



ONTARIO COLLEGE OF TRADES

ORDRE DES MÉTIERS DE L'ONTARIO

RULES OF PROCEDURE OF THE DISCIPLINE COMMITTEE & FITNESS TO PRACTISE COMMITTEE

October 2015

RULES OF PROCEDURE
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Preamble

Throughout these Rules, commentary is provided to assist counsel, College staff, Committee members and College members in interpreting and applying these Rules.

The intent of these Rules is to bring formality, certainty and clarity to the hearing process while allowing Discipline Panels to retain flexibility in the process.

The Rules are meant to be understood by lay persons and apply to all Discipline and Fitness to Practise proceedings.

RULE 1 – INTERPRETATION AND APPLICATION

1.01 DEFINITIONS

(1) In these Rules, unless the context requires otherwise, words that are not defined in sub-rule (2) have the meaning defined in the *Ontario College of Trades and Apprenticeship Act, 2009* or the *Statutory Powers Procedure Act*.

(2) In these Rules, the definitions of the following words will apply, unless the context requires otherwise:

“Act” means the *Ontario College of Trades and Apprenticeship Act, 2009* and any successor legislation;

“Affidavit” means a document made by a person who states that its contents are true and is confirmed as true by oath, affirmation or such other manner as is recognized under the laws of Ontario;

“By-laws” means any by-law of the College from time to time in force or effect;

“Chair” means the Chair of either the Discipline Committee or the Fitness to Practise Committee, depending on the context, or a Panel thereof;

“College” means the Ontario College of Trades;

“Committee Member” means a member of the Discipline Committee or the Fitness to Practise Committee appointed in accordance with the By-laws;

“Counsel” means a lawyer for a participant in a Proceeding, and is used interchangeably with “Lawyer”. For the purposes of Rule

13.03(1)(b) of these Rules, Counsel does not include a Paralegal;

“Deliver” means to serve a person or corporation with a copy of a Document;

“Discipline Committee” means the Discipline Committee of the College’s Board of Governors established under section 30 of the Act; and includes a Discipline Panel;

“Discipline Panel” means a panel of the Discipline Committee appointed in accordance with the By-laws;

“Document” includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account, and information recorded or stored by means of any device including an electronic device;

“Electronic Hearing” means a hearing held by telephone or video conference or similar form of electronic technology allowing persons to communicate with and hear and/or see one another simultaneously;

“File” or “Filing” means effective delivery of Documents to the Hearings Coordinator;

“Fitness to Practise Committee” means the Fitness to Practise Committee of the College’s Board of Governors established under section 30 of the Act, and includes a Fitness to Practise Panel;

“Fitness to Practise Panel” means a panel of the Fitness to Practise Committee appointed in accordance with the By-laws;

“Hearing” means a Proceeding conducted by a Panel that deals with the merits of the matter rather than an interim or procedural step in the Proceeding;

“Hearings Coordinator” is one or more individuals who provide administrative assistance and support for the function of the discipline or fitness to practise process;

“Holiday” means:

- i. any Saturday or Sunday;
- ii. New Year’s Day;
- iii. Family Day;
- iv. Good Friday;

- v. Easter Monday;
- vi. Victoria Day;
- vii. Canada Day;
- viii. Civic Holiday;
- ix. Labour Day;
- x. Thanksgiving Day;
- xi. Remembrance Day;
- xii. Christmas Day;
- xiii. Boxing Day; or
- xiv. any special holiday proclaimed by the Governor General or the Lieutenant Governor;

and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday.

"In-Person Hearing" means a hearing at which the parties or their Representatives attend before the Panel in person;

"Lawyer" means a person licensed as a lawyer under the *Law Society Act* and is used interchangeably with "Counsel". For the purposes of Rule 13.03(1)(b) of these Rules, Counsel does not include a Paralegal;

"Member" means a member of the College as defined in the Act and its Regulations, including the subject of a Proceeding before a Panel;

"Motion" means a written or verbal request for an order, ruling or decision by a Panel on a particular issue at any stage of the Proceeding;

"Notice of Hearing" is a document issued by the Registrar, or his/her delegate, that formally commences a Proceeding by giving the Member notice of the time, date and place of the first appearance/set date appearance in the Proceeding;

"Panel" means either a Discipline Panel or a Fitness to Practise

Panel, depending on the context;

