profession and authorizes the individual to practise the profession, use a title or designation relating to the profession, or both, and

(b) is granted to the individual by a body or individual that is authorized under an Act of Canada or of a province or territory of Canada that is a party to the Agreement on Internal Trade, other than Ontario, to grant such certificate, licence, registration, or other form of official recognition. (“certificat extraprovincial”) 2009, c. 24, s. 33 (5).

Federal Act

(2) For greater certainty, the reference in clause (b) of the definition of “out-of-province certificate” in subsection (1), to an Act of Canada that authorizes a body or individual to grant a certificate, licence, registration, or other form of official recognition, does not include the *Trade-marks Act* (Canada). 2009, c. 24, s. 33 (5).

Purposes

22.16 The purposes of sections 22.15 to 22.23 are,

(a) to eliminate or reduce measures established or implemented by the College that restrict or impair the ability of an individual to obtain a certificate of registration when the individual holds an equivalent out-of-province certificate; and

(b) to support the Government of Ontario in fulfilling its obligations under Chapter Seven of the Agreement on Internal Trade. 2009, c. 24, s. 33 (5).

Ontario residency cannot be required

22.17 The College shall not make it a registration requirement that an applicant reside in Ontario, if the applicant resides in another province or territory of Canada that is a party to the Agreement on Internal Trade. 2009, c. 24, s. 33 (5).

When applicant holds out-of-province certificate

22.18 (1) This section applies if an individual applying to the College for registration already holds an out-of-province certificate that is equivalent to the certificate of registration being applied for. 2009, c. 24, s. 33 (5).

Material additional training, etc., cannot be required

(2) The College shall not impose any registration requirement that would require the applicant to have, undertake, obtain or undergo any material additional training, experience, examinations or assessments. 2009, c. 24, s. 33 (5).

Exception, registration requirements listed on website

(3) Despite subsection (2), the College is not prohibited from imposing on the applicant any registration requirement that,

(a) is listed on the publicly accessible website referred to in clause 9 (3) (a) of the *Ontario Labour Mobility Act, 2009*; and

(b) is stated on the website to be a permissible registration requirement for the certificate of registration being applied for, adopted by the Government of Ontario under Article 708 of the Agreement on Internal Trade. 2009, c. 24, s. 33 (5).

Other exceptions

(4) Despite subsection (2), if the conditions set out in subsection (6) are met, the College is not prohibited from imposing one or both of the following registration requirements on the applicant:

1. Requiring the applicant to demonstrate proficiency in English or in French if equivalent proficiency in the language was not a requirement for the granting of the out-of-province certificate.
2. Requiring the applicant to undertake, obtain or undergo material additional training, experience, examinations or assessments if the applicant has not, within a period of time fixed by the College, before submitting the application for registration, practised the profession to the extent that would be permitted by the certificate of registration for which the applicant is applying. 2009, c. 24, s. 33 (5).

Other permitted registration requirements

(5) Subsection (2) does not prohibit the College from imposing registration requirements that would require the applicant to do one or more of the following:

1. If the conditions set out in subsection (6) are met:

- i. Pay a fee upon application for registration and upon registration.
 - ii. Obtain professional liability insurance or any other insurance or similar protection.
 - iii. Post a bond.
 - iv. Undergo a criminal background check.
 - v. Provide evidence of good character.
2. If the condition set out in paragraph 2 of subsection (6) is met, provide a certificate, letter or other evidence from every body or individual from whom the applicant currently holds an out-of-province certificate, confirming that the out-of-province certificate is in good standing.
 3. If the conditions set out in subsection (6) are met, demonstrate knowledge of matters applicable to the practice of the profession in Ontario, as long as this does not involve material additional training, experience, examinations or assessments.
 4. If the conditions set out in subsection (6) are met, meet any other requirement specified by the College that does not involve material additional training, experience, examinations or assessments. 2009, c. 24, s. 33 (5).

Conditions for subss. (4) and (5)

(6) The conditions referred to in subsections (4) and (5) are:

1. Subject to subsection (9), the requirement imposed by the College on applicants who hold an out-of-province certificate must be the same as, or substantially similar to but no more onerous than, the requirement imposed by the College on applicants who do not hold an out-of-province certificate.
2. The requirement imposed by the College must not be a disguised restriction on labour mobility. 2009, c. 24, s. 33 (5).

Permitted measures

(7) This section does not prohibit the College from carrying out the following measures in respect of the applicant if the conditions set out in subsection (8) are met:

1. Refusing to issue a certificate of registration to the applicant or imposing terms, conditions or limitations on the applicant's certificate of registration if, in the opinion of the Registration Committee, such action is necessary to protect the public interest as a result of complaints, or criminal, disciplinary or other proceedings, against the applicant in any jurisdiction whether in or outside Canada, relating to the applicant's competency, conduct or character.

2. If the out-of-province certificate held by the applicant is subject to a term, condition or limitation,

i. imposing an equivalent term, condition or limitation on the certificate of registration to be issued to the applicant, or

ii. refusing to register the applicant, if the College does not impose an equivalent term, condition or limitation on the certificate of registration being applied for. 2009, c. 24, s. 33 (5).

Conditions for subs. (7)

(8) The conditions referred to in subsection (7) are:

1. Subject to subsection (9), the measure carried out by the College with respect to applicants who hold an out-of-province certificate must be the same as, or substantially similar to but no more onerous than, the measure carried out by the College with respect to applicants who do not hold an out-of-province certificate.

2. The measure carried out by the College must not be a disguised restriction on labour mobility. 2009, c. 24, s. 33 (5).

Costs

(9) The College shall ensure that any registration requirements it imposes on the applicant and any measures it carries out with respect to the applicant in connection with the registration of the applicant do not result in the imposition on the applicant of fees or other costs that are more onerous than those the College would impose if the applicant did not hold an out-of-province certificate, unless the difference in such fees or other costs reflects the actual cost differential to the College. 2009, c. 24, s. 33 (5).

Expeditious registration

(10) The College shall ensure that its imposition of registration requirements on the applicant under subsections (3), (4) and (5) and its imposition of terms, conditions or limitations on the applicant's certificate of registration under subsection (7) do not prevent the expeditious registration of the applicant. 2009, c. 24, s. 33 (5).

Transition

22.19 Sections 22.17 and 22.18 apply to,

(a) an application for registration made to the College on or after the day this section comes into force; and

(b) an application for registration made to the College before the day this section comes into force, if the application has not been finally decided before that day. 2009, c. 24, s. 33 (5).

Occupational standards

22.20 (1) The College shall, to the extent possible and where practical,

(a) ensure that the process it follows in establishing or amending occupational standards for certificates of registration is conducive to labour mobility within Canada;

(b) take steps to reconcile differences between the occupational standards it has established for certificates of registration and occupational standards in effect with respect to the profession in the other provinces and territories of Canada that are parties to the Agreement on Internal Trade; and

(c) ensure that the occupational standards it establishes for certificates of registration are consistent with such common interprovincial or international occupational standards as may have been developed for the profession. 2009, c. 24, s. 33 (5).

No limitation

(2) Subsection (1) does not limit the objects of the College under section 3 or the powers of the Council under section 95 to establish such occupational standards for the profession as it considers appropriate to protect the public. 2009, c. 24, s. 33 (5).

Notice of proposed occupational standards

22.21 If the College wishes to establish or amend occupational standards for a certificate of registration, it shall,

(a) give notice of the proposed new or amended standards to,

3. (i) the Minister,
4. (ii) the co-ordinating Minister under the *Ontario Labour Mobility Act, 2009*, and
5. (iii) the granting bodies and individuals referred to in clause (b) of the definition of “out-of-province certificate” in subsection 22.15 (1); and

(b) afford those granting bodies and individuals an opportunity to comment on the development of the new or amended standards. 2009, c. 24, s. 33 (5).

Conflict

22.22 (1) If any of sections 22.16 to 22.21 conflicts with the health profession Act or a regulation or by-law made under the health profession Act or under this Code, sections 22.16 to 22.21 prevail to the extent of the conflict. 2009, c. 24, s. 33 (5).

Same

(2) This conflict provision prevails over any other conflict provision in the health profession Act, even if the other conflict provision is enacted after this one, unless the other conflict provision refers expressly to sections 22.16 to 22.21 of this Code. 2009, c. 24, s. 33 (5).

Regulations and by-laws to conform

22.23 Within 12 months after the day this section comes into force or within such longer period as may be prescribed, the Council shall take such steps as are within its power to make, amend or revoke regulations and by-laws under this Code and under the health profession Act so that they conform with sections 22.16 to 22.21 of this Code. 2009, c. 24, s. 33 (5).

Register

23. (1) The Registrar shall maintain a register. 2007, c. 10, Sched. M, s. 28.

Contents of register

(2) The register shall contain the following:

1. Each member's name, business address and business telephone number, and, if applicable, the name of every health profession corporation of which the member is a shareholder.
2. The name, business address and business telephone number of every health profession corporation.
3. The names of the shareholders of each health profession corporation who are members of the College.
4. Each member's class of registration and specialist status.
5. The terms, conditions and limitations that are in effect on each certificate of registration.
6. A notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and has not been finally resolved, until the matter has been resolved.
7. The result, including a synopsis of the decision, of every disciplinary and incapacity proceeding, unless a panel of the relevant committee makes no finding with regard to the proceeding.
8. A notation of every finding of professional negligence or malpractice, which may or may not relate to the member's suitability to practise, made against the member, unless the finding is reversed on appeal.

9. A notation of every revocation or suspension of a certificate of registration.
10. A notation of every revocation or suspension of a certificate of authorization.
11. Information that a panel of the Registration, Discipline or Fitness to Practise Committee specifies shall be included.
12. Where findings of the Discipline Committee are appealed, a notation that they are under appeal, until the appeal is finally disposed of.
13. Where, during or as a result of a proceeding under section 25, a member has resigned and agreed never to practise again in Ontario, a notation of the resignation and agreement.
14. Information that is required to be kept in the register in accordance with the by-laws. 2007, c. 10, Sched. M, s. 28.

Publication ban

- (3) No action shall be taken under this section which violates a publication ban, and nothing in this section requires or authorizes the violation of a publication ban. 2007, c. 10, Sched. M, s. 28.

Panels specifying information in register

- (4) In disposing of a matter, a panel of the Registration, Discipline or Fitness to Practise Committee may, for the purposes of paragraph 11 of subsection (2), specify information that is to be included in the register in addition to the information specified in other paragraphs of subsection (2). 2007, c. 10, Sched. M, s. 28.

Access to information by the public

- (5) All of the information required by paragraphs 1 to 13 of subsection (2) and all information designated as public in the by-laws shall, subject to subsections (6), (7), (8), (9) and (11), be made available to an individual during normal business hours, and shall be posted on the College's website in a manner that is accessible to the public or in any other manner and form specified by the Minister. 2007, c. 10, Sched. M, s. 28.

When information may be withheld from the public

- (6) The Registrar may refuse to disclose to an individual or to post on the College's website an address or telephone number or other information designated as information to be withheld from the public in the by-laws if the Registrar has reasonable grounds to believe that disclosure may jeopardize the safety of an individual. 2007, c. 10, Sched. M, s. 28.

Same

(7) The Registrar may refuse to disclose to an individual or to post on the College's website information that is available to the public under subsection (5), if the Registrar has reasonable grounds to believe that the information is obsolete and no longer relevant to the member's suitability to practise. 2007, c. 10, Sched. M, s. 28.

Same, personal health information

(8) The Registrar shall not disclose to an individual or post on the College's website information that is available to the public under subsection (5) that is personal health information, unless the personal health information is that of a member and it is in the public interest that the information be disclosed. 2007, c. 10, Sched. M, s. 28.

Restriction, personal health information

(9) The Registrar shall not disclose to an individual or post on the College's website under subsection (8) more personal health information than is reasonably necessary. 2007, c. 10, Sched. M, s. 28.

Personal health information

(10) In subsections (8) and (9),

“personal health information” means information that identifies an individual and that is referred to in clauses (a) through (g) of the definition of “personal health information” in subsection 4 (1) of the *Personal Health Information Protection Act, 2004*. 2007, c. 10, Sched. M, s. 28.

Other cases when information may be withheld

(11) The Registrar shall refuse to disclose to an individual or to post on the College's website information required by paragraph 7 of subsection (2) if,

(a) a finding of professional misconduct was made against the member and the order made was only a reprimand or only a fine, or a finding of incapacity was made against the member;

(b) more than six years have passed since the information was prepared or last updated;

(c) the member has made an application to the relevant committee for the removal of the information from public access because the information is no longer relevant to the member's suitability to practise, and if,

(i) the relevant committee believes that a refusal to disclose the information outweighs the desirability of public access to the information in the interest of any person affected or the public interest, and

(ii) the relevant committee has directed the Registrar to remove the information from public access; and

(d) the information does not relate to disciplinary proceedings concerning sexual abuse as defined in clause (a) or (b) of the definition of “sexual abuse” in subsection 1 (3). 2007, c. 10, Sched. M, s. 28.

Information from register

(12) The Registrar shall provide to an individual a copy of any information in the register that the individual is entitled to obtain, upon the payment of a reasonable fee, if required. 2007, c. 10, Sched. M, s. 28.

Positive obligation

(13) Subject to subsection (11), where an individual inquires about a member, the Registrar shall make reasonable efforts to ensure that the individual is provided with a list of the information that is available to the public under subsection (5). 2007, c. 10, Sched. M, s. 28.

Meaning of results of proceeding

(14) For the purpose of this section and section 56,

“result”, when used in reference to a disciplinary or incapacity proceeding, means the panel’s finding, particulars of the grounds for the finding, and the order made, including any reprimand. 2007, c. 10, Sched. M, s. 28.

Suspension for non-payment of fees

24. If a member fails to pay a fee that he or she is required to pay in accordance with the by-laws, the Registrar shall give the member notice of intention to suspend the member and may suspend the member’s certificate of registration for failure to pay the fee 30 days after notice is given. 1998, c. 18, Sched. G, s. 14; 2007, c. 10, Sched. M, s. 29.

Complaints And Reports

Panel for investigation or consideration

25. (1) A panel shall be selected by the chair of the Inquiries, Complaints and Reports Committee from among the members of the Committee to investigate a complaint filed with the Registrar regarding the conduct or actions of a member or to consider a report that is made by the Registrar under clause 79 (a). 2007, c. 10, Sched. M, s. 30.

Composition

(2) A panel shall be composed of at least three persons, at least one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council. 2007, c. 10, Sched. M, s. 30.

Quorum

(3) Three members of a panel constitute a quorum. 2007, c. 10, Sched. M, s. 30.

Complaint must be recorded

(4) A panel shall not be selected to investigate a complaint unless the complaint is in writing or is recorded on a tape, film, disk or other medium. 2007, c. 10, Sched. M, s. 30.

Complainant to be informed

(5) The Registrar shall give a complainant notice of receipt of his or her complaint and a general explanation of the processes of the College, including the jurisdiction and role of the Inquiries, Complaints and Reports Committee, together with a copy of the provisions of sections 28 to 29. 2007, c. 10, Sched. M, s. 30.

Notice to member

(6) The Registrar shall give the member, within 14 days of receipt of the complaint or the report,

(a) notice of the complaint, together with a copy of the provisions of sections 28 to 29, or notice of the receipt of the report;

(b) a copy of the provisions of section 25.2; and

(c) a copy of all available prior decisions involving the member unless the decision was to take no further action under subsection 26 (5). 2007, c. 10, Sched. M, s. 30.

Alternative dispute resolution with respect to a complaint

25.1 (1) The Registrar may, with the consent of both the complainant and the member, refer the complainant and the member to an alternative dispute resolution process,

(a) if the matter has not yet been referred to the Discipline Committee under section 26; and

(b) if the matter does not involve an allegation of sexual abuse. 2007, c. 10, Sched. M, s. 30.

Confidentiality

(2) Despite this or any other Act, all communications at an alternative dispute resolution process and the facilitator's notes and records shall remain confidential and be deemed to have been made without prejudice to the parties in any proceeding. 2007, c. 10, Sched. M, s. 30.

Facilitator not to participate

(3) The person who acts as the alternative dispute resolution facilitator shall not participate in any proceeding concerning the same matter. 2007, c. 10, Sched. M, s. 30.

Ratification of resolution

(4) If the complainant and the member reach a resolution of the complaint through alternative dispute resolution, they shall advise the panel of the resolution, and the panel may,

- (a) cease its investigation of the complaint and adopt the proposed resolution; or
- (b) continue with its investigation of the complaint. 2007, c. 10, Sched. M, s. 30.

Submissions by member

25.2 (1) A member who is the subject of a complaint or a report may make written submissions to the Inquiries, Complaints and Reports Committee within 30 days of receiving notice under subsection 25 (6). 2007, c. 10, Sched. M, s. 30.

Exception

(2) The Inquiries, Complaints and Reports Committee may specify a period of time of less than 30 days in which the member may make written submissions, and inform the member to that effect, if the Committee is of the opinion, on reasonable and probable grounds, that the conduct of the member exposes or is likely to expose his or her patients to harm or injury. 2007, c. 10, Sched. M, s. 30.

What a panel may do

26. (1) A panel, after investigating a complaint or considering a report, considering the submissions of the member and making reasonable efforts to consider all records and documents it considers relevant to the complaint or the report, may do any one or more of the following:

1. Refer a specified allegation of the member's professional misconduct or incompetence to the Discipline Committee if the allegation is related to the complaint or the report.
2. Refer the member to a panel of the Inquiries, Complaints and Reports Committee under section 58 for incapacity proceedings.

3. Require the member to appear before a panel of the Inquiries, Complaints and Reports Committee to be cautioned.

4. Take action it considers appropriate that is not inconsistent with the health profession Act, this Code, the regulations or by-laws. 2007, c. 10, Sched. M, s. 30.

Prior decisions

(2) A panel of the Inquiries, Complaints and Reports Committee shall, when investigating a complaint or considering a report currently before it, consider all of its available prior decisions involving the member, including decisions made when that committee was known as the Complaints Committee, and all available prior decisions involving the member of the Discipline Committee, the Fitness to Practise Committee and the Executive Committee, unless the decision was to take no further action under subsection (5). 2007, c. 10, Sched. M, s. 30.

Quality assurance

(3) In exercising its powers under paragraph 4 of subsection (1), the panel may not refer the matter to the Quality Assurance Committee, but may require a member to complete a specified continuing education or remediation program. 2007, c. 10, Sched. M, s. 30.

Complaint in bad faith, etc.

(4) If the panel considers a complaint to be frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, it shall give the complainant and the member notice that it intends to take no action with respect to the complaint and that the complainant and the member have a right to make written submissions within 30 days after receiving the notice. 2007, c. 10, Sched. M, s. 30.

Same

(5) If the panel is satisfied, after considering the written submissions of the complainant and the member, that a complaint was frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, the panel shall not take action with respect to the complaint. 2007, c. 10, Sched. M, s. 30.

Notice of decision

27. (1) A panel shall give the complainant and the member who is the subject of the complaint,

(a) a copy of its decision;

(b) a copy of its reasons, if the panel acted under paragraph 3 or 4 of subsection 26 (1); and

(c) a notice advising the member and the complainant of any right to request a review they may have under subsection 29 (2). 2007, c. 10, Sched. M, s. 30.

Same, report

(2) A panel shall give the member, in the case of a report,

(a) a copy of its decision; and

(b) a copy of its reasons, if the panel acted under paragraph 3 or 4 of subsection 26 (1). 2007, c. 10, Sched. M, s. 30.

Timely disposal

28. (1) A panel shall dispose of a complaint within 150 days after the filing of the complaint. 2007, c. 10, Sched. M, s. 30.

Not affected by ADR

(2) A referral to an alternative dispute resolution process under section 25.1 does not affect the time requirements under this section. 2007, c. 10, Sched. M, s. 30.

If complaint not disposed of

(3) If a panel has not disposed of a complaint within 150 days after the complaint was filed, the Registrar shall provide the complainant with written notice of that fact and an expected date of disposition which shall be no more than 60 days from the date of the written notice. 2007, c. 10, Sched. M, s. 30.

If further delay

(4) If a panel has not disposed of the complaint by the expected date of disposition described in subsection (3), the Registrar shall,

(a) provide the member and complainant with written notice and reasons for the delay and the new expected date of disposition which shall be no more than 30 days from the date of the revised notice or from the expected date of disposition described in subsection (3), whichever is sooner; and

(b) provide the Board with written notice of and reasons for the delay as were provided to the member and complainant. 2007, c. 10, Sched. M, s. 30.

Powers of the Board

(5) The Board, on application of the member or the complainant, shall consider the written reasons for the delay and shall do any one of the following:

1. Direct the Inquiries, Complaints and Reports Committee to continue the investigation.

2. Make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee.

3. Investigate the complaint and make an order under subsection (9) within 120 days of the decision to investigate the complaint. 2007, c. 10, Sched. M, s. 30.

Board's investigatory powers

(6) In investigating a complaint under paragraph 3 of subsection (5), the Board has all the powers of a panel of the Inquiries, Complaints and Reports Committee and of the Registrar with respect to the investigation of the matter and may appoint an investigator under clause 75 (1) (c). 2007, c. 10, Sched. M, s. 30.

Continuing power of Inquiries, Complaints and Reports Committee

(7) The Inquiries, Complaints and Reports Committee may take action under section 26 at any time before the Board completes its investigation. 2007, c. 10, Sched. M, s. 30.

Same

(8) For greater certainty, if the Inquiries, Complaints and Reports Committee takes action as provided for in subsection (7), the Board no longer has jurisdiction to take action under section 26. 2007, c. 10, Sched. M, s. 30.

Powers of Board re an investigation

(9) After an investigation, the Board may do any one or more of the following:

1. Refer the matter to the Inquiries, Complaints and Reports Committee.
2. Make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee.
3. Require the Inquiries, Complaints and Reports Committee or a panel to do anything the Committee or a panel may do under the health profession Act and this Code except to request the Registrar to conduct an investigation. 2007, c. 10, Sched. M, s. 30.

Powers of Board re time limits

28.1 If the Board is satisfied that no person will be unduly prejudiced, it may, on reasonable grounds, extend any time limit with respect to,

- (a) a requirement, under subsection 21 (1), for a review or hearing by the Board;
- (b) a request, under subsection 29 (2), for a review by the Board; or

(c) the Registrar's obligation to give to the Board, under subsection 32 (1), a record of an investigation of a complaint against a member and all relevant documents and things. 2007, c. 10, Sched. M, s. 30.

Review by Board

29. (1) Subject to section 30, the Board shall review a decision of a panel of the Inquiries, Complaints and Reports Committee if the Board receives a request under subsection (2). 2007, c. 10, Sched. M, s. 30.

Request for review

(2) The complainant or the member who is the subject of the complaint may request the Board to review a decision of a panel of the Inquiries, Complaints and Reports Committee unless the decision was,

(a) to refer an allegation of professional misconduct or incompetence to the Discipline Committee; or

(b) to refer the member to a panel of the Inquiries, Complaints and Reports Committee under section 58 for incapacity proceedings. 2007, c. 10, Sched. M, s. 30.

Time limit

(3) A request for a review may be made only within 30 days after the receipt of the notice of the right to request a review given under clause 27 (1) (c). 2007, c. 10, Sched. M, s. 30.

Limitation

(4) The Board shall not, under section 28.1, extend the time limit set out in subsection (3) for more than 60 days. 2007, c. 10, Sched. M, s. 30.

Parties

(5) The complainant and the member who is the subject of the complaint are parties to a review. 2007, c. 10, Sched. M, s. 30.

When no review

30. (1) The Board shall not review a decision if the party who requested the review withdraws the request and the other party consents. 1991, c. 18, Sched. 2, s. 30 (1).

Request in bad faith, etc.

(2) If the Board considers a request to review a decision to have been frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, it shall give the parties notice that it intends not to proceed with the review and that the parties have a right to make written submissions within thirty days after receiving the notice. 1991, c. 18, Sched. 2, s. 30 (2); 2007, c. 10, Sched. M, s. 31 (1).

Idem

(3) If the Board is satisfied, after considering the written submissions of the parties, that a request was frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, the Board shall not review the decision. 1991, c. 18, Sched. 2, s. 30 (3); 2007, c. 10, Sched. M, s. 31 (2).

Personal representative as complainant

31. A complainant's personal representative may act as the complainant for the purposes of a review of the decision by the Board if the complainant dies or becomes incapacitated. 1991, c. 18, Sched. 2, s. 31.

Record of decision to be reviewed

32. (1) If the Board is requested to review a decision, the Registrar shall give the Board, within fifteen days after the Board's request, a record of the investigation and the documents and things upon which the decision was based.

Disclosure

(2) Before reviewing a decision, the Board shall disclose to the parties everything given to it by the Registrar under subsection (1).

Exceptions

(3) The Board may refuse to disclose anything that may, in its opinion,

(a) disclose matters involving public security;

(b) undermine the integrity of the complaint investigation and review process;

(c) disclose financial or personal or other matters of such a nature that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that disclosure be made;

(d) prejudice a person involved in a criminal proceeding or in a civil suit or proceeding; or

(e) jeopardize the safety of any person. 1991, c. 18, Sched. 2, s. 32.

Conduct of review

33. (1) In a review, the Board shall consider either or both of,

- (a) the adequacy of the investigation conducted; or
- (b) the reasonableness of the decision.

Procedure

(2) In conducting a review, the Board,

(a) shall give the party requesting the review an opportunity to comment on the matters set out in clauses (1)(a) and (b) and the other party an opportunity to respond to those comments;

(b) may require the College to send a representative;

(c) may question the parties and the representative of the College;

(d) may permit the parties to make representations with respect to issues raised by any questions asked under clause (c); and

(e) shall not allow the parties or the representative of the College to question each other. 1991, c. 18, Sched. 2, s. 33.

Procedural provisions

34. (1) The following provisions apply with necessary modifications to a review by the Board:

1. Section 43 (no communication by panel members).
2. Section 45 (hearings open).
3. Section 47 (sexual misconduct witnesses).
4. Section 50 (members of panel who participate).
5. Section 55 (release of evidence). 1991, c. 18, Sched. 2, s. 34.

Same

(2) The following provisions of the *Statutory Powers Procedure Act* also apply with necessary modifications to a review by the Board:

1. Section 4 (waiver of procedural requirement).

2. Section 4.1 (disposition of proceeding without hearing).
3. Section 5.1 (written hearings).
4. Section 5.2 (electronic hearings).
5. Section 5.3 (pre-hearing conferences).
6. Section 21 (adjournments).
7. Section 21.1 (correction of errors).
8. Section 25.1 (rules). 1998, c. 18, Sched. G, s. 16.

Powers of Board

35. (1) After conducting a review of a decision, the Board may do any one or more of the following:

1. Confirm all or part of the decision.
2. Make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee.
3. Require the Inquiries, Complaints and Reports Committee to do anything the Committee or a panel may do under the health profession Act and this Code except to request the Registrar to conduct an investigation. 1991, c. 18, Sched. 2, s. 35 (1); 2007, c. 10, Sched. M, s. 32 (1, 2).

Decision in writing

(2) The Board shall give its decision and reasons in writing to the parties and the Inquiries, Complaints and Reports Committee. 1991, c. 18, Sched. 2, s. 35 (2); 2007, c. 10, Sched. M, s. 32 (3).

Discipline

Inquiries, Complaints and Reports Committee referral

36. (1) The Inquiries, Complaints and Reports Committee may refer a specified allegation of a member's professional misconduct or incompetence to the Discipline Committee. 2007, c. 10, Sched. M, s. 33 (1).

Allegations of sexual abuse

(2) In deciding whether or not to refer an allegation of the sexual abuse of a patient to the Discipline Committee, the Inquiries, Complaints and Reports Committee shall take into account any opinion, required under subsection 85.3 (5), as to whether or not the member who is the subject of the report is likely to sexually abuse patients in the future. 1993, c. 37, s. 9; 2007, c. 10, Sched. M, s. 33 (2).

Interim suspension

37. (1) The Inquiries, Complaints and Reports Committee may, subject to subsection (5), make an interim order directing the Registrar to suspend or impose terms, conditions or limitations on a member's certificate of registration if,

(a) an allegation is referred to the Discipline Committee; and

(b) it is of the opinion that the conduct of the member exposes or is likely to expose his or her patients to harm or injury. 1991, c. 18, Sched. 2, s. 37 (1); 2007, c. 10, Sched. M, s. 34 (1).

Procedure following interim suspension

(2) If an order is made under subsection (1) by the Inquiries, Complaints and Reports Committee in relation to a matter referred to the Discipline Committee,

(a) the College shall prosecute the matter expeditiously; and

(b) the Discipline Committee shall give precedence to the matter. 1991, c. 18, Sched. 2, s. 37 (2); 2007, c. 10, Sched. M, s. 34 (2).

Duration of order

(3) An order under subsection (1) continues in force until the matter is disposed of by a panel of the Discipline Committee. 1991, c. 18, Sched. 2, s. 37 (3).

Panel's order

(4) In a matter in which an order under subsection (1) was made, an order of a panel of the Discipline Committee directing the Registrar to revoke, suspend or impose conditions on a member's certificate takes effect immediately despite any appeal. 1991, c. 18, Sched. 2, s. 37 (4).

Restrictions on orders

(5) No order shall be made under subsection (1) unless the member has been given,

(a) notice of the Committee's intention to make the order; and

(b) at least 14 days to make written submissions to the Committee. 2007, c. 10, Sched. M, s. 34 (3).

Extraordinary action to protect public

(6) Despite subsection (5), an order may be made under subsection (1) without notice to the member, subject to the right of the member to make submissions while the suspension or the terms, conditions or limitations are in place, if the Committee is of the opinion, on reasonable and probable grounds, that the conduct of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed. 2007, c. 10, Sched. M, s. 34 (3).

Panel for discipline hearing

38. (1) The chair of the Discipline Committee shall select a panel from among the members of the Committee to hold a hearing of allegations of a member's professional misconduct or incompetence referred to the Committee by the Inquiries, Complaints and Reports Committee. 1991, c. 18, Sched. 2, s. 38 (1); 2007, c. 10, Sched. M, s. 35.

Composition

(2) A panel shall be composed of at least three and no more than five persons, at least two of whom shall be persons appointed to the Council by the Lieutenant Governor in Council. 1991, c. 18, Sched. 2, s. 38 (2).

Idem

(3) At least one of the members of a panel shall be both a member of the College and a member of the Council. 1991, c. 18, Sched. 2, s. 38 (3).

Exclusion from panel

(4) No person shall be selected for a panel who has taken part in the investigation of what is to be the subject-matter of the panel's hearing. 1991, c. 18, Sched. 2, s. 38 (4).

Quorum

(5) Three members of a panel, at least one of whom must be a member who was appointed to the Council by the Lieutenant Governor in Council, constitute a quorum. 1991, c. 18, Sched. 2, s. 38 (5).

Panel members deemed to continue

39. A member of a panel who ceases to be a member of the Discipline Committee after a hearing of a matter has commenced before the panel shall be deemed, for the purposes of dealing with that matter, to remain a member of the panel until the final disposition of the matter. 1991, c. 18, Sched. 2, s. 39.

Amendment of notice of hearing

40. A panel may at any time permit a notice of hearing of allegations against a member to be amended to correct errors or omissions of a minor or clerical nature if it is of the opinion that it is just and equitable to do so and the panel may make any order it considers necessary to prevent prejudice to the member. 1991, c. 18, Sched. 2, s. 40.

Parties

41. The College and the member against whom allegations have been made are parties to a hearing. 1991, c. 18, Sched. 2, s. 41.

Non-party participation in hearings

41.1 (1) A panel, on application by a person who is not a party, may allow the person to participate in a hearing if,

(a) the good character, propriety of conduct or competence of the person is an issue at the hearing; or

(b) the participation of the person, would, in the opinion of the panel, be of assistance to the panel. 1993, c. 37, s. 10; 2007, c. 10, Sched. M, s. 36.

Extent of participation

(2) The panel shall determine the extent to which a person who is allowed to participate may do so and, without limiting the generality of this, the panel may allow the person to make oral or written submissions, to lead evidence and to cross examine witnesses. 1993, c. 37, s. 10.

Disclosure of evidence

42. (1) Evidence against a member is not admissible at a hearing of allegations against the member unless the member is given, at least ten days before the hearing,

(a) in the case of written or documentary evidence, an opportunity to examine the evidence;

(b) in the case of evidence of an expert, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence; or

(c) in the case of evidence of a witness, the identity of the witness. 1991, c. 18, Sched. 2, s. 42 (1); 1993, c. 37, s. 11.

Exception

(2) A panel may, in its discretion, allow the introduction of evidence that is inadmissible under subsection (1) and may make directions it considers necessary to ensure that the member is not prejudiced. 1991, c. 18, Sched. 2, s. 42 (2).

Disclosure of evidence

42.1 (1) Evidence of an expert led by a person other than the College is not admissible unless the person gives the College, at least ten days before the hearing, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence. 1993, c. 37, s. 12.

Exception

(2) A panel may, in its discretion, allow the introduction of evidence that is inadmissible under this section and may make directions it considers necessary to ensure that the College is not prejudiced. 1998, c. 18, Sched. G, s. 17.

No communication by panel members

43. No member of a panel holding a hearing shall communicate outside the hearing, in relation to the subject-matter of the hearing, with a party or the party's representative unless the other party has been given notice of the subject-matter of the communication and an opportunity to be present during the communication. 1991, c. 18, Sched. 2, s. 43.

Legal advice

44. If a panel obtains legal advice with respect to a hearing, it shall make the nature of the advice known to the parties and they may make submissions with respect to the advice. 1991, c. 18, Sched. 2, s. 44.

Hearings public

45. (1) A hearing shall, subject to subsection (2), be open to the public. 1991, c. 18, Sched. 2, s. 45 (1).

Exclusion of public

(2) The panel may make an order that the public be excluded from a hearing or any part of it if the panel is satisfied that,

(a) matters involving public security may be disclosed;

(b) financial or personal or other matters may be disclosed at the hearing of such a nature that the harm created by disclosure would outweigh the desirability of adhering to the principle that hearings be open to the public;

(c) a person involved in a criminal proceeding or in a civil suit or proceeding may be prejudiced; or

(d) the safety of a person may be jeopardized. 1991, c. 18, Sched. 2, s. 45 (2); 2007, c. 10, Sched. M, s. 37.

Orders preventing public disclosure

(3) In situations in which the panel may make an order that the public be excluded from a hearing, it may make orders it considers necessary to prevent the public disclosure of matters disclosed at the hearing, including orders banning the publication or broadcasting of those matters. 1991, c. 18, Sched. 2, s. 45 (3).

Public information may be disclosed

(4) No order shall be made under subsection (3) that prevents the publication of anything that is contained in the register and available to the public. 1991, c. 18, Sched. 2, s. 45 (4).

Exclusion of public

(5) The panel may make an order that the public be excluded from the part of a hearing dealing with a motion for an order under subsection (2). 1991, c. 18, Sched. 2, s. 45 (5).

Orders with respect to matters in submissions

(6) The panel may make any order necessary to prevent the public disclosure of matters disclosed in the submissions relating to any motion described in subsection (5), including prohibiting the publication or broadcasting of those matters. 1991, c. 18, Sched. 2, s. 45 (6).

Reasons for order, etc.

(7) The panel shall ensure that any order it makes under this section and its reasons are available to the public in writing. 1991, c. 18, Sched. 2, s. 45 (7).

Reconsidering of order

(8) The panel may reconsider an order made under subsection (2) or (3) at the request of any person or on its own motion. 1991, c. 18, Sched. 2, s. 45 (8).

Exception to closed hearings

46. If a panel makes an order under subsection 45 (2) wholly or partly in relation to a person, the panel may allow the person and his or her personal representative to attend the hearing and may, in its discretion, allow another person to attend if, in the opinion of the panel, to do so does not undermine the reasons for making the order and does not cause undue prejudice to a party. 2007, c. 10, Sched. M, s. 38.

Sexual misconduct witnesses

47. (1) A panel shall, on the request of a witness whose testimony is in relation to allegations of a member's misconduct of a sexual nature involving the witness, make an order that no person shall publish the identity of the witness or any information that could disclose the identity of the witness. 1991, c. 18, Sched. 2, s. 47.

Interpretation

(2) In subsection (1),

“allegations of a member's misconduct of a sexual nature” include, but are not limited to, allegations that the member sexually abused the witness when the witness was a patient of the member. 1993, c. 37, s. 13.

Transcript of hearings

48. (1) The panel holding a hearing shall ensure that,

(a) the oral evidence is recorded;

(b) copies of the transcript of the hearing are available to a party on the party's request at the party's expense; and

(c) copies of the transcript of any part of the hearing that is not the subject of an order prohibiting publication are available to any person at that person's expense.

Transcripts filed with court

(2) If a transcript of a part of a hearing that is the subject of an order prohibiting publication is filed with a court in respect of proceedings, only the court and the parties to the proceedings may examine it unless the court orders otherwise. 1991, c. 18, Sched. 2, s. 48.

Admissibility of evidence

49. Despite the *Statutory Powers Procedure Act*, nothing is admissible at a hearing that would be inadmissible in a court in a civil action and the findings of a panel shall be based exclusively on evidence admitted before it. 1991, c. 18, Sched. 2, s. 49.

Members of panel who participate

50. Only the members of a panel who were present throughout a hearing shall participate in the panel's decision. 1991, c. 18, Sched. 2, s. 50.

Professional misconduct

51. (1) A panel shall find that a member has committed an act of professional misconduct if,

(a) the member has been found guilty of an offence that is relevant to the member's suitability to practise;

(b) the governing body of a health profession in a jurisdiction other than Ontario has found that the member committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct as defined in the regulations;

(b.0.1) the member has failed to co-operate with the Quality Assurance Committee or any assessor appointed by that committee;

(b.1) the member has sexually abused a patient; or

(c) the member has committed an act of professional misconduct as defined in the regulations. 1991, c. 18, Sched. 2, s. 51 (1); 1993, c. 37, s. 14 (1); 2007, c. 10, Sched. M, s. 39 (1).

Orders

(2) If a panel finds a member has committed an act of professional misconduct, it may make an order doing any one or more of the following:

1. Directing the Registrar to revoke the member's certificate of registration.
2. Directing the Registrar to suspend the member's certificate of registration for a specified period of time.
3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified or indefinite period of time.
4. Requiring the member to appear before the panel to be reprimanded.
5. Requiring the member to pay a fine of not more than \$35,000 to the Minister of Finance.

5.1 If the act of professional misconduct was the sexual abuse of a patient, requiring the member to reimburse the College for funding provided for that patient under the program required under section 85.7.

5.2 If the panel makes an order under paragraph 5.1, requiring the member to post security acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse under the order under paragraph 5.1. 1991, c. 18, Sched. 2, s. 51 (2); 1993, c. 37, s. 14 (2).

Idem

(3) In making an order under paragraph 2 or 3 of subsection (2), a panel may specify criteria to be satisfied for the removal of a suspension or the removal of terms, conditions and limitations imposed on a member's certificate of registration. 1991, c. 18, Sched. 2, s. 51 (3).

Suspension of order

(4) A panel may suspend the effect of all or part of an order made under subsection (2) for a specified period and on specified conditions. 1991, c. 18, Sched. 2, s. 51 (4); 2007, c. 10, Sched. M, s. 39 (2).

Orders relating to sexual abuse

(5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

1. Reprimand the member.
 2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following,
 - i. sexual intercourse,
 - ii. genital to genital, genital to anal, oral to genital, or oral to anal contact,
 - iii. masturbation of the member by, or in the presence of, the patient,
 - iv. masturbation of the patient by the member,
 - v. encouragement of the patient by the member to masturbate in the presence of the member.
- 1993, c. 37, s. 14 (3).

Statement re impact of sexual abuse

(6) Before making an order under subsection (5), the panel shall consider any written statement that has been filed, and any oral statement that has been made to the panel, describing the impact of the sexual abuse on the patient. 1993, c. 37, s. 14 (3).

Same

(7) The statement may be made by the patient or by his or her representative. 1993, c. 37, s. 14 (3).

Same

(8) The panel shall not consider the statement unless a finding of professional misconduct has been made. 1993, c. 37, s. 14 (3).

Notice to member

(9) When a written statement is filed, the panel shall, as soon as possible, have copies of it provided to the member, to his or her counsel and to the College. 1993, c. 37, s. 14 (3).

Incompetence

52. (1) A panel shall find a member to be incompetent if the member's professional care of a patient displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the member is unfit to continue to practise or that the member's practice should be restricted. 1991, c. 18, Sched. 2, s. 52 (1); 2007, c. 10, Sched. M, s. 40 (1).

Order

(2) If a panel finds a member is incompetent, it may make an order doing any one or more of the following:

1. Directing the Registrar to revoke the member's certificate of registration.
2. Directing the Registrar to suspend the member's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified period of time or indefinite period of time. 1991, c. 18, Sched. 2, s. 52 (2); 2007, c. 10, Sched. M, s. 40 (2).

Idem

(3) In making an order under paragraph 2 or 3 of subsection (2), a panel may specify criteria to be satisfied for the removal of a suspension or the removal of terms, conditions and limitations imposed on a member's certificate of registration. 1991, c. 18, Sched. 2, s. 52 (3); 2007, c. 10, Sched. M, s. 40 (3).

Costs if proceedings unwarranted

53. If a panel is of the opinion that the commencement of proceedings was unwarranted, it may make an order requiring the College to pay all or part of the member's legal costs. 1991, c. 18, Sched. 2, s. 53.

College's costs

53.1 In an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct or finds to be incompetent to pay all or part of the following costs and expenses:

1. The College's legal costs and expenses.
2. The College's costs and expenses incurred in investigating the matter.
3. The College's costs and expenses incurred in conducting the hearing. 1993, c. 37, s. 15.

Decision to complainant

54. A panel shall give its decision and reasons in writing to the parties and, if the matter had been referred to the Discipline Committee by the Inquiries, Complaints and Reports Committee, to the complainant in the matter. 1991, c. 18, Sched. 2, s. 54; 2007, c. 10, Sched. M, s. 41.

Release of evidence

55. The Discipline Committee shall release documents and things put into evidence at a hearing to the person who produced them, on request, within a reasonable time after the matter in issue has been finally determined. 1991, c. 18, Sched. 2, s. 55.

Publication of decisions

56. (1) The College shall publish a panel's decision and its reasons, or a summary of its reasons, in its annual report and may publish the decision and reasons or summary in any other publication of the College.

Publication of member's name

(2) In publishing a decision and reasons or summary under subsection (1), the College shall publish the name of the member who was the subject of the proceeding if,

- (a) the results of the proceeding may be obtained by a person from the register; or
- (b) the member requests the publication of his or her name.

Withholding of member's name

(3) The College shall not publish the member's name unless it is required to do so under subsection (2). 1991, c. 18, Sched. 2, s. 56.

Incapacity**Registrar's inquiry**

57. If the Registrar believes that a member may be incapacitated, the Registrar shall make inquiries he or she considers appropriate and shall report the results of the inquiries to the Inquiries, Complaints and Reports Committee. 1991, c. 18, Sched. 2, s. 57; 2007, c. 10, Sched. M, s. 42.

Panel shall inquire

58. (1) A panel selected by the chair of the Inquiries, Complaints and Reports Committee from among the members of the Committee shall inquire into whether a member is incapacitated if,

(a) the Inquiries, Complaints and Reports Committee receives a report from the Registrar under section 57; or

(b) a referral is made from a panel of the Inquiries, Complaints and Reports Committee under paragraph 2 of subsection 26 (1). 2007, c. 10, Sched. M, s. 43.