“Particulars” means facts required to ascertain or clarify the nature of an allegation being made by the College and on which the College is relying, but does not mean the evidence which the College may use to prove such allegation is true;

“Party” means either the College or the Member of the College whose conduct or actions are subject to a Proceeding;

“Pre-hearing Conference Chair” is the person appointed by the Chair of either the Discipline Committee or Fitness to Practise Committee to conduct a pre-hearing conference;

“Proceeding” means a matter that is to be heard before a Discipline Panel or a Fitness to Practise Panel and includes any step in the hearing process, including Motions, pre-hearing conferences, the hearing of the matter on its merits, and any post-hearing procedural or substantive matters;

“Registrar” means the Registrar of the College under the Act;

“Regulations” means the regulations made under the Act;

“Representative” means an agent, Paralegal or other person acting on behalf of a Party in a Proceeding who a Panel is satisfied is authorized to represent the Party before the Panel;

“Rules” means these Rules of Procedure;

“Service” means the effective delivery of documentation to any Party or person in a manner prescribed by these Rules;

“Written Hearing” means a Hearing held by means of the exchange of Documents whether in written form or by electronic means; and

“Vulnerable Witness” means a witness or person providing evidence who, in the opinion of the Panel, will have difficulty testifying or will have difficulty testifying in the presence of the Member or other person for appropriate reasons related to age, disability, illness, trauma, emotional state or similar cause of vulnerability.

1.02 GENERAL PRINCIPLES

- (1) These Rules should be interpreted fairly and, where justice for the Member would not be compromised, in a way that protects the public interest and interests of witnesses.

- (2) Where matters are not provided for in these Rules or the *Statutory Powers Procedure Act*, the procedure shall be determined by analogy to them.
- (3) The Discipline Committee or Fitness to Practise Committee may issue practice directions from time to time to explain or clarify these Rules.

1.03 APPLICATION OF RULES

- (1) These Rules are made pursuant to s. 25.1 of the *Statutory Powers Procedure Act* and in accordance with s. 48 of the Act.
- (2) These Rules apply to all Proceedings before Panels of the College's Discipline Committee and Fitness to Practise Committee including, with all necessary modifications, applications for reinstatement and applications for variation made under section 49 of the Act.

1.04 CONFLICTS

- (1) Where any of these Rules is inconsistent or conflicts with the Act, Regulations or By-laws, the Act, Regulations or By-laws shall prevail.

1.05 GENERAL RULES OF PROCEDURE

- (1) A Panel may exercise any of its powers under these Rules on its own initiative or at the request of a Party.
- (2) A Panel may, at any time, issue general or specific directions or make interim orders concerning the practice or procedure to be followed during a Proceeding on such terms as it considers appropriate, including waiving or varying any of these Rules on such terms as it considers appropriate.
- (3) It is sufficient if there is substantial compliance with a form or notice required by or under these Rules.
- (4) No Proceeding or Document, Hearing, decision or step in a Proceeding is invalid by reason only of a defect or other irregularity in form.
- (5) If a Party seeks a remedy or order that a Panel cannot fairly grant without submissions from the other Party or third parties, the Party seeking the order shall first seek the consent of the other Party or third parties, and advise the Panel whether consent was obtained.

- (6) If the Parties consent, the Proceeding may be disposed of by a decision or order of the Panel given without a Hearing.
- (7) All communications with a Panel in the absence of the other Party shall be made through the Hearings Coordinator.
- (8) Where a Member is represented by a Representative, the Hearings Coordinator may communicate with the Member through the Member's Representative.
- (9) Where a Party is to attend before a Panel but fails to do so at the scheduled time, and the Panel decides to proceed without that Party's participation, the Panel must recess the Hearing for at least fifteen (15) minutes before continuing in the absence of that Party.
- (10) A Panel may at any time correct a typographical error, error of calculation, or other similar minor error made in a finding, a decision, an order, or reasons of the Panel without prior notice to the Parties.
- (11) Despite anything in these Rules, the Discipline Committee or Fitness to Practise Committee can make any order that is necessary to control its processes. In making such an order the Committee must take into consideration the public interest, the interests of witnesses and the Member's right to make full answer and defence to the allegations.