Notice to member

(2) The Inquiries, Complaints and Reports Committee shall give a member notice that it intends to inquire into whether the member is incapacitated. 2007, c. 10, Sched. M, s. 43.

Transitional

(3) A board of inquiry that was constituted under this section, as it existed immediately before the coming into force of section 43 of Schedule M to the *Health System Improvements Act, 2007*, shall be deemed to continue to be validly constituted and to have the authority to do anything that it could have done before the coming into force of section 44 of that Schedule, and where the board of inquiry was to give a copy of a report to the Executive Committee, that Committee may continue to act with respect to that matter and shall have the authority to do anything it could have done before the coming into force of sections 44 to 47 of that Schedule. 2007, c. 10, Sched. M, s. 43.

Inquiries by panel

59. (1) A panel shall make the inquiries it considers appropriate. 2007, c. 10, Sched. M, s. 44.

Physical or mental examinations

(2) If, after making inquiries, a panel has reasonable and probable grounds to believe that the member who is the subject of the inquiry is incapacitated, the panel may require the member to submit to physical or mental examinations conducted or ordered by a health professional specified by the panel and may, subject to section 63, make an order directing the Registrar to suspend the member's certificate of registration until he or she submits to the examinations. 2007, c. 10, Sched. M, s. 44.

Panel's report

60. The panel shall give a copy of its report and a copy of any report on an examination required under subsection 59 (2) to the member who was the subject of the inquiry. 2007, c. 10, Sched. M, s. 44.

Referral to Fitness to Practise Committee

61. After giving a copy of its report and copy of any report on an examination required under subsection 59 (2) to the member, the panel may refer the matter to the Fitness to Practise Committee. 2007, c. 10, Sched. M, s. 44.

Interim suspension

62. (1) The panel may, subject to section 63, make an interim order directing the Registrar to suspend or impose terms, conditions or limitations on a member's certificate of registration if,

(a) it has referred a matter involving the member to the Fitness to Practise Committee; and

(b) it is of the opinion that the physical or mental state of the member exposes or is likely to expose his or her patients to harm or injury. 1991, c. 18, Sched. 2, s. 62 (1); 2007, c. 10, Sched. M, s. 45 (1).

Procedure following interim suspension

(2) If an order is made under subsection (1) in relation to a matter referred to the Fitness to Practise Committee,

(a) the College shall prosecute the matter expeditiously; and

(b) the Fitness to Practise Committee shall give precedence to the matter. 1991, c. 18, Sched. 2, s. 62 (2); 2007, c. 10, Sched. M, s. 45 (2).

Duration of order

(3) An order under subsection (1) continues in force until the matter is disposed of by a panel of the Fitness to Practise Committee. 1991, c. 18, Sched. 2, s. 62 (3).

Restrictions on orders

63. (1) No order shall be made with respect to a member under subsection 59 (2) or 62 (1) unless the member has been given,

(a) notice of the intention to make the order;

(b) at least 14 days to make written submissions to the panel; and

(c) in the case of an order under subsection 62 (1), a copy of the provisions of section 62. 2007, c. 10, Sched. M, s. 46.

Extraordinary action to protect the public

(2) Despite subsection (1), an order may be made without notice to the member, subject to the right of the member to make submissions while the suspension is in place to the panel that made the order, if the panel is of the opinion on reasonable and probable grounds that the physical or mental state of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed. 2007, c. 10, Sched. M, s. 46.

Panels for Fitness to Practise hearings

64. (1) The chair of the Fitness to Practise Committee shall select a panel from among the members of the Committee to hold a hearing of any matter referred to the Committee by a panel of the Inquiries, Complaints and Reports Committee. 1991, c. 18, Sched. 2, s. 64 (1); 2007, c. 10, Sched. M, s. 47 (1).

Composition

(2) A panel shall be composed of at least three persons, at least one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council. 1991, c. 18, Sched. 2, s. 64 (2); 2007, c. 10, Sched. M, s. 47 (2).

Quorum

(3) Three members of a panel constitute a quorum. 1991, c. 18, Sched. 2, s. 64 (3).

Parties

65. The College, the member who is alleged to be incapacitated and any other person specified by the panel are parties to a hearing. 1991, c. 18, Sched. 2, s. 65.

Reports of health professionals

66. (1) A report prepared and signed by a health professional containing his or her findings and the facts upon which they are based is admissible as evidence at a hearing without proof of its making or of the health professional's signature if the party introducing the report gives the other parties a copy of the report at least ten days before the hearing.

Testimony of health professionals

(2) A health professional may not give evidence in his or her professional capacity at a hearing unless a report, prepared and signed by the health professional containing his or her findings and the facts upon which they are based, is introduced as evidence.

Cross-examination

(3) If a report described in subsection (1) is introduced by a party, the other parties may summon and cross-examine the person who prepared the report. 1991, c. 18, Sched. 2, s. 66.

Exception

(4) A panel may, in its discretion, allow a party to introduce evidence that is inadmissible under this section and may make directions it considers necessary to ensure that the other parties are not prejudiced. 1998, c. 18, Sched. G, s. 18.

Procedural provisions

67. The following provisions apply with necessary modifications to a hearing by a panel of the Fitness to Practise Committee:

1. Subsection 22 (4) (findings of fact).
2. Subsection 38 (4) (exclusion from panel).
3. Section 39 (panel members deemed to continue).
4. Section 42 (disclosure of evidence).
- 4.1 Section 42.1 (disclosure of evidence by member).
5. Section 43 (no communication by panel members).
6. Section 44 (legal advice).
7. Section 47 (sexual misconduct witnesses).
8. Section 50 (members of panel who participate).
9. Section 55 (release of evidence). 1991, c. 18, Sched. 2, s. 67; 1993, c. 37, s. 16; 2007, c. 10, Sched. M, s. 48.

Hearings closed

68. (1) A hearing by a panel of the Fitness to Practise Committee shall, subject to subsection (2), be closed to the public. 1991, c. 18, Sched. 2, s. 68 (1); 2007, c. 10, Sched. M, s. 49 (1).

Open on request of member in some cases

(2) A hearing shall be open to the public if the person who is alleged to be incapacitated requests it in a written notice received by the Registrar before the day the hearing commences, unless the panel is satisfied that,

(a) matters involving public security may be disclosed;

(b) financial or personal matters or other matters may be disclosed at the hearing of such a nature that the harm created by disclosure would outweigh the desirability of adhering to the principle that hearings be open to the public;

(c) a person involved in a criminal proceeding or civil suit may be prejudiced; or

(d) the safety of any person may be jeopardized. 1991, c. 18, Sched. 2, s. 68 (2); 2007, c. 10, Sched. M, s. 49 (2).

Orders

69. (1) If a panel finds that a member is incapacitated, it shall make an order doing any one or more of the following:

1. Directing the Registrar to revoke the member's certificate of registration.

2. Directing the Registrar to suspend the member's certificate of registration.

3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified period of time or indefinite period of time. 1991, c. 18, Sched. 2, s. 69 (1); 2007, c. 10, Sched. M, s. 50 (1).

Idem

(2) In making an order under paragraph 2 or 3 of subsection (1), a panel may specify criteria to be satisfied for the removal of a suspension or the removal of terms, conditions and limitations imposed on a member's certificate of registration. 1991, c. 18, Sched. 2, s. 69 (2); 2007, c. 10, Sched. M, s. 50 (2).

Varying

(3) A member or the College may apply to the Fitness to Practise Committee for an order directing the Registrar to remove or modify any term, condition or limitation imposed on the member's certificate of registration as a result of paragraph 3 of subsection (1) and the chair may select a panel to deal with the application. 2007, c. 10, Sched. M, s. 50 (3).

Limitations

(4) The right to apply under subsection (3) is subject to any limitation in the order or to which the member consented and to any limitation made under subsection (5) in the disposition of a previous application to vary. 2007, c. 10, Sched. M, s. 50 (3).

Limitations on applications

(5) The panel, in disposing of an application by a member under subsection (3), may fix a period of time not longer than six months during which the member may not make a further application. 2007, c. 10, Sched. M, s. 50 (3).

Appeals to Court

Appeals from decisions

70. (1) A party to proceedings before the Board concerning a registration hearing or review or to proceedings before a panel of the Discipline or Fitness to Practise Committee, other than a hearing of an application under subsection 72 (1), may appeal from the decision of the Board or panel to the Divisional Court.

Basis of appeal

(2) An appeal under subsection (1) may be made on questions of law or fact or both.

Court's powers

(3) In an appeal under subsection (1), the Court has all the powers of the panel that dealt with the matter and, in an appeal from the Board, the Court also has all the powers of the Board. 1991, c. 18, Sched. 2, s. 70.

No stay of certain orders pending appeal

71. An order made by a panel of the Discipline Committee on the grounds of incompetence or by a panel of the Fitness to Practise Committee on the grounds of incapacity, directing the Registrar to revoke, suspend or impose terms, limitations or conditions on a member's certificate, takes effect immediately despite any appeal. 1991, c. 18, Sched. 2, s. 71.

No stay of certain orders pending appeal

71.1 Section 71 also applies to an order made by a panel of the Discipline Committee because of a finding that a member has committed sexual abuse of the kind described in subparagraph i, ii, iii or iv of paragraph 2 of subsection 51 (5). 1993, c. 37, s. 17.

Order where public at risk

71.2 If the conduct of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed, the College may apply to a judge of the Superior Court of Justice for an order declaring that an order that was made by a panel of the Discipline Committee on the grounds of professional misconduct and that directs the Registrar to revoke, suspend or impose terms, conditions or limitations on a member's certificate shall take effect immediately despite any appeal and any other Act. 2007, c. 10, Sched. M, s. 51.

Reinstatement

Applications for reinstatement

72. (1) A person whose certificate of registration has been revoked or suspended as a result of disciplinary or incapacity proceedings may apply in writing to the Registrar to have a new certificate issued or the suspension removed. 1991, c. 18, Sched. 2, s. 72 (1).

Time of application

(2) An application under subsection (1) shall not be made earlier than,

(a) one year after the date on which the certificate of registration was revoked or suspended; or

(b) six months after a decision has been made in a previous application under subsection (1).
2007, c. 10, Sched. M, s. 52.

Time of application, sexual abuse cases

(3) An application under subsection (1), in relation to a revocation for sexual abuse of a patient, shall not be made earlier than,

(a) five years after the date on which the certificate of registration was revoked; or

(b) six months after a decision has been made in a previous application under subsection (1).
2007, c. 10, Sched. M, s. 52.

Notice where complainant

(4) The Registrar shall give the complainant in the original proceeding notice of an application under subsection (1). 2007, c. 10, Sched. M, s. 52.

Reasons for reinstatement

(5) The person making the application under subsection (1) shall provide reasons why the certificate should be issued or the suspension be removed. 2007, c. 10, Sched. M, s. 52.

Referral to Committee

73. (1) The Registrar shall refer the application, if the revocation or suspension was on the grounds of,

- (a) professional misconduct or incompetence, to the Discipline Committee; or
- (b) incapacity, to the Fitness to Practise Committee.

Hearings

(2) The chair of a committee to which an application is referred shall select a panel from among the members of the committee to hold a hearing of the application.

Procedural provisions

(3) The following provisions apply with necessary modifications to a hearing of an application by a panel of the Discipline Committee:

1. Subsection 22 (4) (findings of fact).
2. Subsection 38 (2) (composition).
3. Subsection 38 (3) (composition).
4. Subsection 38 (5) (quorum).
5. Section 43 (no communication by panel members).
6. Section 44 (legal advice).
7. Section 45 (hearings open).
8. Section 47 (sexual misconduct witnesses).
9. Section 48 (transcript of hearings).
10. Section 50 (members of panel who participate).
11. Section 55 (release of evidence).

Idem

(4) The following provisions apply with necessary modifications to a hearing of an application by a panel of the Fitness to Practise Committee:

1. Subsection 22 (4) (findings of fact).

2. Section 43 (no communication by panel members).
3. Section 44 (legal advice).
4. Section 47 (sexual misconduct witnesses).
5. Section 48 (transcript of hearings).
6. Section 50 (members of panel who participate).
7. Section 55 (release of evidence).
8. Subsection 64 (2) (composition).
9. Subsection 64 (3) (quorum).
10. Section 68 (hearings closed).

Order

(5) A panel may, after a hearing, make an order doing any one or more of the following:

1. Directing the Registrar to issue a certificate of registration to the applicant.
2. Directing the Registrar to remove the suspension of the applicant's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the applicant's certificate of registration. 1991, c. 18, Sched. 2, s. 73 (1-5).

Limitation for sexual abuse cases

(5.1) A panel may not make an order directing that the Registrar issue a new certificate of registration to an applicant whose certificate had been revoked for sexual abuse of a patient unless the prescribed conditions are met. 1993, c. 37, s. 19.

Decision

(6) A panel that held a hearing of an application shall give its decision and reasons in writing to the applicant and the Registrar. 1991, c. 18, Sched. 2, s. 73 (6).

Orders without hearing

74. (1) The Council or Executive Committee may, without a hearing, with respect to a person whose certificate of registration has been revoked or suspended as a result of disciplinary or incapacity proceedings, make an order doing any one or more of the following:

1. Directing the Registrar to issue a new certificate of registration to the applicant.
2. Directing the Registrar to remove the suspension of the applicant's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the applicant's certificate of registration if an order is made under paragraph 1 or 2. 1991, c. 18, Sched. 2, s. 74.

Limitation

(2) This section does not apply with respect to a revocation for sexual abuse of a patient. 1993, c. 37, s. 20.

Registrar's Powers of Investigation

Investigators

75. (1) The Registrar may appoint one or more investigators to determine whether a member has committed an act of professional misconduct or is incompetent if,

(a) the Registrar believes on reasonable and probable grounds that the member has committed an act of professional misconduct or is incompetent and the Inquiries, Complaints and Reports Committee approves of the appointment;

(b) the Inquiries, Complaints and Reports Committee has received information about a member from the Quality Assurance Committee under paragraph 4 of subsection 80.2 (1) and has requested the Registrar to conduct an investigation; or

(c) the Inquiries, Complaints and Reports Committee has received a written complaint about the member and has requested the Registrar to conduct an investigation. 2007, c. 10, Sched. M, s. 53.

Emergencies

(2) The Registrar may appoint an investigator if,

(a) the Registrar believes on reasonable and probable grounds that the conduct of the member exposes or is likely to expose his or her patients to harm or injury, and that the investigator should be appointed immediately; and

(b) there is not time to seek approval from the Inquiries, Complaints and Reports Committee. 2007, c. 10, Sched. M, s. 53.

Report

(3) Where an investigator has been appointed under subsection (2), the Registrar shall report the appointment of the investigator to the Inquiries, Complaints and Reports Committee within five days. 2007, c. 10, Sched. M, s. 53.

Application of *Public Inquiries Act, 2009*

76. (1) An investigator may inquire into and examine the practice of the member to be investigated and section 33 of the *Public Inquiries Act, 2009* applies to that inquiry and examination. 2009, c. 33, Sched. 6, s. 84.

Reasonable inquiries

(1.1) An investigator may make reasonable inquiries of any person, including the member who is the subject of the investigation, on matters relevant to the investigation. 2009, c. 6, s. 1.

Idem

(2) An investigator may, on the production of his or her appointment, enter at any reasonable time the place of practice of the member and may examine anything found there that is relevant to the investigation. 1991, c. 18, Sched. 2, s. 76 (2); 2007, c. 10, Sched. M, s. 54.

Obstruction prohibited

(3) No person shall obstruct an investigator or withhold or conceal from him or her or destroy anything that is relevant to the investigation. 1991, c. 18, Sched. 2, s. 76 (3).

Member to co-operate

(3.1) A member shall co-operate fully with an investigator. 2009, c. 6, s. 1.

Conflicts

(4) This section applies despite any provision in any Act relating to the confidentiality of health records. 1991, c. 18, Sched. 2, s. 76 (4).

Entries and searches

77. (1) A justice of the peace may, on the application of the investigator made without notice, issue a warrant authorizing an investigator to enter and search a place and examine any document or thing specified in the warrant if the justice of the peace is satisfied that the investigator has been properly appointed and that there are reasonable and probable grounds established upon oath for believing that,

(a) the member being investigated has committed an act of professional misconduct or is incompetent; and

(b) there is something relevant to the investigation at the place. 2007, c. 10, Sched. M, s. 55.

Hours of execution

(2) A warrant issued under subsection (1) may be executed only between 8 a.m. and 8 p.m. unless the warrant specifies otherwise. 2007, c. 10, Sched. M, s. 55.

Application for dwelling

(2.1) An application for a warrant under subsection (1) to enter a dwelling shall specifically indicate that the application relates to a dwelling. 2007, c. 10, Sched. M, s. 55.

Assistance and entry by force

(3) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) may be assisted by other persons and may enter a place by force. 1991, c. 18, Sched. 2, s. 77 (3).

Investigator to show identification

(4) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) shall produce his or her identification, on request, to any person at the place. 1991, c. 18, Sched. 2, s. 77 (4).

Copying of documents and objects

78. (1) An investigator may copy, at the College's expense, a document or object that an investigator may examine under subsection 76 (2) or under the authority of a warrant issued under subsection 77 (1).

Removal for documents and objects

(2) An investigator may remove a document or object described in subsection (1) if,

(a) it is not practicable to copy it in the place where it is examined; or

(b) a copy of it is not sufficient for the purposes of the investigation.

Return of documents and objects or copies

(3) If it is practicable to copy a document or object removed under subsection (2), the investigator shall,

(a) if it was removed under clause (2) (a), return the document or object within a reasonable time; or

(b) if it was removed under clause (2) (b), provide the person who was in possession of the document or object with a copy of it within a reasonable time.

Copy as evidence

(4) A copy of a document or object certified by an investigator to be a true copy shall be received in evidence in any proceeding to the same extent and shall have the same evidentiary value as the document or object itself.

Definition

(5) In this section,

“document” means a record of information in any form and includes any part of it. 1991, c. 18, Sched. 2, s. 78.

Report of investigation

79. The Registrar shall report the results of an investigation to,

(a) the Inquiries, Complaints and Reports Committee if the investigator was appointed under clause 75 (1) (a) or (b) or subsection 75 (2);

(b) the Inquiries, Complaints and Reports Committee if the investigator was appointed under clause 75 (1) (c), at the request of the Inquiries, Complaints and Reports Committee; or

(c) the Board if the investigator was appointed under clause 75 (1) (c) by the Board exercising the Registrar’s powers under subsection 28 (6). 2007, c. 10, Sched. M, s. 56.

Quality Assurance Committee

79.1 Repealed: 2007, c. 10, Sched. M, s. 57.

Quality assurance program required

80. The Council shall make regulations under clause 95 (1) (r) prescribing a quality assurance program. 1991, c. 18, Sched. 2, s. 80; 2000, c. 26, Sched. H, s. 3 (1).

Minimum requirements for quality assurance program

80.1 A quality assurance program prescribed under section 80 shall include,

(a) continuing education or professional development designed to,

(i) promote continuing competence and continuing quality improvement among the members,

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is amended by adding the following subclause:

(i.1) promote interprofessional collaboration,

See: 2009, c. 26, ss. 24 (14), 27 (2).

(ii) address changes in practice environments, and

(iii) incorporate standards of practice, advances in technology, changes made to entry to practice competencies and other relevant issues in the discretion of the Council;

(b) self, peer and practice assessments; and

(c) a mechanism for the College to monitor members' participation in, and compliance with, the quality assurance program. 2007, c. 10, Sched. M, s. 58.

Powers of the Committee

80.2 (1) The Quality Assurance Committee may do only one or more of the following:

1. Require individual members whose knowledge, skill and judgment have been assessed under section 82 and found to be unsatisfactory to participate in specified continuing education or remediation programs.

2. Direct the Registrar to impose terms, conditions or limitations for a specified period to be determined by the Committee on the certificate of registration of a member,

i. whose knowledge, skill and judgment have been assessed or reassessed under section 82 and have been found to be unsatisfactory, or

ii. who has been directed to participate in specified continuing education or remediation programs as required by the Committee under paragraph 1 and has not completed those programs successfully.

3. Direct the Registrar to remove terms, conditions or limitations before the end of the specified period, if the Committee is satisfied that the member's knowledge, skill and judgment are now satisfactory.

4. Disclose the name of the member and allegations against the member to the Inquiries, Complaints and Reports Committee if the Quality Assurance Committee is of the opinion that the member may have committed an act of professional misconduct, or may be incompetent or incapacitated. 2007, c. 10, Sched. M, s. 58.

Notice

(2) No direction shall be given to the Registrar under paragraph 2 of subsection (1) unless the member has been given notice of the Quality Assurance Committee's intention to give direction, and at least 14 days to make written submissions to the Committee. 2007, c. 10, Sched. M, s. 58.

Assessors

81. The Quality Assurance Committee may appoint assessors for the purposes of a quality assurance program. 1991, c. 18, Sched. 2, s. 81.

Co-operation with Committee and assessors

82. (1) Every member shall co-operate with the Quality Assurance Committee and with any assessor it appoints and in particular every member shall,

- (a) permit the assessor to enter and inspect the premises where the member practises;
- (b) permit the assessor to inspect the member's records of the care of patients;
- (c) give the Committee or the assessor the information in respect of the care of patients or in respect of the member's records of the care of patients the Committee or assessor requests in the form the Committee or assessor specifies;
- (d) confer with the Committee or the assessor if requested to do so by either of them; and
- (e) participate in a program designed to evaluate the knowledge, skill and judgment of the member, if requested to do so by the Committee.

Inspection of premises

(2) Every person who controls premises where a member practises, other than a private dwelling, shall allow an assessor to enter and inspect the premises.

Inspection of records

(3) Every person who controls records relating to a member's care of patients shall allow an assessor to inspect the records.

Exception

(4) Subsection (3) does not require a patient or his or her representative to allow an assessor to inspect records relating to the patient's care.