1.06 ADMISSIBILITY OF EVIDENCE

- (1) Subject to sub-rule (3), a Panel may admit as evidence any testimony, document or other thing, including hearsay, which it considers to be relevant to the matters before it and is not bound by the technical or legal rules of evidence.
- (2) A Panel may admit a copy of any document or other thing as evidence if it is satisfied that the copy is authentic.
- (3) Nothing is admissible in evidence which would be inadmissible by reason of a statute or a legal privilege.

1.07 COMPUTATION, EXTENSION OR ABRIDGEMENT OF TIME

- (1) Subject to sub-rule 1.07(2), in computing time periods under these Rules (or an order of a Panel):
 - (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the

second event happens, even where the words 'at least' are used;

- (b) Service of a Document made after 4:00 p.m. or at any time on a Holiday shall be deemed to have been made on the next day that is not a Holiday;
 - (c) where a period of less than seven (7) days is required, Holidays shall not be counted;
 - (d) where the time for doing an act under these Rules expires on a Holiday, the act may be done on the next day that is not a Holiday; and
 - (e) where under these Rules, a Document would be deemed to be received or Service would be deemed to be effective on a day that is a Holiday, it shall be deemed to be received or effective on the next day which is not a Holiday.
- (2) Where a time of day is mentioned in these Rules, in an Order or in any Document in a Proceeding, the time referred to shall be taken as the time observed locally.
- (3) A Panel may, at any time and on such conditions as it considers appropriate, extend or abridge the time required for the performance of any obligation under these Rules.

Commentary: Conduct of Hearings

The College expects that proceedings taking place before Discipline Panels or Fitness to Practise Panels will be conducted with civility and courtesy. All submissions should be directed to the Chair and members of the Panel.

To facilitate the orderly flow of proceedings, the Committee expects that parties will have available seven (7) copies of any exhibit they wish to enter or authorities to which they wish to refer.

The College encourages the use of agreed statements of fact, joint document books and joint books of authorities, where there are difficult or complex legal issues to be determined.

From time to time, members of the Panel may participate in Hearings by asking questions of witnesses. In so doing, however, panel members will be careful not to usurp the role of the parties and their representatives. The College adopts the principles expressed by the Ontario Court of Appeal in *R. v. Stucky*, [2009] O.J. No. 600 and, specifically, the following passages when determining when and

under what circumstances a Discipline Panel member may ask questions of a witness:

...a trial judge may intervene to ask questions, and, where necessary, he or she has a duty to ask questions where justice requires it. ... [There are] three situations in which questions... may be justified, namely: to clear up ambiguities and call a witness to order to explore some matter which the witnesses' answers have left vague; or, to put questions which should have been asked by counsel in order to bring out some relevant matter, but which were nonetheless omitted. ...The third situation... is not an open-ended invitation to the trial judge to usurp the role of Crown counsel. The judge cannot leave his or her position of neutrality as a fact-finder and become the cross-examiner.

And later:

[Questions] to a witness should generally be put after counsel has completed his or her examination of the witness and, further, that the witness should not be cross-examined by the trial judge during examination-in-chief.

Should a member of the Discipline Panel or Fitness to Practise Panel ask a witness a question, he or she should then provide the College's prosecutor, the Member or the Member's Representative an opportunity to ask further or follow-up questions that may arise out of the Panel's queries.

RULE 2 – COMMENCEMENT AND CONDUCT OF PROCEEDINGS

2.01 NOTICE OF HEARING

- (1) A matter that is referred to the Discipline Committee or the Fitness to Practise Committee under sections 44, 45 or 49 of the Act for a Hearing by a Panel shall be commenced by a Notice of Hearing issued by the Registrar, or his/her delegate, and shall include Particulars of the conduct at issue.
- (2) The College shall deliver to the Member whose conduct or actions are subject to a Proceeding, at least thirty (30) days prior to the first appearance/set date appearance in the Proceeding, a Notice of Hearing by serving it upon the Member in accordance with Rule 4, unless a Panel orders otherwise.
- (3) The Notice of Hearing shall include:

- (a) a reference to the statutory authority under which the Hearing is to be held;
 - (b) information required by the *Statutory Powers Procedure Act* to be included in the Notice of Hearing, including any information required for holding all or part of the Proceeding electronically or in writing; and
 - (c) a statement of the purpose of the Hearing.
- (4) The Registrar may include in a Notice of Hearing any other information or directions that he/she considers necessary for the proper conduct of the Proceeding.
- (5) All Hearings shall be conducted by way of an In-Person Hearing unless a Panel concludes that an Electronic Hearing or Written Hearing is appropriate in the particular circumstances.