Conflict

(5) This section applies despite any provision in any Act relating to the confidentiality of health records. 1991, c. 18, Sched. 2, s. 82.

Confidentiality of information

83. (1) Except as provided in section 80.2 and in this section, the Quality Assurance Committee and any assessor appointed by it shall not disclose, to any other committee, information that,

(a) was given by the member; or

(b) relates to the member and was obtained under section 82. 1991, c. 18, Sched. 2, s. 83 (1); 2007, c. 10, Sched. M, s. 59 (1).

Exception if member gave false information

(2) Where relevant to a proceeding before a committee, information described in subsection (1) may be disclosed to that committee for the purpose of showing that the member knowingly gave false information to the Quality Assurance Committee or an assessor. 2007, c. 10, Sched. M, s. 59 (2).

(3) Repealed: 2007, c. 10, Sched. M, s. 59 (3).

Use in other Committees

(4) Information that was disclosed contrary to subsection (1) shall not be used against the member to whom it relates in a proceeding before the Discipline or Fitness to Practise Committees. 1991, c. 18, Sched. 2, s. 83 (4).

(5) Repealed: 2004, c. 3, Sched. B, s. 11 (1).

Quality assurance and other information

83.1 (1) In this section,

“disclose” means, with respect to quality assurance information, to provide or make the information available to a person who is not,

(a) a member of the Quality Assurance Committee,

(b) an assessor appointed by the Committee, a person engaged on its behalf such as a mentor or a person conducting an assessment program on its behalf, or

(c) a person providing administrative support to the Committee or the Registrar or the Committee's legal counsel,

and "disclosure" has a corresponding meaning; ("divulguer", "divulgation")

"proceeding" includes a proceeding that is within the jurisdiction of the Legislature and that is held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, a committee of a College under the *Regulated Health Professions Act, 1991*, a committee of the Board under the *Drugless Practitioners Act*, a committee of the College under the *Social Work and Social Service Work Act, 1998*, an arbitrator or a mediator, but does not include any activities carried on by the Quality Assurance Committee; ("instance")

"quality assurance information" means information that,

(a) is collected by or prepared for the Quality Assurance Committee for the sole or primary purpose of assisting the Committee in carrying out its functions,

(b) relates solely or primarily to any activity that the Quality Assurance Committee carries on as part of its functions,

(c) is prepared by a member or on behalf of a member solely or primarily for the purpose of complying with the requirements of the prescribed quality assurance program, or

(d) is provided to the Quality Assurance Committee under subsection (3),

but does not include,

(e) the name of a member and allegations that the member may have committed an act of professional misconduct, or may be incompetent or incapacitated,

(f) information that was referred to the Quality Assurance Committee from another committee of the College or the Board, or

(g) information that a regulation made under this Code specifies is not quality assurance information and that the Quality Assurance Committee receives after the day on which that regulation is made; ("renseignements sur l'assurance de la qualité")

"witness" means a person, whether or not a party to a proceeding, who, in the course of the proceeding,

(a) is examined or cross-examined for discovery, either orally or in writing,

(b) makes an affidavit, or

(c) is competent or compellable to be examined or cross-examined or to produce a document, whether under oath or not. (“témoin”) 2004, c. 3, Sched. B, s. 11 (2).

Conflict

(2) In the event of a conflict between this section and a provision under any other Act, this section prevails unless it specifically provides otherwise. 2004, c. 3, Sched. B, s. 11 (2).

Disclosure to Quality Assurance Committee

(3) Despite the *Personal Health Information Protection Act, 2004*, a person may disclose any information to the Quality Assurance Committee for the purposes of the committee. 2004, c. 3, Sched. B, s. 11 (2).

Quality assurance information

(4) Despite the *Personal Health Information Protection Act, 2004*, no person shall disclose quality assurance information except as permitted by the *Regulated Health Professions Act, 1991*, including this Code or an Act named in Schedule 1 to that Act or regulations or by-laws made under the *Regulated Health Professions Act, 1991* or under an Act named in Schedule 1 to that Act. 2004, c. 3, Sched. B, s. 11 (2).

Non-disclosure in proceeding

(5) No person shall ask a witness and no court or other body conducting a proceeding shall permit or require a witness in the proceeding to disclose quality assurance information except as permitted or required by the provisions relating to the quality assurance program. 2004, c. 3, Sched. B, s. 11 (2).

Non-admissibility of evidence

(6) Quality assurance information is not admissible in evidence in a proceeding. 2004, c. 3, Sched. B, s. 11 (2).

Non-retaliation

(7) No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that the person has disclosed information to the Quality Assurance Committee under subsection (3), but a person may be disciplined for disclosing false information to the Committee. 2004, c. 3, Sched. B, s. 11 (2).

Immunity

(8) No action or other proceeding may be instituted against a person who in good faith discloses information to a Quality Assurance Committee at the request of the Committee or for

the purposes of assisting the Committee in carrying out its functions. 2004, c. 3, Sched. B, s. 11 (2).

Patient Relations Program

Patient relations program

84. (1) The College shall have a patient relations program. 1991, c. 18, Sched. 2, s. 84 (1).

Measures for sexual abuse of patients

(2) The patient relations program must include measures for preventing and dealing with sexual abuse of patients. 1993, c. 37, s. 22 (1); 2007, c. 10, Sched. M, s. 60 (1).

Same

(3) The measures for preventing and dealing with sexual abuse of patients must include,

(a) educational requirements for members;

(b) guidelines for the conduct of members with their patients;

(c) training for the College's staff; and

(d) the provision of information to the public. 1991, c. 18, Sched. 2, s. 84 (3); 1993, c. 37, s. 22 (2); 2007, c. 10, Sched. M, s. 60 (2).

Report on program

(4) The Council shall give the Health Professions Regulatory Advisory Council a written report describing the patient relation program and, when changes are made to the program, a written report describing the changes. 1991, c. 18, Sched. 2, s. 84 (4).

Advice to Council

85. The Patient Relations Committee shall advise the Council with respect to the patient relations program. 1991, c. 18, Sched. 2, s. 85.

Reporting of Health Professionals

Reporting by members

85.1 (1) A member shall file a report in accordance with section 85.3 if the member has reasonable grounds, obtained in the course of practising the profession, to believe that another member of the same or a different College has sexually abused a patient.

If name not known

(2) A member is not required to file a report if the member does not know the name of the member who would be the subject of the report.

If information from a patient

(3) If a member is required to file a report because of reasonable grounds obtained from one of the member's patients, the member shall use his or her best efforts to advise the patient of the requirement to file the report before doing so. 1993, c. 37, s. 23.

Reporting by facilities

85.2 (1) A person who operates a facility where one or more members practise shall file a report in accordance with section 85.3 if the person has reasonable grounds to believe that a member who practises at the facility is incompetent, incapacitated, or has sexually abused a patient. 1993, c. 37, s. 23; 2007, c. 10, Sched. M, s. 61.

When non-individuals have reasonable grounds

(2) For the purposes of subsection (1), a person who operates a facility but who is not an individual shall be deemed to have reasonable grounds if the individual who is responsible for the operation of the facility has reasonable grounds. 1993, c. 37, s. 23.

If name not known

(3) A person who operates a facility is not required to file a report if the person does not know the name of the member who would be the subject of the report. 1993, c. 37, s. 23.

Requirements of required reports

85.3 (1) A report required under section 85.1 or 85.2 must be filed in writing with the Registrar of the College of the member who is the subject of the report. 1993, c. 37, s. 23.

Timing of report

(2) The report must be filed within 30 days after the obligation to report arises unless the person who is required to file the report has reasonable grounds to believe that the member will continue to sexually abuse the patient or will sexually abuse other patients, or that the incompetence or the incapacity of the member is likely to expose a patient to harm or injury and there is urgent need for intervention, in which case the report must be filed forthwith. 2007, c. 10, Sched. M, s. 62 (1).

Contents of report

(3) The report must contain,

- (a) the name of the person filing the report;
- (b) the name of the member who is the subject of the report;
- (c) an explanation of the alleged sexual abuse, incompetence or incapacity;
- (d) if the grounds of the person filing the report are related to a particular patient of the member who is the subject of the report, the name of that patient, subject to subsection (4). 1993, c. 37, s. 23; 2007, c. 10, Sched. M, s. 62 (2).

Patients not named without consent

- (4) The name of a patient who may have been sexually abused must not be included in a report unless the patient, or if the patient is incapable, the patient's representative, consents in writing to the inclusion of the patient's name. 1993, c. 37, s. 23.

If reporter providing psychotherapy

- (5) If a member who is required to file a report under section 85.1 is providing psychotherapy to the member who would be the subject of the report, the report must also contain the opinion of the member filing the report, if he or she is able to form one, as to whether or not the member who is the subject of the report is likely to sexually abuse patients in the future. 1993, c. 37, s. 23.

Additional reports, psychotherapy

85.4 (1) A member who files a report in respect of which subsection 85.3 (5) applies, shall file an additional report to the same College if the member ceases to provide psychotherapy to the member who was the subject of the first report.

Timing of additional report

- (2) The additional report must be filed forthwith. 1993, c. 37, s. 23.

Reporting by employers, etc.

85.5 (1) A person who terminates the employment or revokes, suspends or imposes restrictions on the privileges of a member or who dissolves a partnership, a health profession corporation or association with a member for reasons of professional misconduct, incompetence or incapacity shall file with the Registrar within thirty days after the termination, revocation, suspension, imposition or dissolution a written report setting out the reasons. 1993, c. 37, s. 23; 2000, c. 42, Sched., s. 36.

Same

(2) If a person intended to terminate the employment of a member or to revoke the member's privileges for reasons of professional misconduct, incompetence or incapacity but the person did not do so because the member resigned or voluntarily relinquished his or her privileges, the person shall file with the Registrar within thirty days after the resignation or relinquishment a written report setting out the reasons upon which the person had intended to act. 1993, c. 37, s. 23.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted: (See: 2014, c. 14, Sched. 2, ss. 12, 13)

Same

(2) Where a member resigns, or voluntarily relinquishes or restricts his or her privileges or practice, and the circumstances set out in paragraph 1 or 2 apply, a person referred to in subsection (3) shall act in accordance with those paragraphs:

1. Where a person referred to in subsection (3) has reasonable grounds to believe that the resignation, relinquishment or restriction, as the case may be, is related to the member's professional misconduct, incompetence or incapacity, the person shall file with the Registrar within 30 days after the resignation, relinquishment or restriction a written report setting out the grounds upon which the person's belief is based.

2. Where the resignation, relinquishment or restriction, as the case may be, takes place during the course of, or as a result of, an investigation conducted by or on behalf of a person referred to in subsection (3) into allegations related to professional misconduct, incompetence or incapacity on the part of the member, the person referred to in subsection (3) shall file with the Registrar within 30 days after the resignation, relinquishment or restriction a written report setting out the nature of the allegations being investigated. 2014, c. 14, Sched. 2, s. 12.

Application

(3) This section applies to every person, other than a patient, who employs or offers privileges to a member or associates in partnership or otherwise with a member for the purpose of offering health services. 1993, c. 37, s. 23.

Immunity for reports

85.6 No action or other proceeding shall be instituted against a person for filing a report in good faith under section 85.1, 85.2, 85.4 or 85.5. 1993, c. 37, s. 23.

Reporting by members re: offences

85.6.1 (1) A member shall file a report in writing with the Registrar if the member has been found guilty of an offence. 2007, c. 10, Sched. M, s. 63; 2009, c. 26, s. 24 (15).

Timing of report

(2) The report must be filed as soon as reasonably practicable after the member receives notice of the finding of guilt. 2007, c. 10, Sched. M, s. 63.

Contents of report

(3) The report must contain,

(a) the name of the member filing the report;

(b) the nature of, and a description of the offence;

(c) the date the member was found guilty of the offence;

(d) the name and location of the court that found the member guilty of the offence; and

(e) the status of any appeal initiated respecting the finding of guilt. 2007, c. 10, Sched. M, s. 63.

Publication ban

(4) The report shall not contain any information that violates a publication ban. 2007, c. 10, Sched. M, s. 63.

Same

(5) No action shall be taken under this section which violates a publication ban and nothing in this section requires or authorizes the violation of a publication ban. 2007, c. 10, Sched. M, s. 63.

Additional reports

(6) A member who files a report under subsection (1) shall file an additional report if there is a change in status of the finding of guilt as the result of an appeal. 2007, c. 10, Sched. M, s. 63.

Reporting by members re: professional negligence and malpractice

85.6.2 (1) A member shall file a report in writing with the Registrar if there has been a finding of professional negligence or malpractice made against the member. 2007, c. 10, Sched. M, s. 63; 2009, c. 26, s. 24 (16).

Timing of report

(2) The report must be filed as soon as reasonably practicable after the member receives notice of the finding made against the member. 2007, c. 10, Sched. M, s. 63.

Contents of report

- (3) The report must contain,
- (a) the name of the member filing the report;
 - (b) the nature of, and a description of the finding;
 - (c) the date that the finding was made against the member;
 - (d) the name and location of the court that made the finding against the member; and
 - (e) the status of any appeal initiated respecting the finding made against the member. 2007, c. 10, Sched. M, s. 63.

Publication ban

- (4) The report shall not contain any information that violates a publication ban. 2007, c. 10, Sched. M, s. 63.

Same

- (5) No action shall be taken under this section which violates a publication ban and nothing in this section requires or authorizes the violation of a publication ban. 2007, c. 10, Sched. M, s. 63.

Additional reports

- (6) A member who files a report under subsection (1) shall file an additional report if there is a change in status of the finding made against the member as the result of an appeal. 2007, c. 10, Sched. M, s. 63.

Funding for Therapy and Counselling**Funding provided by College**

- 85.7** (1) There shall be a program, established by the College, to provide funding for therapy and counselling for persons who, while patients, were sexually abused by members. 1993, c. 37, s. 23.

Funding governed by regulations

- (2) The funding shall be provided in accordance with the regulations made under the *Regulated Health Professions Act, 1991*. 1993, c. 37, s. 23.

Administration

(3) The Patient Relations Committee shall administer the program. 1993, c. 37, s. 23.

Eligibility

(4) A person is eligible for funding only if,

(a) there is a finding by a panel of the Discipline Committee that the person, while a patient, was sexually abused by a member; or

(b) the alternative requirements prescribed in the regulations made by the Council are satisfied. 1993, c. 37, s. 23.

Effect of appeal

(5) A person's eligibility for funding under clause (4) (a) is not affected by an appeal from the panel's finding. 1993, c. 37, s. 23.

No assessment

(6) A person is not required to undergo a psychological or other assessment before receiving funding. 1993, c. 37, s. 23.

Choice of therapist or counsellor

(7) A person who is eligible for funding is entitled to choose any therapist or counsellor, subject to the following restrictions:

1. The therapist or counsellor must not be a person to whom the eligible person has any family relationship.
2. The therapist or counsellor must not be a person who, to the College's knowledge, has at any time or in any jurisdiction been found guilty of professional misconduct of a sexual nature or been found civilly or criminally liable for an act of a similar nature.
3. If the therapist or counsellor is not a member of a regulated health profession, the College may require the person to sign a document indicating that he or she understands that the therapist or counsellor is not subject to professional discipline. 1993, c. 37, s. 23.

Payment

(8) Funding shall be paid only to the therapist or counsellor chosen by the person. 1993, c. 37, s. 23.

Use of funding

(9) Funding shall be used only to pay for therapy or counselling and shall not be applied directly or indirectly for any other purpose. 1993, c. 37, s. 23.

Same

(10) Funding may be used to pay for therapy or counselling that was provided at any time after the sexual abuse took place. 2007, c. 10, Sched. M, s. 64.

Other coverage

(11) The funding that is provided to a person shall be reduced by the amount that the Ontario Health Insurance Plan or a private insurer is required to pay for therapy or counselling for the person during the period of time during which funding may be provided for him or her under the program. 1993, c. 37, s. 23.

Right of recovery

(12) The College is entitled to recover from the member, in a proceeding brought in a court of competent jurisdiction, money paid in accordance with this section for therapy or counselling for an eligible person referred to in clause (4) (a). 1993, c. 37, s. 23.

Person not required to testify

(13) The eligible person shall not be required to appear or testify in the proceeding. 1993, c. 37, s. 23.

Health Profession Corporations**Professional corporations**

85.8 (1) Subject to the regulations made under subsection 43 (1) of the *Regulated Health Professions Act, 1991* and the by-laws, one or more members of the same health profession may establish a health profession corporation for the purposes of practising their health profession. 2005, c. 28, Sched. B, s. 2 (1).

Same

(2) The provisions of the *Business Corporations Act*, including the regulations made under that Act, that apply with respect to professional corporations apply with respect to a health profession corporation established under subsection (1). 2005, c. 28, Sched. B, s. 2 (1).

Notice of change of shareholder

85.9 A health profession corporation shall notify the Registrar within the time and in the form and manner determined under the by-laws of a change in the shareholders of the corporation who are members of the College. 2000, c. 42, Sched., s. 37; 2007, c. 10, Sched. M, s. 69.

Application of Act, etc.

85.10 The following things apply to a member who practises a health profession through a health profession corporation:

1. The *Regulated Health Professions Act, 1991* and the regulations made under that Act.
2. The health profession Act governing the member's health profession and the regulations and by-laws made under that Act. 2001, c. 8, s. 220; 2007, c. 10, Sched. M, s. 65.

Professional, fiduciary and ethical obligations to patients

85.11 (1) The professional, fiduciary and ethical obligations of a member to a person on whose behalf the member is practising a health profession,

(a) are not diminished by the fact that the member is practising through a health profession corporation; and

(b) apply equally to the corporation and to its directors, officers, shareholders, agents and employees. 2000, c. 42, Sched., s. 37; 2001, c. 8, s. 221 (1).

Investigation

(2) Subsections (3) and (4) apply if an action or the conduct of a member practising on behalf of a health profession corporation is the subject of one of the following:

1. A complaint.
2. A mandatory report.
3. A specified allegation of professional misconduct or incompetence.
4. An investigation, review or hearing by the Board.
5. An investigation, inspection or assessment by an investigator or assessor appointed under the Code.
6. An inquiry by a panel of the Inquiries, Complaints and Reports Committee.
7. A referral to the Discipline Committee or the Fitness to Practise Committee.

8. A hearing by a committee of the college. 2001, c. 8, s. 221 (2); 2007, c. 10, Sched. M, s. 66.

Same

(3) In the circumstances described in subsection (2), any power that the College may exercise in respect of the member may be exercised in respect of the health profession corporation. 2001, c. 8, s. 221 (2).

Liability

(4) In the circumstances described in subsection (2), the health profession corporation is jointly and severally liable with the member for all fines, costs and expenses that the member is ordered to pay. 2001, c. 8, s. 221 (2).

Conflict in duties

85.12 If there is a conflict between a member's duty to a patient, the college or the public and the member's duty to a health profession corporation as a director or officer of the corporation, the duty to the patient, the college or the public prevails. 2001, c. 8, s. 222.

Restrictions apply to corporation's certificate

85.13 A term, condition or limitation imposed on the certificate of registration of a member practising a health profession through a health profession corporation applies to the certificate of authorization of the corporation in relation to the practice of the health profession through the member. 2000, c. 42, Sched., s. 37.

Prohibition, professional misconduct

85.14 (1) In the course of practising a health profession, a health profession corporation shall not do, or fail to do, something that would constitute professional misconduct if a member of the health profession did, or failed to do, it. 2001, c. 8, s. 223.

Prohibition, contraventions

(2) A health profession corporation shall not contravene any provision of,

(a) the *Regulated Health Professions Act, 1991* and the regulations made under that Act; or

(b) the health profession Act governing the member's health profession and the regulations and by-laws made under that Act. 2001, c. 8, s. 223; 2007, c. 10, Sched. M, s. 67.

Prohibition, corporate matters

(3) A health profession corporation shall not practise a health profession when it does not satisfy the requirements for a professional corporation under subsection 3.2 (2) of the *Business*

Corporations Act or a requirement established under subsection 3.2 (6) of that Act. 2005, c. 28, Sched. B, s. 2 (2).

Miscellaneous

Right to use French

86. (1) A person has the right to use French in all dealings with the College. 1991, c. 18, Sched. 2, s. 86 (1).

Language preferences

(1.1) The College shall identify and record the language preference of each College member and identify the language preference of each member of the public who has dealings with the College. 2007, c. 10, Sched. M, s. 68.

Council to ensure right

(2) The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use French in all dealings with the College. 1991, c. 18, Sched. 2, s. 86 (2).

Definition

(3) In this section,

“dealings” means any service or procedure available to the public or to members and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews. 1991, c. 18, Sched. 2, s. 86 (3).

Limitation

(4) A person’s right under subsection (1) is subject to the limits that are reasonable in the circumstances. 1991, c. 18, Sched. 2, s. 86 (4).

Court orders

87. The College may apply to the Superior Court of Justice for an order directing a person to comply with a provision of the health profession Act, this Code, the *Regulated Health Professions Act, 1991*, the regulations under those Acts or the by-laws made under clause 94 (1) (l.2), (l.3) (s), (t), (t.1), (t.2), (v), (w) or (y). 1991, c. 18, Sched. 2, s. 87; 1998, c. 18, Sched. G, s. 20; 2000, c. 42, Sched., s. 38; 2001, c. 8, s. 224; 2006, c. 19, Sched. C, s. 1 (1).

Evidence of Registrar

88. A statement purporting to be certified by the Registrar under the seal of the College as a statement of information from the records kept by the Registrar in the course of his or her duties is admissible in court as proof, in the absence of evidence to the contrary, of the information in it without proof of the Registrar's appointment or signature or of the seal of the College. 1991, c. 18, Sched. 2, s. 88.

89. Repealed: 2002, c. 24, Sched. B, s. 25.

90. Repealed: 1993, c. 37, s. 24.

91. Repealed: 2007, c. 10, Sched. M, s. 70.

Making false representations to obtain certificates

92. (1) Every person who makes a representation, knowing it to be false,

(a) for the purpose of having a certificate of registration issued is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) for the purpose of having a certificate of authorization issued is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 71.