2.02 IN-PERSON HEARING

For an In-Person Hearing, in addition to the requirements of rule 2.01, the Notice of Hearing shall include:

- (a) a statement of the date, time and place of the first appearance/set date appearance in the Hearing; and
- (b) a statement that if the Member does not attend at the Hearing, the Panel may proceed in the Member's absence and the Member will not be entitled to any further notice of the Proceeding.

2.03 WRITTEN HEARING

For a Written Hearing, in addition to the requirements of rule 2.01, the Notice of Hearing shall include:

- (a) a statement of the date and time of the Hearing, which is provided by setting out the time periods during which Parties are to Serve and File Documents for the Written Hearing;
- (b) a statement that Parties will be required to exchange Documents with other Parties and will have an opportunity to make submissions;
- (c) a statement that the Party may object to the Hearing being held as a Written Hearing by Filing an objection within ten (10) days after receiving Notice of Hearing, and a statement that where an objection is Filed, the Panel may hold an In-

Person Hearing or an Electronic Hearing and supply directions as to the holding of that Hearing;

- (d) a statement that if the Party neither objects to the Hearing being a Written Hearing, in the manner set out in clause (c); or if the Member does not participate in the Hearing in accordance with the Notice of Hearing, the Panel may proceed without the Member's participation and the Member will not be entitled to any further notice of the Proceeding; and
- (e) a statement that the Parties will be obliged to provide with their final submissions a list of the Documents that they are relying on to support their respective positions and copies of those Documents if the Panel does not already have them.

2.04 ELECTRONIC HEARING

- (1) For an Electronic Hearing, in addition to the requirements of rule 2.01, the Notice of Hearing shall include:
 - (a) a statement of the date and time of the Hearing, and details about the manner in which the Hearing will be held;
 - (b) a statement that the Party may, by satisfying a Panel that holding the Hearing as an Electronic Hearing is likely to cause the Party significant prejudice, require a Panel to hold the Hearing as an In-Person Hearing, and an indication of the procedure to be followed for that purpose; and
 - (c) a statement that if the Party neither follows the procedure set out in clause (b) for objections to an Electronic Hearing, if applicable; or if the Member does not participate in the Hearing in accordance with the Notice of Hearing, the Panel may proceed without the Member's participation and the Member will not be entitled to any further notice of the Proceeding.
- (2) At least 48 hours before an Electronic Hearing is scheduled to commence, every person participating in the Electronic Hearing shall give notice to the Hearings Coordinator of the telephone number, location and other coordinates, if applicable, where he/she can be reached for the Electronic Hearing.
- (3) Every person participating in the Electronic Hearing shall ensure that he or she can be reached at the telephone number or other coordinates provided to the Hearings Coordinator at least 5 minutes before the Electronic Hearing is scheduled to commence.

- (4) Unless otherwise provided in these Rules, every person participating in the Electronic Hearing shall Deliver every Document, in sequentially numbered pages, that he or she intends to rely upon at least 3 days before the Electronic Hearing.
- (5) Where an exhibit is not a Document and it is not reasonably practicable to produce a documentary likeness of that exhibit, such as a photograph, the Party shall have a right of reasonable access to the exhibit prior to final submissions.

2.05 WHEN TO HOLD A WRITTEN OR ELECTRONIC HEARING

- (1) In deciding whether to hold a Written Hearing or an Electronic Hearing, a Panel shall consider any relevant factors, including:
 - (a) the suitability of a Written Hearing or an Electronic Hearing considering the subject matter of the Hearing, including the extent to which the matters are in dispute;
 - (b) whether the nature of evidence is appropriate for a Written Hearing or an Electronic Hearing, including whether credibility is an issue and the extent to which the facts are in dispute;
 - (c) the extent to which the matters in dispute are questions of law;
 - (d) the convenience of the Parties;
 - (e) the cost, efficiency and timeliness of the Proceeding;
 - (f) avoidance of unnecessary length or delay;
 - (g) ensuring a fair and understandable process;
 - (h) the desirability or necessity of public participation in, or public access to, the discipline process; or
 - (i) any other consideration affecting the fulfillment of the Panel's mandate.
- (2) When ordering that a matter proceed by Written Hearing or Electronic Hearing, a Panel shall do so on terms that are just.
- (3) A Party requesting a Written Hearing or an Electronic Hearing shall do so by Motion.