Assisting the making of false representation

(2) Every person who knowingly assists a person in committing an offence under subsection (1) is guilty of an offence and on conviction is liable,

(a) in the case of an individual, to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation, to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 71.

Protection for reporters from reprisals

92.1 No person shall do anything, or refrain from doing anything, relating to another person's employment or to a contract providing for the provision of services by that other person, in retaliation for that other person filing a report or making a complaint as long as the report was filed, or the complaint was made, in good faith. 1993, c. 37, s. 25.

Offences

93. (1) Every person who contravenes an order made under subsection 7 (3) or section 45 or 47, or who contravenes subsection 76 (3), 82 (2) or (3), 85.2 (1), 85.5 (1) or (2) or 85.14 (2) or section 92.1 is guilty of an offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than \$50,000 for a first offence and not more than \$200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 72; 2009, c. 26, s. 24 (17).

Same

(2) Every person who contravenes subsection 85.1 (1) or 85.4 (1) is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 for a first offence and not more than \$50,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 72.

Forms

93.1The College may require that forms approved by the College be used for any purpose under the Act. 1998, c. 18, Sched. G, s. 21.

By-laws

94. (1) The Council may make by-laws relating to the administrative and internal affairs of the College and, without limiting the generality of the foregoing, the Council may make by-laws,

(a) adopting a seal for the College;

(b) providing for the execution of documents by the College;

(c) respecting banking and finance;

(d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;

(d.1) respecting the election of Council members, including the requirements for members to be able to vote, electoral districts and election recounts;

(d.2) respecting the qualification and terms of office of Council members who are elected;

(d.3) prescribing conditions disqualifying elected members from sitting on the Council and governing the removal of disqualified Council members;

(e) providing procedures for the election of the President and Vice-President of the College, the selection of the chairs of the committees, the filling of a vacancy in those offices, and setting out the duties and powers of the President, Vice-President and the chairs;

(f) respecting the calling, holding and conducting of the Council meetings and respecting the duties of the Council's members;

(g) respecting the calling, holding and conducting of meetings of the members;

(g.1) providing that a meeting of the Council or of members or a meeting of a committee or of a panel that is held for any purpose other than for the conducting of a hearing may be held in any manner that allows all the persons participating to communicate with each other simultaneously and instantaneously;

(g.2) prescribing what constitutes a conflict of interest for members of the Council or a committee and regulating or prohibiting the carrying out of the duties of those members in cases in which there is a conflict of interest;

(h) providing for the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and for the payment of the expenses of the Council and committees in the conduct of their business;

(h.1) respecting the filling of vacancies on the Council or on committees;

(h.2) providing for the composition of committees;

(h.3) respecting the qualification, selection, appointment and terms of office of members of committees required by subsection 10 (1) who are not members of the Council;

(h.4) prescribing conditions disqualifying committee members from sitting on committees required under subsection 10 (1) and governing the removal of disqualified committee members;

(i) providing for the appointment, powers and duties of committees other than the committees required by subsection 10 (1);

(j) delegating to the Executive Committee powers and duties of the Council, other than the power to make, amend or revoke regulations and by-laws;

(k) providing for a code of ethics for the members;

(l) providing for the appointment of inspectors for the purposes of regulations made under clause 95 (1) (h);

(l.1) respecting the maintenance of the register kept by the Registrar and providing for the issuing of certificates when information contained in the register is made available to the public under section 23;

(l.2) prescribing information as information to be kept in the register for the purposes of paragraph 14 of subsection 23 (2), designating information kept in the register as public for the purposes of subsection 23 (5), and designating information kept in the register as public for the purposes of subsection 23 (5) that may be withheld from the public for the purposes of subsection 23 (6);

(l.3) requiring members to give the College their home addresses and such other information as may be specified in the by-law about themselves and the places they practise the profession, the services they provide there, their participation in continuing education programs and the names, business addresses, telephone numbers and facsimile numbers of their associates, partners, employers and employees and prescribing the form and manner in which the information shall be given;

(l.4) respecting the duties and office of the Registrar;

(m) providing procedures for the making, amending and revoking of by-laws;

(n) prescribing forms and providing for their use;

(o) respecting the management of the property of the College;

(p) authorizing the College to make arrangements for the indemnity of members against professional liability and providing levies to be paid by members;

(q) respecting membership of the College in a national organization of bodies with similar functions, the payment of annual assessments and representation at meetings;

(r) authorizing the making of grants to advance scientific knowledge or the education of persons wishing to practise the profession, to maintain or improve the standards of practice of the profession or to provide public information about, and encourage interest in, the past and present role of the profession in society;

(s) requiring members to pay annual fees, fees upon application for a certificate and upon registration and fees for examinations, appeals from examinations, election recounts and continuing education programs and for anything the Registrar or a committee of the College is required or authorized to do and requiring members to pay penalties for the late payment of any fee;

(t) specifying the amount of any fee or penalty required under clause (s);

(t.1) prescribing the form and manner in which a health profession corporation shall notify the Registrar of a change in the shareholders of the corporation and the time period for doing so;

(t.2) requiring the payment of fees upon application for a certificate of authorization and for the issue or renewal of a certificate of authorization and specifying the amount of such fees;

(u) requiring persons to pay fees, set by the Registrar or by by-law, for anything the Registrar is required or authorized to do;

(v) requiring members to pay specified amounts to pay for the program required under section 85.7, including amounts that are different for different members or classes of members and including amounts,

(i) that are specified in the by-law,

(ii) that are calculated according to a method set out in the by-law, or

(iii) that are determined by a person specified in the by-law;

(w) requiring members to participate in an arrangement set up by the College in which members pay a person such amounts as may be determined by the person for the members or for classes of members and the person pays amounts to the College to pay for the program required under section 85.7;

(x) authorizing the Patient Relations Committee to require therapists and counsellors who are providing therapy or counselling that is funded through the program required under section 85.7 and persons who are receiving such therapy or counselling, to provide a written statement, signed in each case by the therapist or counsellor and by the person, containing details of the therapist's or counsellor's training and experience, and confirming that therapy or counselling is being provided and that the funds received are being devoted only to that purpose;

(y) requiring members to have professional liability insurance that satisfies the requirements specified in the by-laws or to belong to a specified association that provides protection against professional liability and requiring members to give proof of the insurance or membership to the Registrar in the manner set out in the by-laws;

(z) respecting the designation of life or honorary members of the College and prescribing their rights and privileges;

(z.1) exempting any member or class of member from a by-law made under this section;

(z.2) specifying or setting out anything that is required to be specified or set out under this subsection. 1991, c. 18, Sched. 2, s. 94 (1); 1998, c. 18, Sched. G, s. 22 (1-4); 2000, c. 42, Sched., s. 40; 2007, c. 10, Sched. M, s. 73 (1, 2).

Circulation of certain by-laws

(2) A by-law shall not be made under clause (1) (l.2), (l.3), (s), (t), (v), (w) or (y) unless the proposed by-law is circulated to every member at least 60 days before it is approved by the Council. 1998, c. 18, Sched. G, s. 22 (5).

Exception

(2.1) Despite subsection (2), the Council may, with the approval of the Minister, exempt a by-law from the requirement that it be circulated or abridge the 60-day period referred to in subsection (2) to such lesser period as the Minister may determine. 1998, c. 18, Sched. G, s. 22 (5).

Copies of by-laws, etc.

(3) A copy of the by-laws and standards of practice made by the Council, and any documents that are referred to in the by-laws and regulations made by the Council shall be given to the Minister and to each member and shall be made available to the public during normal business hours in the office of the College. 2007, c. 10, Sched. M, s. 73 (3).

Public copies

(3.1) Any person is entitled to a copy of any by-law, standard of practice or other document mentioned in subsection (3) on the payment of a reasonable fee, if required, to the Registrar. 2007, c. 10, Sched. M, s. 73 (3).

Unanimous by-laws, etc.

(4) A by-law or resolution signed by all the members of the Council is as valid and effective as if passed at a meeting of the Council called, constituted and held for the purpose. 1991, c. 18, Sched. 2, s. 94 (4).

Application

(5) Subsections (3) and (4) apply to by-laws made under this section or under a health profession Act. 1998, c. 18, Sched. G, s. 22 (6).

Regulations

95. (1) Subject to the approval of the Lieutenant Governor in Council and with prior review of the Minister, the Council may make regulations,

(0.a) providing that the spousal exception in subsection 1 (5) applies in respect of the College;

(a) prescribing classes of certificates of registration and imposing terms, conditions and limitations on the certificates of registration of a class;

- (b) respecting applications for certificates of registration or classes of them and the issuing, suspension, revocation and expiration of the certificates or classes of them;
- (c) prescribing standards and qualifications for the issue of certificates of registration;
- (d) prescribing certain registration requirements as non-exemptible requirements for the purposes of subsection 18 (3) and 22 (8);
- (e) defining specialties in the profession, providing for certificates relating to those specialties, the qualifications for and suspension and revocation of those certificates and governing the use of prescribed terms, titles or designations by members indicating a specialization in the profession;
- (f) requiring, for purposes associated with the registration of members, the successful completion of examinations as set and approved, from time to time, by the College, other persons or associations of persons and providing for an appeal of the results of the examinations;
- (g) governing or prohibiting the delegation by or to members of controlled acts set out in subsection 27 (2) of the *Regulated Health Professions Act, 1991*;
- (h) requiring and providing for the inspection and examination of premises used in connection with the practice of the profession and of equipment, books, accounts, reports and records of members relating to their practices;
- (h.1) providing for the direct observation of a member in his or her practice, including the direct observation by inspectors of procedures, during the course of an inspection or examination provided for under clause (h);
- (i) prescribing what constitutes a conflict of interest in the practice of the profession and regulating or prohibiting the practice of the profession in cases in which there is a conflict of interest;
- (j) defining professional misconduct for the purposes of clause 51 (1) (c);
- (k) designating acts of professional misconduct that must be reported;
- (l) respecting the promotion or advertising of the practice of the profession;
- (m) respecting the reporting and publication of decisions of panels;
- (n) prescribing the standards of practice of the profession and prohibiting members from acting beyond the scope of practice of the profession in the course of practising the profession;
- (o) requiring members to keep prescribed records in respect of their practice;

- (p) regulating or prohibiting the use of terms, titles and designations by members in respect of their practices;
- (q) prescribing alternative requirements for eligibility for funding under clause 85.7 (4) (b);
- (r) prescribing a quality assurance program;
- (r.1) specifying information for the purposes of clause (g) of the definition of “quality assurance information” in subsection 83.1 (1);
- (s) respecting the giving of notice of meetings and hearings that are to be open to the public;
- (t) providing for the exemption of any member from the regulations made by the Council;
- (u) prescribing anything that is referred to in the health profession Act or this Code as being prescribed. 1998, c. 18, Sched. G, s. 23 (1); 2004, c. 3, Sched. B, s. 11 (3); 2007, c. 10, Sched. M, s. 74 (1); 2009, c. 6, s. 2; 2013, c. 9, s. 1 (2).

Note: The following apply with respect to regulations made under paragraphs 1 to 7, 14, 22, 23, 27 to 31, 31.2 to 32, 34, 35 and 38 of subsection 95 (1) that are in force immediately before the Statutes of Ontario, 1998, chapter 18, Schedule G, subsection 23 (1) comes into force:

Despite the coming into force of the Statutes of Ontario, 1998, chapter 18, Schedule G, subsection 23 (1) (repealing the authority under which the regulations are made), the regulations shall be deemed to continue in force until they are revoked by the authority that made them.

A reference to by-laws in any Act listed in Schedule 1 shall be deemed to include a reference to regulations which are deemed to continue in force. See: 1998, c. 18, Sched. G, ss. 23 (2-4), 74.

Standards of practice

(1.1) A regulation under clause (1) (n) may adopt by reference, in whole or in part and with such changes as are considered necessary, any code, standard or guideline relating to standards of practice of the profession and require compliance with the code, standard or guideline as adopted. 1998, c. 18, Sched. G, s. 23 (1).

Rolling incorporation

(1.2) If a regulation under subsection (1.1) so provides, a scientific, administrative or technical document adopted by reference shall be a reference to it, as amended from time to time, and whether the amendment was made before or after the regulation was made. 2007, c. 10, Sched. M, s. 74 (2).

Third party external document

(1.2.1) A document adopted under subsection (1.2) must be a document created by a recognized body and must not be a document created by the College. 2007, c. 10, Sched. M, s. 74 (2).

Exception

(1.2.2) Despite subsection (1.2.1), the incorporation by reference of a document created by the College that was made before the coming into force of that subsection remains valid until it is revoked. 2007, c. 10, Sched. M, s. 74 (2).

Copies available for inspection

(1.3) A copy of every code, standard or guideline adopted by reference under subsection (1.1) shall be available for public inspection during normal business hours in the office of the College and shall be posted on the College's website or be available through a hyperlink at the College's website. 2007, c. 10, Sched. M, s. 74 (2).

Circulation

(1.4) A regulation shall not be made under subsection (1) unless the proposed regulation is circulated to every member at least 60 days before it is approved by the Council. 1998, c. 18, Sched. G, s. 23 (1).

Same

(1.5) Subsection (1.4) does not apply to a regulation if the Minister required that the Council make the regulation under clause 5 (1) (c) of the *Regulated Health Professions Act, 1991*. 1998, c. 18, Sched. G, s. 23 (1).

Exception

(1.6) Despite subsection (1.4), the Council may, with the approval of the Minister, exempt a regulation from the requirement that it be circulated or abridge the 60-day period referred to in subsection (1.4) to such lesser period as the Minister may determine. 1998, c. 18, Sched. G, s. 23 (1).

Adopted documents

(1.7) Subsections (1.4) and (1.6) apply with necessary modifications to an amendment to a scientific, administrative or technical document adopted by reference under subsection (1.1). 2007, c. 10, Sched. M, s. 74 (3).

Quality assurance program – continuing education

(2) Regulations made under clause (1) (r) may require members to participate in continuing education programs. 1991, c. 18, Sched. 2, s. 95 (2); 2000, c. 26, Sched. H, s. 3 (2).

(2.1), (2.2) Repealed: 2007, c. 10, Sched. M, s. 74 (4).

Scope of regulations

(3) A regulation may be general or particular in its application. 1991, c. 18, Sched. 2, s. 95 (3).

Medicine Act, 1991, S.O. 1991, Chap. 30

Health Professions Procedural Code

2. (1) The Health Professions Procedural Code shall be deemed to be part of this Act. 1991, c. 30, s. 2 (1).

Medicine Act, 1991, Ontario Regulation 856/ 93 “Professional Misconduct”

1. (1) The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:

1. Contravening a term, condition or limitation on the member’s certificate of registration.
2. Failing to maintain the standard of practice of the profession.
3. Abusing a patient verbally or physically.
4. Practising the profession while the member’s ability is impaired.
 - 4.1 Practising the profession while the member knows that he or she has deficient clinical ability, as defined in section 26 of Ontario Regulation 114/94 (General) made under the Act.
 - 4.2 Practising the profession during the period after the member is notified by the College that he or she has deficient clinical ability, as defined in section 26 of Ontario Regulation 114/94 (General) made under the Act, and before the member is notified by the College that he or she no longer has deficient clinical ability.
5. Having a conflict of interest.
6. Prescribing, dispensing or selling drugs for an improper purpose.
7. Discontinuing professional services that are needed unless,
 - i. the patient requests the discontinuation,
 - ii. alternative services are arranged, or
 - iii. the patient is given a reasonable opportunity to arrange alternative services.
8. Failing to fulfil the terms of an agreement for professional services.
9. Performing a professional service for which consent is required by law without consent.
10. Giving information concerning the condition of a patient or any services rendered to a patient to a person other than the patient or his or her authorized representative except with the consent of the patient or his or her authorized representative or as required by law.
11. Sharing fees with a person who has referred a patient or receiving fees from any person to whom a member has referred a patient or requesting or accepting a rebate or commission for the referral of a patient.
12. Failing to reveal the exact nature of a secret remedy or treatment used by the member following a proper request to do so.
13. Making a misrepresentation respecting a remedy, treatment or device.

14. Making a claim respecting the utility of a remedy, treatment, device or procedure other than a claim which can be supported as reasonable professional opinion.

15. Using a name other than the member's name as set out in the register in the course of providing or offering to provide services within the scope of practice of the profession.

15.1 Without restricting the generality of paragraph 27, using a term, title or designation relating to a specialty or subspecialty of the profession in contravention of section 9 of Ontario Regulation 114/94 (General) made under the Act.

15.2 Without restricting the generality of paragraph 27, failing to include, in a clear and prominent manner and unabbreviated form, specialist or subspecialist information or the fact that the member is a general practitioner in any material that advertises, promotes or relates to the provision of any professional services by a member in contravention of section 9 of Ontario Regulation 114/94 (General) made under the Act.

16. Falsifying a record relating to the member's practice.

17. Failing without reasonable cause to provide a report or certificate relating to an examination or treatment performed by the member to the patient or his or her authorized representative within a reasonable time after the patient or his or her authorized representative has requested such a report or certificate.

18. Signing or issuing, in the member's professional capacity, a document that the member knows or ought to know is false or misleading.

19. Refusing to perform a medically necessary service unless all or part of the fee is paid before the service is performed.

20. Charging a fee for services not performed, but a member may charge for the cancellation of an appointment less than twenty-four hours before the appointment time or, in psychotherapy practice, in accordance with any reasonable written agreement with the patient.

21. Charging a fee that is excessive in relation to the services performed.

22. Charging a fee for a service that exceeds the fee set out in the then current schedule of fees published by the Ontario Medical Association without informing the patient, before the service is performed, of the excess amount that will be charged.

23. Charging a block or annual fee, which is a fee charged for services that are not insured services as defined in section 1 of the Health Insurance Act and is a set fee regardless of how many services are rendered to a patient.

23.1 Charging a fee for an undertaking not to charge for a service or class of services.

23.2 Charging a fee for an undertaking to be available to provide services to a patient.

24. Failing to itemize an account for professional services,

- i. if requested to do so by the patient or the person or agency who is to pay, in whole or in part, for the services, or
 - ii. if the account includes a commercial laboratory fee.
25. Failing to issue a statement or receipt when requested by a patient or his or her authorized representative.
26. Selling or assigning any debt owed to the member for professional services, but a member may accept a credit card to pay for professional services and may make a general assignment of debts as collateral for a loan to finance his or her medical practice.
- 26.1 Pledging, mortgaging or in any other way encumbering or granting security in the member's interest in a medical record required to be kept under the Act.
27. Contravening the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts.
- 27.1 Without restricting the generality of paragraph 27, failing, by act or omission, to comply with any duty or requirement under Part XI (Inspection of Premises where Certain Procedures are Performed) of Ontario Regulation 114/94 (General) made under the Act.
28. Contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a public hospital if,
- i. the purpose of the law, by-law or rule is to protect public health, or
 - ii. the contravention is relevant to the member's suitability to practise.
29. Permitting, counselling or assisting a person who is not a member of the College to perform acts which should be performed by a member.
30. Failing to respond appropriately or within a reasonable time to a written inquiry from the College.
31. Influencing a patient to change his or her will or other testamentary instrument in favour of a member.
32. Being subjected to the withdrawal or restriction of rights or privileges under the Narcotic Control Act (Canada) or the Food and Drugs Act (Canada) or the regulations under either of those Acts, unless by the member's own request.
33. An act or omission relevant to the practice of medicine that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.
34. Conduct unbecoming a physician. O. Reg. 856/93, s. 1 (1); O. Reg. 857/93, s. 1 (1); O. Reg. 115/94, s. 1; O. Reg. 53/95, s. 1; O. Reg. 450/10, s. 1.

(2) Despite paragraph 10 of subsection (1), it is not professional misconduct for a member to give information about a patient, including access to the patient's records,

(a) to a practitioner of a health profession for the purpose of providing care to the patient; or

(b) to a person for the purpose of research or health administration or planning if the member reasonably believes that the person will take reasonable steps to protect the identity of the patient. O. Reg. 856/93, s. 1 (2).

(2.1) Paragraphs 23, 23.1 and 23.2 of subsection (1) do not apply in a case where a member charges a fee to a third party for a third party service under the Health Insurance Act. O. Reg. 857/93, s. 1 (2).

(3) A member shall be deemed to have committed an act of professional misconduct if the governing body of a health profession in a jurisdiction other than Ontario has made a finding of incompetence or professional misconduct or a similar finding against the member, and the finding is based on facts which would, in the opinion of the College, be grounds for a finding of incompetence as defined in section 52 of the Code or would be an act of professional misconduct as defined in subsection (1). O. Reg. 856/93, s. 1 (3).

(4) A member shall be deemed to have committed an act of professional misconduct if,

(a) the governing body of a health profession in a jurisdiction other than Ontario has provided records to the College evidencing that an allegation of professional misconduct or incompetence or a similar allegation has been made against the member and he or she has entered into an agreement or compromise with the governing body in order to settle the matter without a finding of misconduct or incompetence or a similar finding being made;

(b) the College is satisfied that the records are authentic, accurate and complete; and

(c) the act or omission that is the subject of the allegation would, in the opinion of the College, be an act of professional misconduct as defined in subsection (1), or would constitute incompetence as defined in section 52 of the Code. O. Reg. 856/93, s. 1 (4).

2. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 856/93, s. 2.