2.06 NON-ATTENDANCE OR NON-PARTICIPATION

Where a Notice of Hearing has been Served on the Member in accordance with these Rules and any applicable legislation, and the Member does not attend at or participate in the Hearing as specified in the Notice of Hearing, a Panel may proceed in his/her absence or without his/her attendance or participation and the Member is not entitled to any further notice of the Proceeding.

2.07 ORDER OF PRESENTATION

- (1) The order of presentation at the Hearing of a Proceeding or a step in a Proceeding shall be as follows:
 - (a) The College shall make an opening address and the Member, if he or she chooses to make an opening address, may either make an opening address immediately following the College's opening address or prior to presenting its case in (c) below, but not both;
 - (b) The College shall present its evidence and examine its witnesses and the Member shall be permitted to cross-examine each of the College's witnesses;
 - (c) The Member shall present its evidence and examine its witnesses and the College shall be permitted to cross-examine each of the Member's witnesses;
 - (d) The College may present any evidence and call any witnesses in reply to any issues raised for the first time by the Member during the presentation of its case in (c) above, and the Member shall be permitted to cross-examine any such witnesses called by the College;
 - (e) The College, followed by the Member, may make a closing argument and the College shall be permitted to reply to any issues raised by the Member.
- (2) Following the cross-examination of any witness, reply examination by the Party that called the witness is permitted but only in respect of matters raised for the first time in cross-examination.
- (3) In addition to any questions asked during the examination or cross-examination of a witness, the Panel may ask questions of the witness, subject to the right of all Parties to ask questions of the witness regarding any matters raised by the Panel.
- (4) Where there are two or more Members separately represented, the order of presentation shall be as directed by the Panel.

Commentary: Procedure at a Hearing

A Hearing is a formal proceeding. It is an adversarial process in which two competing parties, the College and the Member, present their sides of the case. The role of the Panel is:

- (a) to ensure that both parties present their cases fairly;
- (b) to listen impartially to the evidence and arguments; and
- (c) after the parties have completed their presentations, to decide the issues.

The Hearing is usually conducted in the same order used in the civil courts. This means that, generally, the party initiating a segment of the Hearing goes both first and last in that segment. Thus, at the beginning of a Hearing, the College's prosecutor (who initiated the Hearing) will lead evidence first, the Member will call his or her evidence second, and the prosecutor will then call any reply witnesses.

The party who calls a witness leads that witness's evidence first, the other party cross-examines as the second step, and then the party calling the witness re-examines.

In closing argument, the prosecutor usually goes first, the Member goes second and the prosecutor may reply third.

When a party brings a Motion, that party (whether the College's prosecutor or the Member) goes first, the responder second, then the party who brought the motion replies.

RULE 3 – PUBLIC ACCESS

3.01 GENERAL RULES

- (1) Subject to sub-rules (2), (3) and (4), all Hearings before a Discipline Panel shall be open to the public unless the Panel orders otherwise.
- (2) A Panel may order, on such terms as it considers appropriate, that all or part of a Hearing be heard in the absence of the public where the Panel is of the opinion that:
 - (a) a witness or Party may disclose matters involving public security;

- (b) a witness or Party may disclose financial or personal or other matters of such a nature that the harm created by disclosure would outweigh the benefits of an open Hearing;
 - (c) a person involved in a criminal, civil or other proceeding may be prejudiced; or
 - (d) the safety of a person may be jeopardized.
- (3) A Hearing before a Discipline Panel shall be open to the public except where the Panel makes an order excluding members of the public, including members of the College, from a Hearing or any part of a Hearing in accordance with section 48(7) or (8) of the Act.
 - (4) A Discipline Panel may also make an order that the public, including members of the College, be excluded from any part of a Hearing in which it will deliberate whether to exclude them from a Hearing or a part of a Hearing.
 - (5) A Hearing before a Fitness to Practise Panel shall be closed to the public, including members of the College in accordance with section 48(9) of the Act, except where a person who is alleged to be incapacitated requests that the Hearing be made open to the public in accordance with, and subject to the requirements of, section 48(10) of the Act.
 - (6) A Fitness to Practise Panel may make an order that the public, including members of the College, be excluded from any part of a Hearing in which it will deliberate whether to open the Hearing or a part of the Hearing to the public under section 48(10) of the Act.
 - (7) Exhibits, documents and transcripts relating to that part of a Hearing held where the public had been excluded from the Hearing shall be marked “Confidential” and shall be kept separate from the public record, and access to this material shall only be by order of the Panel.