**Health Professions Appeal and Review Board and Health Services Appeal and Review
Board Consolidated Rules of Practice (May 1, 2013)**

Rule 2.8

The Board may:

- (a) lengthen or shorten any time limit in these Rules;
- (b) add or remove a party;
- (c) allow any filing to be amended;
- (d) schedule a proceeding, with or without consultation with the parties;
- (e) direct that a proceeding be expedited;
- (f) make orders and recommendations regarding the scheduling of proceedings where two or more proceedings involve the same or similar questions of fact, law or policy;
- (g) determine the location of a proceeding;
- (h) determine whether an in-person, electronic or written proceeding will be held;
- (i) convert the form of a proceeding, case conference or mediation at any stage;
- (j) direct the order in which issues in a proceeding will be considered and determined;
- (k) define and narrow the issues;
- (l) determine and direct the order in which evidence or submissions will be presented;
- (m) on the request of a party or on its own motion, may require any person, including a party, by summons, to give or produce evidence at a proceeding;
- (n) question a witness;
- (o) limit the evidence or submissions on any issue;
- (p) advise when additional evidence, submissions or witnesses may assist the Board;
- (q) make such further orders as are necessary to give effect to an order or direction under these Rules;
- (r) attach terms or conditions to any order or direction;
- (s) make such orders or give such directions as are necessary to prevent abuse of its processes and ensure that the conduct of participants in Board proceedings is courteous and respectful of the Board, Facilitators, parties and others;

- (t) issue Practice Directions to provide further information about Board processes and procedures or to set requirements relating to Board processes, proceedings, case conferences or mediations; and
- (u) take any other action the Board determines is appropriate.

[...]

Representatives

Rule 2.15

A party may represent himself/herself in a proceeding or be represented by a representative.

Rule 2.16

The Board does not assign or pay for the costs of retaining a representative.

Rule 2.17

If a party is represented, the party or his or her representative must notify the Board in writing.

Rule 2.18

A representative must notify the Board if he or she ceases to represent the party and must provide the Board with the party's most current contact information.

[...]

Rule 9.2

Where a party intends to bring a motion, the party shall obtain directions from the Board regarding the time limits for the delivery of motion materials and whether the motion will be conducted in-person, electronically or in writing.

Rule 9.3

A party bringing a motion shall deliver a Notice in writing that provides the following:

- (a) the relief sought and the basis for bringing the motion, the documentary or other evidence relied upon in support of the motion, including any statutory provision or Rule to be relied on;
- (b) a clear and concise statement of the relevant facts pertaining to the matters to be determined by the Board; and
- (c) all submissions and case law.

Rule 9.4

A party responding to a motion shall deliver the following within the time set by the Board:

- (a) the documentary or other evidence relied upon in response to the motion, including any statutory provision or Rule to be relied on;
- (b) a clear and concise statement of the relevant facts pertaining to the matters to be determined by the Board; and
- (c) all submissions and case law.

[...]

Rule 15

Hearings applies only to hearings before the HSARB and hearings by the HPARB under the *Regulated Health Professions Act* and the *Public Hospitals Act* (“PHA Appeals”). This Rule does not apply to reviews by the HSARB under the *Commitment to the Future of Medicare Act, 2004* or to complaint reviews or registration reviews by the HPARB under the *Regulated Health Professions Act*.

Rule 15.1 – Applicant’s Application**Applicant’s application**

15.1.1 An Applicant may deliver an application for a hearing to the Board. The application must comply with any timelines or other requirements under the governing legislation.

Rule 15.2 – Applicant’s Grounds for Hearing

15.2.1 Within 30 days of delivering the application, the Applicant shall deliver a copy of the Applicant’s Grounds for Hearing to the Respondent and to the Board.

15.2.2 The Applicant’s Grounds for Hearing shall contain:

- (a) a copy of the decision that is the subject of the hearing;
- (b) a statement of the Applicant’s position and the reasons for it;
- (c) the remedy, order or decision requested; and
- (d) any additional documents that the Applicant intends to rely on at the hearing.

Rule 15.3 – Respondent’s Grounds of Response

15.3.1 The Respondent shall, within 30 days of the date it received the Applicant’s Grounds for Hearing, deliver a copy of the Respondent’s Grounds of Response to the Applicant and to the Board.

15.3.2 The Respondent’s Grounds of Response shall include:

- (a) an answer or response to the Applicant’s Grounds for Hearing, including a statement of the issues that the Respondent intends to argue at the hearing;
 - (b) the address for delivery of documents to the Respondent, if different from the address set out in the Applicant’s application;
 - (c) the email address of the Respondent, if available;
 - (d) the Board file number, if available;
 - (e) in the case of a PHA Appeal, a copy of the hospital and medical staff by-laws; and
 - (f) any additional documents that the Respondent intends to rely on at the hearing.
- 17.1, 17.2, and pages 31, 34.

Rule 15.4 – Failure to Deliver within Timelines

Failure to deliver Applicant’s Grounds for Hearing or Respondent’s Grounds of Response within timelines

15.4.1 If the Applicant’s Grounds for Hearing or the Respondent’s Grounds of Response are not delivered to the other party and the Board within the applicable time limit, the Board may take any action it considers appropriate, including:

- a) extending the time for delivering the Applicant’s Grounds for Hearing or the Respondent’s Grounds of Response;
- (b) applying case management processes as described in Rule 7;
- (c) setting a date for the hearing; or
- (d) any other action the Board deems appropriate in the circumstances.

Rule 15.5 – Disclosure

Disclosure

15.5.1 In addition to the Applicant’s Grounds for Hearing and the Respondent’s Grounds of Response, unless the Board or a Facilitator orders or directs otherwise, every party must deliver to the other party and to the Board, no later than 15 days before the date of the hearing:

- (a) a copy of any documents the party intends to rely upon at the hearing;
- (b) any witness statements or reports (see Rule 15.6 for witness statements and for expert witness statements and reports);
- (c) any case law the party intends to rely on at the hearing; and
- (d) any other materials the party intends to rely on at the hearing, including a written submission, a factum, a book of authorities or an agreed statement of facts.

Number of copies

15.5.2 A party must provide the Board with the number of copies specified by the Board when delivering or submitting any document or other material.

Rule 15.6 – Witnesses

Witness statements

15.6.1 The Board or a Facilitator may require the parties to deliver witness statements to the other party and to the Board at least 15 days before the date of the hearing, unless the Board specifies another date.

15.6.2 Unless the Board directs otherwise, each witness statement shall include, where applicable:

- (a) the name, address and telephone number of the witness;
- (b) whether the evidence will be factual evidence or, if the witness is qualified, expert evidence;
- (c) whether or not the witness has an interest in the hearing (e.g., a financial, personal or other interest) and, if so, the nature of the interest;
- (d) the date of the statement; and
- (e) the signature of the witness.

Expert witness statements or reports

15.6.3 Unless the Board orders or directs otherwise, every party must deliver to the other party and to the Board, no later than 40 days before the date of the hearing, any expert witness statements or reports.

15.6.4 In the event a party intends to present expert witness evidence, in addition to any requirements under 15.6.2, the expert witness statement shall include:

- (a) a resume of the witness' qualifications;
- (b) a signed Form 2;
- (c) a summary of the opinions, conclusions and recommendations of the witness; and

(d) reference to those portions of other documents which form an important part of the opinions, conclusions and recommendations of the witness.

15.6.5 A party who intends to call an expert witness to respond to the expert witness of the other party must, at least 15 days before the hearing, deliver a copy of the report to the other party and the Board, in compliance with this Rule.

Failure to provide witness statements

15.6.6 If a party fails to comply with the Board's rules in respect of witnesses and disclosure, the party may not call the person as a witness without the consent of the Board, which may be on any terms and conditions set by the Board.

Witnesses

15.6.7 The Board may require that a witness give testimony under oath or affirmation.

15.6.8 Subject to any directions of the Board, a party may:

- (a) call persons as witnesses and ask them questions;
- (b) submit written reports, statements, documents or recordings of any kind; and
- (c) ask questions of any persons called as witnesses by another party.

15.6.9 The Board may limit further examination or cross examination of a witness if it is satisfied that the examination or cross examination has been sufficient to disclose fully and fairly all matters relevant to the issue in the hearing.

Requiring attendance of a witness

15.6.10 A party may request that the Board issue an order for a summons requiring a person to give evidence or produce documents and things specified by the Board at the hearing.

15.6.11 A party shall include in their written request to the Board the following information:

- (a) the name of the witness and his or her address for service;
- (b) a brief summary of the evidence to be given by the witness;
- (c) an explanation of why the evidence of the witness would be relevant and necessary;
- (d) details of any documents or things which the person should be required to bring to the hearing; and
- (e) why the summons is required.

15.6.12 After considering the requesting party's explanation, the Chair or designate may choose not to issue a summons and refer the matter to the panel conducting the hearing for consideration.

15.6.13 Where a summons has been issued before the hearing, the panel conducting the hearing may decide that the summons should be cancelled or varied or, if the witness is present, that they may be excused from the remainder of the hearing.

15.6.14 A witness who is subject to a summons may object to the summons by applying to the Board to have it cancelled or varied. The application may be made to the Chair prior to the hearing or to the panel during the hearing. If the Board is satisfied that the evidence sought from the witness is not relevant or is protected by privilege at law, or if the witness is not able to supply the evidence sought, the Board may cancel or vary the summons.

15.6.15 A party who receives a Board order under this Rule may prepare and serve a summons in the form established by the Board, requiring a person:

(a) to attend an in-person or electronic hearing to give evidence on oath or affirmation or in any other manner that is admissible and relevant to an issue in the hearing; or

(b) to produce for the Board, that party or another party a document or other thing in the person's possession or control that is admissible and relevant to an issue in the hearing.

15.6.16 If the Board issues the order requested under this Rule, the party requesting the order must, at least 15 days before the hearing, deliver a copy of the order to:

(a) the person whose attendance is required by the order; and

(b) all other parties.

15.6.17 The Board may require any person, including a party, by summons:

(a) to attend an in-person or electronic hearing to give evidence on oath or affirmation or in any other manner; or

(b) to produce for the Board or a party a document or other thing in the person's possession or control, as specified by the Board.

Witness panels

15.6.18 The Board may receive evidence from panels of witnesses composed of two or more persons if all parties have had an opportunity to make submissions in that regard.

Rule 15.7 – Recording Evidence

Recording evidence

15.7.1 The oral evidence taken before the Board at a hearing shall be recorded and form part of the official record of proceeding.

15.7.2 If a party requires a copy of a transcript, the party may contact the Board for the name of the court reporter. The party is responsible for ordering the transcript from the court reporter and payment of any applicable fees.

Rule 15.8 – Costs**Ability to order costs**

15.8.1 The HSARB, except in the case of reviews under the Commitment to the Future of Medicare Act, and the HPARB, in the case of hearings under the Public Hospitals Act and registration hearings under the Regulated Health Professions Act, may make an order that costs be awarded to either party in accordance with these Rules.

When costs may be ordered

15.8.2 Where the Board finds that a party has acted unreasonably, frivolously, vexatiously or in bad faith, the Board may order that party to pay the costs of another party.

Request for costs and submissions regarding costs

15.8.3 A request for costs by a party shall be made in writing to the Board before the end of the hearing.

15.8.4 The party requesting costs shall state the grounds for the request and the amount being requested. Supporting invoices or receipts for the expenses being claimed must be filed with the Board within 5 days after the end of the hearing and served on all parties.

Unreasonable, frivolous, vexatious or bad faith conduct

15.8.5 For the purposes of this Rule, “unreasonable, frivolous, vexatious or bad faith conduct” may include, but is not limited to:

- (a) failing to attend a hearing, case conference or mediation, or to send a representative when properly served with a notice;
- (b) failing to cooperate with other parties during the proceedings;
- (c) failing to comply with a procedural order or direction of the Board;
- (d) continuing to deal with issues which the Board has determined are irrelevant;
- (e) continuing to ask questions which are unduly repetitive or that the Board has determined are irrelevant;
- (f) addressing the other parties and/or the Board rudely or disrespectfully, or acting in a disorderly manner;
- (g) unreasonably maligning or slurring the character of a person;
- (h) asking for adjournments or delays without justification;
- (i) failing to prepare adequately for a proceeding;
- (j) taking unnecessary steps in a proceeding;
- (k) initiating a proceeding frivolously, vexatiously, or in bad faith;

- (l) calling a witness that the party knows will give false or misleading evidence; or
- (m) knowingly presenting false or misleading evidence.

15.8.6 The Board is not bound to award costs if one or more of the examples of unreasonable, frivolous, vexatious or bad faith conduct occurs.

Eligible expenses and rates

15.8.7 In the table below, the Board has established maximum levels for legal and consulting fees and other disbursements. Parties should not assume they will recover all of their disbursements or receive full indemnification for legal or consulting fees through a costs award. The Board may make adjustments based on the criteria outlined in these Rules. Based on the circumstances of each case, the Board will determine the scope of the costs and whether the commencement date for work billed may precede the date of the notice of the proceeding. Costs for preparing and presenting the costs application itself are available only where the party's costs claim is reasonable. Eligible expenses include:

Legal Fees **Maximum Rates**

Senior Counsel (>10 yrs. experience)	\$ 290/hr.
Intermediate Counsel (5-10 yrs. experience)	\$ 230/hr.
Junior Counsel (<5 yrs. experience)	\$ 170/hr.
Paralegal or Articling Student	\$ 100/hr.

Consulting Fees

Senior Consultant (>10 yrs. experience)	\$ 290/hr.
Intermediate Consultant (5-10 yrs. experience)	\$ 230/hr.
Junior Consultant (<5 yrs. experience)	\$ 170/hr.

Disbursements

Current Maximum Rates

Travel by Automobile	40.00¢/km for southern Ontario 41.00¢/km for northern Ontario
Meals	\$40.00/day
Photocopies/facsimile	25¢/copy

15.8.8 The claimable fees and disbursements are based on current rates and updated rates are available from the Board. The cost of hotel accommodation (if the proceeding lasts more than one day) and meals will normally be allowed when the claimant is located more than 99 kilometres from the site of the proceeding. Reasonable claims for public transit, taxi or airport limousine travel are acceptable. Reimbursements for air and rail travel and reasonable compensation for travel time will be considered when the claimant is located more than 99 kilometres from the site of the proceeding and the attendance of the claimant is necessary.

15.8.9 Unless ordered otherwise, awards of costs shall bear interest in the same manner as those made under section 129 of the *Courts of Justice Act*.

15.8.10 Costs may be claimed only for the additional proceeding time resulting from the unreasonable conduct of a party.

15.8.11 In deciding the amount of a cost award, the Board may also take into consideration the party's ability to pay and the seriousness of the misconduct.

15.8.12 Parties may also claim costs for economic loss resulting from the unreasonable conduct of another party.

[...]

Rule 17 – Appeals from Board Decisions

Appeals from Board decisions

17.1 A party to a Board proceeding may request a judicial review or appeal from the Board's decision or order to the Divisional Court in accordance with the applicable legislation and the Rules of that Court.

17.2 A party appealing a decision or order of the Board or filing an application for judicial review, shall deliver a copy of the notice of appeal or notice of application for judicial review with the Board at the time the notice of appeal or judicial review application is filed with the court.

[...]

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Complaint Reviews (HPARB)

Application of the Rules

Unless expressly stated otherwise, the Rules apply to all complaint review proceedings before the HPARB under the Regulated Health Professions Act.

For clarity, the following Rules do not apply to complaint reviews:

Rule 8 Mediation

Rule 11 Abandonment

Rule 15 Hearings

[...]

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Guide to Application of the Consolidated Rules

The Consolidated Rules apply to all proceedings before the HPARB and the HSARB. Where a specific Rule does not apply to a particular type of Board proceeding, the Rules will specifically state this. For ease of reference, the following table provides a list of the Rules that do NOT apply in the case of each type of proceeding conducted by the HPARB and the HSARB.

Type of Proceedings	Legislation	Rules that do NOT apply
Complaint Reviews	<input type="checkbox"/> <i>Regulated Health Professions Act</i>	<input type="checkbox"/> Rule 8– Mediation <input type="checkbox"/> Rule 11- Abandonment <input type="checkbox"/> Rule 15– Hearings
Registration Reviews	<input type="checkbox"/> <i>Regulated Health Professions Act</i>	<input type="checkbox"/> Rule 6– Notice of Proceeding <input type="checkbox"/> Rule 8– Mediation <input type="checkbox"/> Rule 15– Hearings
Registration Hearings	<input type="checkbox"/> <i>Regulated Health Professions Act</i>	<input type="checkbox"/> Rule 14– Documents to be relied upon in a review
<i>Public Hospitals Act</i> Hearings	<input type="checkbox"/> <i>Public Hospitals Act</i>	<input type="checkbox"/> Rule 14– Documents to be relied upon in a review
HSARB Hearings	<input type="checkbox"/> <i>Ambulance Act</i> <input type="checkbox"/> <i>Healing Arts Radiation Protection Act</i> <input type="checkbox"/> <i>Health Facilities Special Orders Act</i> <input type="checkbox"/> <i>Health Insurance Act</i>	<input type="checkbox"/> Rule 14– Documents to be relied upon in a review

Health Protection and Promotion Act

Home Care and Community Services Act, 1994

Immunization of School Pupils Act

Independent Health Facilities Act

Laboratory and Specimen Collection Centre Licensing Act

Long-Term Care Homes Act, 2007

Private Hospitals Act

CFMA Reviews

Commitment to the Future of Medicare Act

Rule 6– Notice of Proceeding

Rule 8– Mediation

Rule 15– Hearings

Ontario Works Act, 1997, S.O. 1997, c. 25, Schedule A

Decisions which may be appealed

[26. \(1\)](#) Any decision of an administrator affecting eligibility for or the amount of basic financial assistance, other than a decision referred to in subsection (2), may be appealed to the Tribunal.

...

Jurisdiction of Tribunal

[67. \(1\)](#) The Tribunal shall not make a decision in an appeal under this Act that the administrator would not have authority to make.

Same

[\(2\)](#) The Tribunal shall not inquire into or make a decision concerning,

(a) the constitutional validity of a provision of an Act or a regulation; or

(b) the legislative authority for a regulation made under an Act. 1997, c. 25, Sched. A, s. 67.

Ontario Disability Support Program Act, 1997, S.O. 1997, c. 25, Schedule B

Eligibility for income support

- 5. (1)** No person is eligible for income support unless,
- (a) the person qualifies under subsection 3 (1);
 - (b) the person is resident in Ontario;
 - (c) the budgetary requirements of the person and any dependants exceed their income and their assets do not exceed the prescribed limits, as provided for in the regulations;
 - (d) the person and the prescribed dependants provide the information and the verification of information required to determine eligibility including,
 - (i) information regarding personal identification, as prescribed,
 - (ii) financial information, as prescribed, and
 - (iii) any other prescribed information; and
 - (e) the person and any dependants meet any other prescribed conditions relating to eligibility. 1997, c. 25, Sched. B, s. 5 (1).

Same

- (2)** A person is not eligible for income support if,
- (a) the person is dependent on or addicted to alcohol, a drug or some other chemically active substance;
 - (b) the alcohol, drug or other substance has not been authorized by prescription as provided for in the regulations; and
 - (c) the only substantial restriction in activities of daily living is attributable to the use or cessation of use of the alcohol, drug or other substance at the time of determining or reviewing eligibility. 1997, c. 25, Sched. B, s. 5 (2).
- (3)** Subsection (2) does not apply with respect to a person who, in addition to being dependent on or addicted to alcohol, a drug or some other chemically active substance, has a substantial physical or mental impairment, whether or not that impairment is caused by the use of alcohol, a drug or some other chemically active substance. 1997, c. 25, Sched. B, s. 5 (3).

Order of Tribunal

- 26. (1)** In an appeal to the Tribunal, the Tribunal may,
- (a) deny the appeal;
 - (b) grant the appeal;
 - (c) grant the appeal in part; or

(d) refer the matter back to the Director for reconsideration in accordance with any directions the Tribunal considers proper. 1997, c. 25, Sched. B, s. 26 (1).

Reasons

(2) The Tribunal shall give reasons for its decision. 1997, c. 25, Sched. B, s. 26 (2).

Same

(3) The Director shall give effect to the Tribunal's directions under this section. 1997, c. 25, Sched. B, s. 26 (3).

Order takes effect

(4) A decision of the Tribunal takes effect when it is made and, if it is appealed, continues in effect until a decision of the Divisional Court is made on appeal. 1997, c. 25, Sched. B, s. 26 (4).

...

Jurisdiction of Tribunal

29. (3) The Tribunal shall not make a decision in an appeal under this Act that the Director would not have authority to make. 1997, c. 25, Sched. B, s. 29 (3).

...

Appeal to Court

31. (1) Any party to a hearing before the Tribunal may appeal the Tribunal's decision to the Divisional Court on a question of law. 1997, c. 25, Sched. B, s. 31 (1).

Record to be filed in court

(2) If a party appeals from a decision of the Tribunal, the Tribunal shall forthwith file with the Divisional Court the prescribed documents, which shall constitute the record in the appeal. 1997, c. 25, Sched. B, s. 31 (2).

Notice

(3) The person appealing shall serve the notice of appeal on any other party before the Tribunal. 1997, c. 25, Sched. B, s. 31 (3).

Minister entitled to be heard

(4) The Minister is entitled to be heard by counsel or otherwise on an appeal under this section. 1997, c. 25, Sched. B, s. 31 (4).

Powers of court on appeal

(5) In an appeal to the Court of a decision of the Tribunal, the Court may,

(a) deny the appeal;

(b) grant the appeal;

(c) grant the appeal in part; or

(d) refer the matter back to the Tribunal or the Director for reconsideration in accordance with any directions the Court considers proper. 1997, c. 25, Sched. B, s. 31 (5).

Same

[\(6\)](#) The Tribunal or the Director shall give effect to any direction given by the Court under this section. 1997, c. 25, Sched. B, s. 31 (6).