3.02 NOTICE TO THE PUBLIC

- (1) The Hearings Coordinator shall give public notice of Proceedings that are open to the public including, where practicable, posting a notice on the College’s website.
- (2) Despite sub-rule (1), the Hearings Coordinator shall not give public notice of a pre-hearing conference or other Proceeding that is closed to the public.

3.03 PUBLIC ACCESS TO HEARING RECORD

- (1) This Rule applies to Hearings that are open to the public.
- (2) Subject to sub-rule (4), if an individual from the public wishes to have access to all or part of the record of the Discipline Panel, he or she shall bring a Motion to the Panel upon notice to the Parties, and such Motion shall be made, considered and decided in writing by the Panel or, if the Hearing is completed or the Panel is otherwise unable to deal with the issue expeditiously, the Chair of the Panel.
- (3) In considering a Motion under this Rule, the Discipline Panel or the Chair of the Panel shall balance the privacy interests of those identified in the record with the interest in public access to the disciplinary process.
- (4) If a member of the public wishes to have access to the Notice of Hearing, Agreed Statement of Facts and/or Joint Submission on Penalty filed as exhibits in a Hearing, a Motion is not necessary but he/she shall make a written request of the Committee and shall be provided with a copy of these documents, provided all reasonable photocopying charges are paid in advance. The Committee will advise the Parties of the request and what documents have been released.
- (5) The Hearings Coordinator shall charge the fee authorized for the provision of access to or copies of the record.

3.04 ELECTRONIC DEVICES AND PUBLICATION OF PROCEEDINGS

- (1) No person shall:
 - (a) take or attempt to take a photograph, audio or video recording or other record capable of producing visual or audio representations by any means at a Proceeding; or
 - (b) publish, broadcast, reproduce or otherwise disseminate a photograph, audio or video recording or other record taken in contravention of clause (a).
- (2) Sub-rule (1) does not apply to:
 - (a) a person unobtrusively making handwritten or typewritten notes or sketches at a Proceeding; or
 - (b) a disabled person using a device to compensate for a disability.

- (3) No person shall interfere with or disrupt a Proceeding including by making a noise, signaling or using gestures, or by communicating with any Hearing Participant about his/her evidence during the Hearing or during any break in the Hearing.

RULE 4 – SERVICE AND FILING

4.01 SERVICE

- (1) In accordance with section 22.1 of the By-laws, a Document may be served:
 - (a) by personal delivery;
 - (b) by sending a copy by courier to the last address of the person known to the Registrar;
 - (c) by sending a copy by regular mail, registered mail or email to the last address of such person known to the Registrar; or
 - (d) by faxing a copy to the last known fax number of such person known to the Registrar.
- (2) In accordance with subsection 82(2) of the Act, if a notice or document is sent by mail addressed to a person at the last address of the person in the records of the College, there is a rebuttable presumption that the notice or document is delivered to the person on the fifth day after the day of mailing.
- (3) In accordance with section 22.2 of the By-laws, where a document or notice to be given or served is sent by courier, there is a rebuttable presumption that the notice or document is delivered to the person on the second day following the day the courier was given the document or notice.
- (4) In accordance with section 22.3 of the By-laws, where a notice or document is to be served by facsimile or email, there is a rebuttable presumption that the notice or document is delivered to the person on the day the facsimile or email is sent, except that where the facsimile or email is sent between 4:00 p.m. and midnight, there is a rebuttable presumption that the notice or document is delivered to the person on the following day.
- (5) If it is impractical to give Service in accordance with sub-rule (1), a Panel may give such directions for substituted Service as it considers appropriate or, where necessary, may dispense with Service.

- (6) A person who Serves a Document shall include with it a statement of the person's address, telephone number and the name of the Proceeding to which the Document relates.