Human Rights Code, RSBC 1996, c. 210

Dismissal of a complaint

27 (1) A member or panel may, at any time after a complaint is filed and with or without a hearing, dismiss all or part of the complaint if that member or panel determines that any of the following apply:

- (a) the complaint or that part of the complaint is not within the jurisdiction of the tribunal;
- (b) the acts or omissions alleged in the complaint or that part of the complaint do not contravene this Code;
- (c) there is no reasonable prospect that the complaint will succeed;
- (d) proceeding with the complaint or that part of the complaint would not
 - (i) benefit the person, group or class alleged to have been discriminated against, or
 - (ii) further the purposes of this Code;
- (e) the complaint or that part of the complaint was filed for improper motives or made in bad faith;
- (f) the substance of the complaint or that part of the complaint has been appropriately dealt with in another proceeding;
- (g) the contravention alleged in the complaint or that part of the complaint occurred more than 6 months before the complaint was filed unless the complaint or that part of the complaint was accepted under section 22 (3).

(2) If a member or panel dismisses a complaint or part of a complaint under subsection (1), that member or panel must inform the following persons of the decision in writing and give reasons for the decision:

(a) the complainant;

(b) the person against whom the complaint was made, if that person had been given notice of the complaint;

(c) any other party;

(d) an intervenor.

Mental Health Act, R.S.O. 1990, c. M.7**Duty of attending physician**

20.(1) The attending physician, after observing and examining a person who is the subject of an application for assessment under section 15 or who is the subject of an order under section 32,

(a) shall release the person from the psychiatric facility if the attending physician is of the opinion that the person is not in need of the treatment provided in a psychiatric facility;

(b) shall admit the person as an informal or voluntary patient if the attending physician is of the opinion that the person is suffering from mental disorder of such a nature or quality that the person is in need of the treatment provided in a psychiatric facility and is suitable for admission as an informal or voluntary patient; or

(c) shall admit the person as an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission if the attending physician is of the opinion that the conditions set out in subsection (1.1) or (5) are met. R.S.O. 1990, c. M.7, s. 20 (1); 2000, c. 9, s. 7 (1).

Conditions for involuntary admission

(1.1) The attending physician shall complete a certificate of involuntary admission or a certificate of renewal if, after examining the patient, he or she is of the opinion that the patient,

(a) has previously received treatment for mental disorder of an ongoing or recurring nature that, when not treated, is of a nature or quality that likely will result in serious bodily harm to the person or to another person or substantial mental or physical deterioration of the person or serious physical impairment of the person;

(b) has shown clinical improvement as a result of the treatment;

(c) is suffering from the same mental disorder as the one for which he or she previously received treatment or from a mental disorder that is similar to the previous one;

(d) given the person's history of mental disorder and current mental or physical condition, is likely to cause serious bodily harm to himself or herself or to another person or is likely to suffer substantial mental or physical deterioration or serious physical impairment;

(e) has been found incapable, within the meaning of the Health Care Consent Act, 1996, of consenting to his or her treatment in a psychiatric facility and the consent of his or her substitute decision-maker has been obtained; and

(f) is not suitable for admission or continuation as an informal or voluntary patient. 2000, c. 9, s. 7 (2).

Physician who completes certificate of involuntary admission

(2) The physician who completes a certificate of involuntary admission pursuant to clause (1) (c) shall not be the same physician who completed the application for psychiatric assessment under section 15. R.S.O. 1990, c. M.7, s. 20 (2).

Release of person by officer in charge

(3) The officer in charge shall release a person who is the subject of an application for assessment under section 15 or who is the subject of an order under section 32 upon the completion of 72 hours of detention in the psychiatric facility unless the attending physician has released the person, has admitted the person as an informal or voluntary patient or has admitted the person as an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission. R.S.O. 1990, c. M.7, s. 20 (3).

Authority of certificate

(4) An involuntary patient may be detained, restrained, observed and examined in a psychiatric facility,

(a) for not more than two weeks under a certificate of involuntary admission; and

(b) for not more than,

(i) one additional month under a first certificate of renewal,

(ii) two additional months under a second certificate of renewal, and

(iii) three additional months under a third or subsequent certificate of renewal,

that is completed and filed with the officer in charge by the attending physician. R.S.O. 1990, c. M.7, s. 20 (4).

Conditions for involuntary admission

(5) The attending physician shall complete a certificate of involuntary admission or a certificate of renewal if, after examining the patient, he or she is of the opinion both,

(a) that the patient is suffering from mental disorder of a nature or quality that likely will result in,

(i) serious bodily harm to the patient,

(ii) serious bodily harm to another person, or

(iii) serious physical impairment of the patient,

unless the patient remains in the custody of a psychiatric facility; and

(b) that the patient is not suitable for admission or continuation as an informal or voluntary patient. R.S.O. 1990, c. M.7, s. 20 (5); 2000, c. 9, s. 7 (3, 4).

Change of status, where period of detention has expired

(6) An involuntary patient whose authorized period of detention has expired shall be deemed to be an informal or voluntary patient. R.S.O. 1990, c. M.7, s. 20 (6).

Idem, where period of detention has not expired

(7) An involuntary patient whose authorized period of detention has not expired may be continued as an informal or voluntary patient upon completion of the approved form by the attending physician. R.S.O. 1990, c. M.7, s. 20 (7); 2000, c. 9, s. 7 (5).

Examination of certificate by officer in charge

(8) Forthwith following completion and filing of a certificate of involuntary admission or of a certificate of renewal, the officer in charge or his or her delegate shall review the certification documents to ascertain whether or not they have been completed in compliance with the criteria outlined in this Act and where, in his or her opinion, the documents are not properly completed, the officer in charge shall so inform the attending physician and, unless the person is re-examined and released or admitted in accordance with this section, the officer in charge shall release the person. R.S.O. 1990, c. M.7, s. 20 (8); 2000, c. 9, s. 7 (6).

*Statutory Powers Procedure Act, R.S.O. 1990, Chap. S.22***CONTENTS**

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Interpretation

[1. \(1\)](#) In this Act,

“electronic hearing” means a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another; (“audience électronique”)

“hearing” means a hearing in any proceeding; (“audience”)

“licence” includes any permit, certificate, approval, registration or similar form of permission required by law; (“autorisation”)

“municipality” has the same meaning as in the *Municipal Affairs Act*; (“municipalité”)

“oral hearing” means a hearing at which the parties or their representatives attend before the tribunal in person; (“audience orale”)

“proceeding” means a proceeding to which this Act applies; (“instance”)

“representative” means, in respect of a proceeding to which this Act applies, a person authorized under the *Law Society Act* to represent a person in that proceeding; (“représentant”)

“statutory power of decision” means a power or right, conferred by or under a statute, to make a decision deciding or prescribing,

(a) the legal rights, powers, privileges, immunities, duties or liabilities of any person or party, or

(b) the eligibility of any person or party to receive, or to the continuation of, a benefit or licence, whether the person is legally entitled thereto or not; (“compétence légale de décision”)

“tribunal” means one or more persons, whether or not incorporated and however described, upon which a statutory power of decision is conferred by or under a statute; (“tribunal”)

“written hearing” means a hearing held by means of the exchange of documents, whether in written form or by electronic means. (“audience écrite”) R.S.O. 1990, c. S.22, s. 1 (1); 1994, c. 27, s. 56 (1-3); 2002, c. 17, Sched. F, Table; 2006, c. 21, Sched. C, s. 134 (1, 2).

Meaning of “person” extended

(2) A municipality, an unincorporated association of employers, a trade union or council of trade unions who may be a party to a proceeding in the exercise of a statutory power of decision under the statute conferring the power shall be deemed to be a person for the purpose of any provision of this Act or of any rule made under this Act that applies to parties. R.S.O. 1990, c. S.22, s. 1 (2).

Liberal construction of Act and rules

2. This Act, and any rule made by a tribunal under subsection 17.1 (4) or section 25.1, shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits. 1999, c. 12, Sched. B, s. 16 (1); 2006, c. 19, Sched. B, s. 21 (1).

Application of Act

3. (1) Subject to subsection (2), this Act applies to a proceeding by a tribunal in the exercise of a statutory power of decision conferred by or under an Act of the Legislature, where the tribunal is required by or under such Act or otherwise by law to hold or to afford to the parties to the proceeding an opportunity for a hearing before making a decision. R.S.O. 1990, c. S.22, s. 3 (1); 1994, c. 27, s. 56 (5).

Where Act does not apply

(2) This Act does not apply to a proceeding,

(a) before the Assembly or any committee of the Assembly;

(b) in or before,

(i) the Court of Appeal,

(ii) the Superior Court of Justice,

(iii) the Ontario Court of Justice,

(iv) the Family Court of the Superior Court of Justice,

(v) the Small Claims Court, or

- (vi) a justice of the peace;
- (c) to which the Rules of Civil Procedure apply;
- (d) before an arbitrator to which the *Arbitrations Act* or the *Labour Relations Act* applies;
- (e) at a coroner's inquest;
- (f) of a commission appointed under the *Public Inquiries Act, 2009*;
- (g) of one or more persons required to make an investigation and to make a report, with or without recommendations, where the report is for the information or advice of the person to whom it is made and does not in any way legally bind or limit that person in any decision he or she may have power to make; or
- (h) of a tribunal empowered to make regulations, rules or by-laws in so far as its power to make regulations, rules or by-laws is concerned. R.S.O. 1990, c. S.22, s. 3 (2); 1994, c. 27, s. 56 (6); 2006, c. 19, Sched. C, s. 1 (1, 2, 4); 2009, c. 33, Sched. 6, s. 87.

Waiver

Waiver of procedural requirement

[4.1\(1\)](#) Any procedural requirement of this Act, or of another Act or a regulation that applies to a proceeding, may be waived with the consent of the parties and the tribunal. 1997, c. 23, s. 13 (1).

Same, rules

[\(2\)](#) Any provision of a tribunal's rules made under section 25.1 may be waived in accordance with the rules. 1994, c. 27, s. 56 (7).

Disposition without hearing

[4.1](#) If the parties consent, a proceeding may be disposed of by a decision of the tribunal given without a hearing, unless another Act or a regulation that applies to the proceeding provides otherwise. 1997, c. 23, s. 13 (2).

Panels, certain matters

[4.2\(1\)](#) A procedural or interlocutory matter in a proceeding may be heard and determined by a panel consisting of one or more members of the tribunal, as assigned by the chair of the tribunal. 1994, c. 27, s. 56 (8).

Assignments

[\(2\)](#) In assigning members of the tribunal to a panel, the chair shall take into consideration any requirement imposed by another Act or a regulation that applies to the proceeding that the tribunal be representative of specific interests. 1997, c. 23, s. 13 (3).

Decision of panel

[\(3\)](#) The decision of a majority of the members of a panel, or their unanimous decision in the case of a two-member panel, is the tribunal's decision. 1994, c. 27, s. 56 (8).

Panel of one, reduced panel

Panel of one

[4.2.1\(1\)](#) The chair of a tribunal may decide that a proceeding be heard by a panel of one person and assign the person to hear the proceeding unless there is a statutory requirement in another Act that the proceeding be heard by a panel of more than one person.

Reduction in number of panel members

[\(2\)](#) Where there is a statutory requirement in another Act that a proceeding be heard by a panel of a specified number of persons, the chair of the tribunal may assign to the panel one person or any lesser number of persons than the number specified in the other Act if all parties to the proceeding consent. 1999, c. 12, Sched. B, s. 16 (2).

Expiry of term

[4.3](#) If the term of office of a member of a tribunal who has participated in a hearing expires before a decision is given, the term shall be deemed to continue, but only for the purpose of participating in the decision and for no other purpose. 1997, c. 23, s. 13 (4).

Incapacity of member

[4.4\(1\)](#) If a member of a tribunal who has participated in a hearing becomes unable, for any reason, to complete the hearing or to participate in the decision, the remaining member or members may complete the hearing and give a decision. 1994, c. 27, s. 56 (9).

Other Acts and regulations

[\(2\)](#) Subsection (1) does not apply if another Act or a regulation specifically deals with the issue of what takes place in the circumstances described in subsection (1). 1997, c. 23, s. 13 (5).

Decision not to process commencement of proceeding

[4.5\(1\)](#) Subject to subsection (3), upon receiving documents relating to the commencement of a proceeding, a tribunal or its administrative staff may decide not to process the documents relating to the commencement of the proceeding if,

- (a) the documents are incomplete;
- (b) the documents are received after the time required for commencing the proceeding has elapsed;
- (c) the fee required for commencing the proceeding is not paid; or
- (d) there is some other technical defect in the commencement of the proceeding.

Notice

[\(2\)](#) A tribunal or its administrative staff shall give the party who commences a proceeding notice of its decision under subsection (1) and shall set out in the notice the reasons for the decision and the requirements for resuming the processing of the documents.

Rules under s. 25.1

[\(3\)](#) A tribunal or its administrative staff shall not make a decision under subsection (1) unless the tribunal has made rules under section 25.1 respecting the making of such decisions and those rules shall set out,

- (a) any of the grounds referred to in subsection (1) upon which the tribunal or its administrative staff may decide not to process the documents relating to the commencement of a proceeding; and
- (b) the requirements for the processing of the documents to be resumed.

Continuance of provisions in other statutes

[\(4\)](#) Despite section 32, nothing in this section shall prevent a tribunal or its administrative staff from deciding not to process documents relating to the commencement of a proceeding on grounds that differ from those referred to in subsection (1) or without complying with subsection (2) or (3) if the tribunal or its staff does so in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

Dismissal of proceeding without hearing

[4.6\(1\)](#) Subject to subsections (5) and (6), a tribunal may dismiss a proceeding without a hearing if,

- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
- (b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or
- (c) some aspect of the statutory requirements for bringing the proceeding has not been met.

Notice

(2) Before dismissing a proceeding under this section, a tribunal shall give notice of its intention to dismiss the proceeding to,

- (a) all parties to the proceeding if the proceeding is being dismissed for reasons referred to in clause (1) (b); or
- (b) the party who commences the proceeding if the proceeding is being dismissed for any other reason.

Same

(3) The notice of intention to dismiss a proceeding shall set out the reasons for the dismissal and inform the parties of their right to make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.

Right to make submissions

(4) A party who receives a notice under subsection (2) may make written submissions to the tribunal with respect to the dismissal within the time specified in the notice.

Dismissal

(5) A tribunal shall not dismiss a proceeding under this section until it has given notice under subsection (2) and considered any submissions made under subsection (4).

Rules

(6) A tribunal shall not dismiss a proceeding under this section unless it has made rules under section 25.1 respecting the early dismissal of proceedings and those rules shall include,

- (a) any of the grounds referred to in subsection (1) upon which a proceeding may be dismissed;
- (b) the right of the parties who are entitled to receive notice under subsection (2) to make submissions with respect to the dismissal; and
- (c) the time within which the submissions must be made.

Continuance of provisions in other statutes

[\(7\)](#) Despite section 32, nothing in this section shall prevent a tribunal from dismissing a proceeding on grounds other than those referred to in subsection (1) or without complying with subsections (2) to (6) if the tribunal dismisses the proceeding in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

Classifying proceedings

[4.7](#) A tribunal may make rules under section 25.1 classifying the types of proceedings that come before it and setting guidelines as to the procedural steps or processes (such as preliminary motions, pre-hearing conferences, alternative dispute resolution mechanisms, expedited hearings) that apply to each type of proceeding and the circumstances in which other procedures may apply. 1999, c. 12, Sched. B, s. 16 (3).

Alternative dispute resolution

[4.8\(1\)](#) A tribunal may direct the parties to a proceeding to participate in an alternative dispute resolution mechanism for the purposes of resolving the proceeding or an issue arising in the proceeding if,

- (a) it has made rules under section 25.1 respecting the use of alternative dispute resolution mechanisms; and
- (b) all parties consent to participating in the alternative dispute resolution mechanism.

Definition

[\(2\)](#) In this section,

“alternative dispute resolution mechanism” includes mediation, conciliation, negotiation or any other means of facilitating the resolution of issues in dispute.

Rules

[\(3\)](#) A rule under section 25.1 respecting the use of alternative dispute resolution mechanisms shall include procedural guidelines to deal with the following:

1. The circumstances in which a settlement achieved by means of an alternative dispute resolution mechanism must be reviewed and approved by the tribunal.
2. Any requirement, statutory or otherwise, that there be an order by the tribunal.

Mandatory alternative dispute resolution

[\(4\)](#) A rule under subsection (3) may provide that participation in an alternative dispute resolution mechanism is mandatory or that it is mandatory in certain specified circumstances.

Person appointed to mediate, etc.

[\(5\)](#) A rule under subsection (3) may provide that a person appointed to mediate, conciliate, negotiate or help resolve a matter by means of an alternative dispute resolution mechanism be a member of the tribunal or a person independent of the tribunal. However, a member of the tribunal who is so appointed with respect to a matter in a proceeding shall not subsequently hear the matter if it comes before the tribunal unless the parties consent.

Continuance of provisions in other statutes

[\(6\)](#) Despite section 32, nothing in this section shall prevent a tribunal from directing parties to a proceeding to participate in an alternative dispute resolution mechanism even though the requirements of subsections (1) to (5) have not been met if the tribunal does so in accordance with the provisions of an Act that are in force on the day this section comes into force. 1999, c. 12, Sched. B, s. 16 (3).

Mediators, etc.: not compellable, notes not evidence

Mediators, etc., not compellable

[4.9\(1\)](#) No person employed as a mediator, conciliator or negotiator or otherwise appointed to facilitate the resolution of a matter before a tribunal by means of an alternative dispute resolution mechanism shall be compelled to give testimony or produce documents in a proceeding before the tribunal or in a civil proceeding with respect to matters that come to his or her knowledge in the course of exercising his or her duties under this or any other Act.

Evidence in civil proceedings

[\(2\)](#) No notes or records kept by a mediator, conciliator or negotiator or by any other person appointed to facilitate the resolution of a matter before a tribunal by means of an alternative dispute resolution mechanism under this or any other Act are admissible in a civil proceeding. 1999, c. 12, Sched. B, s. 16 (3).

Parties

[5.](#) The parties to a proceeding shall be the persons specified as parties by or under the statute under which the proceeding arises or, if not so specified, persons entitled by law to be parties to the proceeding. R.S.O. 1990, c. S.22, s. 5.

Written hearings

[5.1\(1\)](#) A tribunal whose rules made under section 25.1 deal with written hearings may hold a written hearing in a proceeding. 1997, c. 23, s. 13 (6).

Exception

[\(2\)](#) The tribunal shall not hold a written hearing if a party satisfies the tribunal that there is good reason for not doing so.

Same

[\(2.1\)](#) Subsection (2) does not apply if the only purpose of the hearing is to deal with procedural matters. 1999, c. 12, Sched. B, s. 16 (4).

Documents

[\(3\)](#) In a written hearing, all the parties are entitled to receive every document that the tribunal receives in the proceeding. 1994, c. 27, s. 56 (10).

Electronic hearings

[5.2\(1\)](#) A tribunal whose rules made under section 25.1 deal with electronic hearings may hold an electronic hearing in a proceeding. 1997, c. 23, s. 13 (7).

Exception

[\(2\)](#) The tribunal shall not hold an electronic hearing if a party satisfies the tribunal that holding an electronic rather than an oral hearing is likely to cause the party significant prejudice.

Same

[\(3\)](#) Subsection (2) does not apply if the only purpose of the hearing is to deal with procedural matters.

Participants to be able to hear one another

[\(4\)](#) In an electronic hearing, all the parties and the members of the tribunal participating in the hearing must be able to hear one another and any witnesses throughout the hearing. 1994, c. 27, s. 56 (10).

Different kinds of hearings in one proceeding

[5.2.1](#) A tribunal may, in a proceeding, hold any combination of written, electronic and oral hearings. 1997, c. 23, s. 13 (8).

Pre-hearing conferences

[5.3\(1\)](#) If the tribunal's rules made under section 25.1 deal with pre-hearing conferences, the tribunal may direct the parties to participate in a pre-hearing conference to consider,

- (a) the settlement of any or all of the issues;
- (b) the simplification of the issues;
- (c) facts or evidence that may be agreed upon;
- (d) the dates by which any steps in the proceeding are to be taken or begun;
- (e) the estimated duration of the hearing; and
- (f) any other matter that may assist in the just and most expeditious disposition of the proceeding. 1994, c. 27, s. 56 (11); 1997, c. 23, s. 13 (9).

Other Acts and regulations

[\(1.1\)](#) The tribunal's power to direct the parties to participate in a pre-hearing conference is subject to any other Act or regulation that applies to the proceeding. 1997, c. 23, s. 13 (10).

Who presides

[\(2\)](#) The chair of the tribunal may designate a member of the tribunal or any other person to preside at the pre-hearing conference.

Orders

[\(3\)](#) A member who presides at a pre-hearing conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding, including adding parties.

Disqualification

[\(4\)](#) A member who presides at a pre-hearing conference at which the parties attempt to settle issues shall not preside at the hearing of the proceeding unless the parties consent. 1994, c. 27, s. 56 (11).

Application of s. 5.2

[\(5\)](#) Section 5.2 applies to a pre-hearing conference, with necessary modifications. 1997, c. 23, s. 13 (10).

Disclosure

[5.4\(1\)](#) If the tribunal's rules made under section 25.1 deal with disclosure, the tribunal may, at any stage of the proceeding before all hearings are complete, make orders for,

- (a) the exchange of documents;
- (b) the oral or written examination of a party;
- (c) the exchange of witness statements and reports of expert witnesses;
- (d) the provision of particulars;
- (e) any other form of disclosure. 1994, c. 27, s. 56 (12); 1997, c. 23, s. 13 (11).

Other Acts and regulations

[\(1.1\)](#) The tribunal's power to make orders for disclosure is subject to any other Act or regulation that applies to the proceeding. 1997, c. 23, s. 13 (12).

Exception, privileged information

[\(2\)](#) Subsection (1) does not authorize the making of an order requiring disclosure of privileged information. 1994, c. 27, s. 56 (12).

Notice of hearing

[6.1\(1\)](#) The parties to a proceeding shall be given reasonable notice of the hearing by the tribunal. R.S.O. 1990, c. S.22, s. 6 (1).

Statutory authority

[\(2\)](#) A notice of a hearing shall include a reference to the statutory authority under which the hearing will be held.

Oral hearing

[\(3\)](#) A notice of an oral hearing shall include,

- (a) a statement of the time, place and purpose of the hearing; and
- (b) a statement that if the party notified does not attend at the hearing, the tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13).

Written hearing

(4) A notice of a written hearing shall include,

(a) a statement of the date and purpose of the hearing, and details about the manner in which the hearing will be held;

(b) a statement that the hearing shall not be held as a written hearing if the party satisfies the tribunal that there is good reason for not holding a written hearing (in which case the tribunal is required to hold it as an electronic or oral hearing) and an indication of the procedure to be followed for that purpose;

(c) a statement that if the party notified neither acts under clause (b) nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13); 1997, c. 23, s. 13 (13); 1999, c. 12, Sched. B, s. 16 (5).

Electronic hearing

(5) A notice of an electronic hearing shall include,

(a) a statement of the time and purpose of the hearing, and details about the manner in which the hearing will be held;

(b) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;

(c) if clause (b) does not apply, a statement that the party notified may, by satisfying the tribunal that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the tribunal to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose; and

(d) a statement that if the party notified neither acts under clause (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13).

Effect of non-attendance at hearing after due notice

7.(1) Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding. R.S.O. 1990, c. S.22, s. 7; 1994, c. 27, s. 56 (14).

Same, written hearings

(2) Where notice of a written hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (4) (b) nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.

Same, electronic hearings

(3) Where notice of an electronic hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (5) (c), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (15).

Where character, etc., of a party is in issue

8. Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto. R.S.O. 1990, c. S.22, s. 8.

Hearings to be public; maintenance of order**Hearings to be public, exceptions**

9.(1) An oral hearing shall be open to the public except where the tribunal is of the opinion that,

(a) matters involving public security may be disclosed; or

(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the tribunal may hold the hearing in the absence of the public. R.S.O. 1990, c. S.22, s. 9 (1); 1994, c. 27, s. 56 (16).

Written hearings

(1.1) In a written hearing, members of the public are entitled to reasonable access to the documents submitted, unless the tribunal is of the opinion that clause (1) (a) or (b) applies. 1994, c. 27, s. 56 (17).

Electronic hearings

[\(1.2\)](#) An electronic hearing shall be open to the public unless the tribunal is of the opinion that,

- (a) it is not practical to hold the hearing in a manner that is open to the public; or
- (b) clause (1) (a) or (b) applies. 1997, c. 23, s. 13 (14).

Maintenance of order at hearings

[\(2\)](#) A tribunal may make such orders or give such directions at an oral or electronic hearing as it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any such order or direction, the tribunal or a member thereof may call for the assistance of any peace officer to enforce the order or direction, and every peace officer so called upon shall take such action as is necessary to enforce the order or direction and may use such force as is reasonably required for that purpose. R.S.O. 1990, c. S.22, s. 9 (2); 1994, c. 27, s. 56 (18).

Proceedings involving similar questions

[9.1\(1\)](#) If two or more proceedings before a tribunal involve the same or similar questions of fact, law or policy, the tribunal may,

- (a) combine the proceedings or any part of them, with the consent of the parties;
- (b) hear the proceedings at the same time, with the consent of the parties;
- (c) hear the proceedings one immediately after the other; or
- (d) stay one or more of the proceedings until after the determination of another one of them.

Exception

[\(2\)](#) Subsection (1) does not apply to proceedings to which the *Consolidated Hearings Act* applies. 1994, c. 27, s. 56 (19).

Same

[\(3\)](#) Clauses (1) (a) and (b) do not apply to a proceeding if,

- (a) any other Act or regulation that applies to the proceeding requires that it be heard in private;
- (b) the tribunal is of the opinion that clause 9 (1) (a) or (b) applies to the proceeding. 1994, c. 27, s. 56 (19); 1997, c. 23, s. 13 (15).

Conflict, consent requirements

[\(4\)](#) The consent requirements of clauses (1) (a) and (b) do not apply if another Act or a regulation that applies to the proceedings allows the tribunal to combine them or hear them at the same time without the consent of the parties. 1997, c. 23, s. 13 (16).

Use of same evidence

[\(5\)](#) If the parties to the second-named proceeding consent, the tribunal may treat evidence that is admitted in a proceeding as if it were also admitted in another proceeding that is heard at the same time under clause (1) (b). 1994, c. 27, s. 56 (19).

Right to representation

[10.](#) A party to a proceeding may be represented by a representative. 2006, c. 21, Sched. C, s. 134 (3).

Examination of witnesses

[10.1](#) A party to a proceeding may, at an oral or electronic hearing,

(a) call and examine witnesses and present evidence and submissions; and

(b) conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding. 1994, c. 27, s. 56 (20).

Rights of witnesses to representation

[11. \(1\)](#) A witness at an oral or electronic hearing is entitled to be advised by a representative as to his or her rights, but such representative may take no other part in the hearing without leave of the tribunal. 2006, c. 21, Sched. C, s. 134 (4).

Idem

[\(2\)](#) Where an oral hearing is closed to the public, the witness's representative is not entitled to be present except when that witness is giving evidence. R.S.O. 1990, c. S.22, s. 11 (2); 1994, c. 27, s. 56 (22); 2006, c. 21, Sched. C, s. 134 (5).

Summonses

[12. \(1\)](#) A tribunal may require any person, including a party, by summons,

(a) to give evidence on oath or affirmation at an oral or electronic hearing; and

(b) to produce in evidence at an oral or electronic hearing documents and things specified by the tribunal,

relevant to the subject-matter of the proceeding and admissible at a hearing. R.S.O. 1990, c. S.22, s. 12 (1); 1994, c. 27, s. 56 (23).

Form and service of summons

(2) A summons issued under subsection (1) shall be in the prescribed form (in English or French) and,

- (a) where the tribunal consists of one person, shall be signed by him or her;
- (b) where the tribunal consists of more than one person, shall be signed by the chair of the tribunal or in such other manner as documents on behalf of the tribunal may be signed under the statute constituting the tribunal. 1994, c. 27, s. 56 (24).

Same

(3) The summons shall be served personally on the person summoned. 1994, c. 27, s. 56 (24).

Fees and allowances

(3.1) The person summoned is entitled to receive the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Superior Court of Justice. 1994, c. 27, s. 56 (24); 2006, c. 19, Sched. C, s. 1 (1).

Bench warrant

(4) A judge of the Superior Court of Justice may issue a warrant against a person if the judge is satisfied that,

- (a) a summons was served on the person under this section;
- (b) the person has failed to attend or to remain in attendance at the hearing (in the case of an oral hearing) or has failed otherwise to participate in the hearing (in the case of an electronic hearing) in accordance with the summons; and
- (c) the person's attendance or participation is material to the ends of justice. 1994, c. 27, s. 56 (25); 2006, c. 19, Sched. C, s. 1 (1).

Same

(4.1) The warrant shall be in the prescribed form (in English or French), directed to any police officer, and shall require the person to be apprehended anywhere within Ontario, brought before the tribunal forthwith and,

- (a) detained in custody as the judge may order until the person's presence as a witness is no longer required; or

(b) in the judge's discretion, released on a recognizance, with or without sureties, conditioned for attendance or participation to give evidence. 1994, c. 27, s. 56 (25).

Proof of service

(5) Service of a summons may be proved by affidavit in an application to have a warrant issued under subsection (4). 1994, c. 27, s. 56 (26).

Certificate of facts

(6) Where an application to have a warrant issued is made on behalf of a tribunal, the person constituting the tribunal or, if the tribunal consists of more than one person, the chair of the tribunal may certify to the judge the facts relied on to establish that the attendance or other participation of the person summoned is material to the ends of justice, and the judge may accept the certificate as proof of the facts. 1994, c. 27, s. 56 (26).

Same

(7) Where the application is made by a party to the proceeding, the facts relied on to establish that the attendance or other participation of the person is material to the ends of justice may be proved by the party's affidavit. 1994, c. 27, s. 56 (26).

Contempt proceedings

13.(1) Where any person without lawful excuse,

(a) on being duly summoned under section 12 as a witness at a hearing makes default in attending at the hearing; or

(b) being in attendance as a witness at an oral hearing or otherwise participating as a witness at an electronic hearing, refuses to take an oath or to make an affirmation legally required by the tribunal to be taken or made, or to produce any document or thing in his or her power or control legally required by the tribunal to be produced by him or her or to answer any question to which the tribunal may legally require an answer; or

(c) does any other thing that would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court,

the tribunal may, of its own motion or on the motion of a party to the proceeding, state a case to the Divisional Court setting out the facts and that court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of that person and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he or she had been guilty of contempt of the court. R.S.O. 1990, c. S.22, s. 13; 1994, c. 27, s. 56 (27).

Same

(2) Subsection (1) also applies to a person who,

(a) having objected under clause 6 (4) (b) to a hearing being held as a written hearing, fails without lawful excuse to participate in the oral or electronic hearing of the matter; or

(b) being a party, fails without lawful excuse to attend a pre-hearing conference when so directed by the tribunal. 1997, c. 23, s. 13 (17).

Protection for witnesses

14.(1) A witness at an oral or electronic hearing shall be deemed to have objected to answer any question asked him or her upon the ground that the answer may tend to criminate him or her or may tend to establish his or her liability to civil proceedings at the instance of the Crown, or of any person, and no answer given by a witness at a hearing shall be used or be receivable in evidence against the witness in any trial or other proceeding against him or her thereafter taking place, other than a prosecution for perjury in giving such evidence. R.S.O. 1990, c. S.22, s. 14 (1); 1994, c. 27, s. 56 (28).

(2) Repealed: 1994, c. 27, s. 56 (29).

Evidence**What is admissible in evidence at a hearing**

15.(1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

(a) any oral testimony; and

(b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

What is inadmissible in evidence at a hearing

(2) Nothing is admissible in evidence at a hearing,

(a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or

(b) that is inadmissible by the statute under which the proceeding arises or any other statute.

Conflicts

[\(3\)](#) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding.

Copies

[\(4\)](#) Where a tribunal is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

Photocopies

[\(5\)](#) Where a document has been filed in evidence at a hearing, the tribunal may, or the person producing it or entitled to it may with the leave of the tribunal, cause the document to be photocopied and the tribunal may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing it or the person entitled to it a photocopy of the document filed certified by a member of the tribunal.

Certified copy admissible in evidence

[\(6\)](#) A document purporting to be a copy of a document filed in evidence at a hearing, certified to be a copy thereof by a member of the tribunal, is admissible in evidence in proceedings in which the document is admissible as evidence of the document. R.S.O. 1990, c. S.22, s. 15.

Use of previously admitted evidence

[15.1\(1\)](#) The tribunal may treat previously admitted evidence as if it had been admitted in a proceeding before the tribunal, if the parties to the proceeding consent. 1994, c. 27, s. 56 (30).

Definition

[\(2\)](#) In subsection (1),

“previously admitted evidence” means evidence that was admitted, before the hearing of the proceeding referred to in that subsection, in any other proceeding before a court or tribunal, whether in or outside Ontario.

Additional power

[\(3\)](#) This power conferred by this section is in addition to the tribunal’s power to admit evidence under section 15. 1997, c. 23, s. 13 (18).

Witness panels

15.2 A tribunal may receive evidence from panels of witnesses composed of two or more persons, if the parties have first had an opportunity to make submissions in that regard. 1994, c. 27, s. 56 (31).

Notice of facts and opinions

16. A tribunal may, in making its decision in any proceeding,

(a) take notice of facts that may be judicially noticed; and

(b) take notice of any generally recognized scientific or technical facts, information or opinions within its scientific or specialized knowledge. R.S.O. 1990, c. S.22, s. 16.

Interim decisions and orders

16.1(1) A tribunal may make interim decisions and orders.

Conditions

(2) A tribunal may impose conditions on an interim decision or order.

Reasons

(3) An interim decision or order need not be accompanied by reasons. 1994, c. 27, s. 56 (32).

Time frames

16.2 A tribunal shall establish guidelines setting out the usual time frame for completing proceedings that come before the tribunal and for completing the procedural steps within those proceedings. 1999, c. 12, Sched. B, s. 16 (6).

Decision; interest**Decision**

17.(1) A tribunal shall give its final decision and order, if any, in any proceeding in writing and shall give reasons in writing therefor if requested by a party. R.S.O. 1990, c. S.22, s. 17; 1993, c. 27, Sched.

Interest

(2) A tribunal that makes an order for the payment of money shall set out in the order the principal sum, and if interest is payable, the rate of interest and the date from which it is to be calculated. 1994, c. 27, s. 56 (33).

Costs

17.1 (1) Subject to subsection (2), a tribunal may, in the circumstances set out in rules made under subsection (4), order a party to pay all or part of another party's costs in a proceeding. 2006, c. 19, Sched. B, s. 21 (2).

Exception

(2) A tribunal shall not make an order to pay costs under this section unless,

(a) the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith; and

(b) the tribunal has made rules under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Amount of costs

(3) The amount of the costs ordered under this section shall be determined in accordance with the rules made under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Rules

(4) A tribunal may make rules with respect to,

(a) the ordering of costs;

(b) the circumstances in which costs may be ordered; and

(c) the amount of costs or the manner in which the amount of costs is to be determined. 2006, c. 19, Sched. B, s. 21 (2).

Same

(5) Subsections 25.1 (3), (4), (5) and (6) apply with respect to rules made under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Continuance of provisions in other statutes

(6) Despite section 32, nothing in this section shall prevent a tribunal from ordering a party to pay all or part of another party's costs in a proceeding in circumstances other than those set out in, and without complying with, subsections (1) to (3) if the tribunal makes the order in accordance with the provisions of an Act that are in force on February 14, 2000. 2006, c. 19, Sched. B, s. 21 (2).

Transition

[\(7\)](#) This section, as it read on the day before the effective date, continues to apply to proceedings commenced before the effective date. 2006, c. 19, Sched. B, s. 21 (2).

Same

[\(8\)](#) Rules that are made under section 25.1 before the effective date and comply with subsection (4) are deemed to be rules made under subsection (4) until the earlier of the following days:

1. The first anniversary of the effective date.
2. The day on which the tribunal makes rules under subsection (4). 2006, c. 19, Sched. B, s. 21 (2).

Definition

[\(9\)](#) In subsections (7) and (8),

“effective date” means the day on which section 21 of Schedule B to the *Good Government Act, 2006* comes into force. 2006, c. 19, Sched. B, s. 21 (2).

Notice of decision

[18. \(1\)](#) The tribunal shall send each party who participated in the proceeding, or the party’s representative, a copy of its final decision or order, including the reasons if any have been given,

- (a) by regular lettermail;
- (b) by electronic transmission;
- (c) by telephone transmission of a facsimile; or
- (d) by some other method that allows proof of receipt, if the tribunal’s rules made under section 25.1 deal with the matter. 1994, c. 27, s. 56 (34); 1997, c. 23, s. 13 (19); 2006, c. 21, Sched. C, s. 134 (6).

Use of mail

[\(2\)](#) If the copy is sent by regular lettermail, it shall be sent to the most recent addresses known to the tribunal and shall be deemed to be received by the party on the fifth day after the day it is mailed. 1994, c. 27, s. 56 (34).

Use of electronic or telephone transmission

[\(3\)](#) If the copy is sent by electronic transmission or by telephone transmission of a facsimile, it shall be deemed to be received on the day after it was sent, unless that day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday. 1994, c. 27, s. 56 (34).

Use of other method

[\(4\)](#) If the copy is sent by a method referred to in clause (1) (d), the tribunal's rules made under section 25.1 govern its deemed day of receipt. 1994, c. 27, s. 56 (34).

Failure to receive copy

[\(5\)](#) If a party that acts in good faith does not, through absence, accident, illness or other cause beyond the party's control, receive the copy until a later date than the deemed day of receipt, subsection (2), (3) or (4), as the case may be, does not apply. 1994, c. 27, s. 56 (34).

Enforcement of orders

[19. \(1\)](#) A certified copy of a tribunal's decision or order in a proceeding may be filed in the Superior Court of Justice by the tribunal or by a party and on filing shall be deemed to be an order of that court and is enforceable as such. 1994, c. 27, s. 56 (35); 2006, c. 19, Sched. C, s. 1 (1).

Notice of filing

[\(2\)](#) A party who files an order under subsection (1) shall notify the tribunal within 10 days after the filing. 1994, c. 27, s. 56 (35).

Order for payment of money

[\(3\)](#) On receiving a certified copy of a tribunal's order for the payment of money, the sheriff shall enforce the order as if it were an execution issued by the Superior Court of Justice. 1994, c. 27, s. 56 (35); 2006, c. 19, Sched. C, s. 1 (1).

Record of proceeding

[20.](#) A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

- (a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;
- (b) the notice of any hearing;

- (c) any interlocutory orders made by the tribunal;
- (d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;
- (e) the transcript, if any, of the oral evidence given at the hearing; and
- (f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20.

Adjournments

21. A hearing may be adjourned from time to time by a tribunal of its own motion or where it is shown to the satisfaction of the tribunal that the adjournment is required to permit an adequate hearing to be held. R.S.O. 1990, c. S.22, s. 21.

Correction of errors

21.1 A tribunal may at any time correct a typographical error, error of calculation or similar error made in its decision or order. 1994, c. 27, s. 56 (36).

Power to review

21.2(1) A tribunal may, if it considers it advisable and if its rules made under section 25.1 deal with the matter, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order. 1997, c. 23, s. 13 (20).

Time for review

(2) The review shall take place within a reasonable time after the decision or order is made.

Conflict

(3) In the event of a conflict between this section and any other Act, the other Act prevails. 1994, c. 27, s. 56 (36).

Administration of oaths

22. A member of a tribunal has power to administer oaths and affirmations for the purpose of any of its proceedings and the tribunal may require evidence before it to be given under oath or affirmation. R.S.O. 1990, c. S.22, s. 22.

Powers re control of proceedings

Abuse of processes

[23. \(1\)](#) A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes. R.S.O. 1990, c. S.22, s. 23 (1).

Limitation on examination

[\(2\)](#) A tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding. 1994, c. 27, s. 56 (37).

Exclusion of representatives

[\(3\)](#) A tribunal may exclude from a hearing anyone, other than a person licensed under the *Law Society Act*, appearing on behalf of a party or as an adviser to a witness if it finds that such person is not competent properly to represent or to advise the party or witness, or does not understand and comply at the hearing with the duties and responsibilities of an advocate or adviser. 2006, c. 21, Sched. C, s. 134 (7).

Notice, etc.

[24.\(1\)](#) Where a tribunal is of the opinion that because the parties to any proceeding before it are so numerous or for any other reason, it is impracticable,

(a) to give notice of the hearing; or

(b) to send its decision and the material mentioned in section 18,

to all or any of the parties individually, the tribunal may, instead of doing so, cause reasonable notice of the hearing or of its decision to be given to such parties by public advertisement or otherwise as the tribunal may direct.

Contents of notice

[\(2\)](#) A notice of a decision given by a tribunal under clause (1) (b) shall inform the parties of the place where copies of the decision and the reasons therefor, if reasons were given, may be obtained. R.S.O. 1990, c. S.22, s. 24.

Appeal operates as stay, exception

[25.\(1\)](#) An appeal from a decision of a tribunal to a court or other appellate body operates as a stay in the matter unless,

(a) another Act or a regulation that applies to the proceeding expressly provides to the contrary;
or

(b) the tribunal or the court or other appellate body orders otherwise. 1997, c. 23, s. 13 (21).

Idem

[\(2\)](#) An application for judicial review under the *Judicial Review Procedure Act*, or the bringing of proceedings specified in subsection 2 (1) of that Act is not an appeal within the meaning of subsection (1). R.S.O. 1990, c. S.22, s. 25 (2).

Control of process

[25.0.1](#) A tribunal has the power to determine its own procedures and practices and may for that purpose,

(a) make orders with respect to the procedures and practices that apply in any particular proceeding; and

(b) establish rules under section 25.1. 1999, c. 12, Sched. B, s. 16 (8).

Rules

[25.1 \(1\)](#) A tribunal may make rules governing the practice and procedure before it. 1994, c. 27, s. 56 (38).

Application

[\(2\)](#) The rules may be of general or particular application. 1994, c. 27, s. 56 (38).

Consistency with Acts

[\(3\)](#) The rules shall be consistent with this Act and with the other Acts to which they relate. 1994, c. 27, s. 56 (38).

Public access

[\(4\)](#) The tribunal shall make the rules available to the public in English and in French. 1994, c. 27, s. 56 (38).

Legislation Act, 2006, Part III

[\(5\)](#) Rules adopted under this section are not regulations as defined in Part III (Regulations) of the *Legislation Act, 2006*. 1994, c. 27, s. 56 (38); 2006, c. 21, Sched. F, s. 136 (1).

Additional power

6) The power conferred by this section is in addition to any power to adopt rules that the tribunal may have under another Act. 1994, c. 27, s. 56 (38).

Regulations

26. The Lieutenant Governor in Council may make regulations prescribing forms for the purpose of section 12. 1994, c. 27, s. 56 (41).

Rules, etc., available to public

27. A tribunal shall make any rules or guidelines established under this or any other Act available for examination by the public. 1999, c. 12, Sched. B, s. 16 (9).

Substantial compliance

28. Substantial compliance with requirements respecting the content of forms, notices or documents under this Act or any rule made under this or any other Act is sufficient. 1999, c. 12, Sched. B, s. 16 (9).

29-31. Repealed: 1994, c. 27, s. 56 (40).

Conflict

32. Unless it is expressly provided in any other Act that its provisions and regulations, rules or by-laws made under it apply despite anything in this Act, the provisions of this Act prevail over the provisions of such other Act and over regulations, rules or by-laws made under such other Act which conflict therewith. R.S.O. 1990, c. S.22, s. 32; 1994, c. 27, s. 56 (42).

33, 34. Repealed: 1994, c. 27, s. 56 (43).

FORMS 1, 2 Repealed: 1994, c. 27, s. 56 (44).