4.02 FILING

- (1) All Documents required to be Filed in a Proceeding shall be Filed with the Hearings Coordinator, except where such Documents are Filed in the course of a Hearing or where these Rules otherwise provide, by any of the methods of Service provided in this Rule. The date of Filing shall be the same day such Documents are actually received by the Hearings Coordinator.
- (2) A Document exceeding twenty (20) pages, inclusive of the cover sheet, shall be Filed by fax only with the prior written approval of the Hearings Coordinator.
- (3) A person who Files a Document shall include with it a statement of the person's address, telephone number and the name of the Proceeding to which the Document relates.

RULE 5 – INTERPRETERS

5.01 INTERPRETERS FOR NON-OFFICIAL LANGUAGES

- (1) If a Party requires an interpreter in a language other than English or French, the Party shall notify the Hearings Coordinator, and provide an interpreter at his/her own expense.
- (2) If a witness requires an interpreter in a language other than English or French, the Party calling the witness shall notify the Hearings Coordinator, and provide an interpreter at his/her own expense.
- (3) An interpreter shall be competent and independent and shall swear or affirm that he/she will interpret accurately.
- (4) If a Party or a witness for a Party requires an interpreter for the French language, the Party shall notify the Hearings Coordinator and the Panel will provide an interpreter at its own expense.
- (5) A Party shall make a notification under this Rule as soon as it becomes aware of the need for an interpreter.

RULE 6 – DISCLOSURE

6.01 DISCLOSURE OF DOCUMENTS OR THINGS GENERALLY

- (1) Subject to Rule 6.02, the College must provide the Member with complete disclosure at least fifteen (15) days before the Hearing all

evidence in the College's possession or control relevant to the allegations that is not privileged, including:

- (a) all witness statements and transcripts or notes of witness interviews or, if these do not exist, statements of evidence that each witness is expected to give; and
 - (b) all Documents and other things.
- (2) Subject to Rule 6.02, at least fifteen (15) days before the Hearing, except where a Document or thing is to be used by a Party solely for the purpose of the cross-examination of another Party or another Party's witness, a Party to a Hearing shall:
- (a) disclose to all other Parties the existence of every Document and thing that the Party will refer to or tender as evidence at the Hearing and shall provide a copy of such Documents and things to the other Parties; and
 - (b) disclose and make available for inspection by every other Party all things, other than Documents, that the Party will refer to or tender as evidence at the Hearing.
- (3) Any person who receives disclosure must only use the information for the purposes of the Proceeding, and must not use it for any other reason. The person must also ensure that any other person to whom he or she gives the information (such as an expert) undertakes to similarly restrict the use of the information.
- (4) A Panel may at any stage of the Proceeding order a Party to disclose to any other Party any relevant Document or thing, other than privileged information, and may impose any conditions it considers appropriate.

6.02 DISCLOSURE OF WRITTEN STATEMENTS OR EXPERT REPORTS

- (1) A Party who intends to call an expert witness at a Hearing shall, not less than 45 days before a pre-hearing conference, or if there is none, the Hearing, Deliver to the other Party:
- (a) a copy of a written statement or report signed by the expert; which must contain:
 - i. the expert's name, address and area of expertise;
 - ii. the expert's qualifications and employment and educational experiences in his/her area of expertise;

- iii. a description of the factual assumptions on which the opinion is based;
 - iv. a description of any research conducted by the expert that led him/her to form the opinion; and
 - v. a list of every Document, if any, relied on by the expert in forming the opinion.
- (b) The instructions provided to the expert in relation to the opinion;
 - (c) An Acknowledgement of Expert's Duty using Form 6A signed by the expert.
- (2) If the expert report delivered by a Party contains unexpected information, the other Party may bring a Motion for additional time to Deliver a responding expert report and the Panel may grant such additional time upon such terms and conditions as are just.
- (3) No expert witness may testify, except with leave of the Panel, unless sub-rule (1) has been complied with.

6.03 DUTY OF EXPERT

- (1) It is the duty of every expert engaged by or on behalf of a Party to provide evidence in relation to a Proceeding:
- (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and
 - (c) to provide such additional assistance as the Panel may reasonably require to determine a matter in issue.
- (2) The duty in sub-rule 6.03 prevails over any obligation owed by the expert to the Party by whom or on whose behalf he or she is engaged.
- (3) Any expert who gives evidence at a hearing shall certify, either in writing or during oral evidence, that he/she acknowledges and understands the duty described in sub-rule 6.03.

6.04 DISCLOSURE OF PARTICULARS

- (1) At any time in a Proceeding, a Panel may order the College to provide the Member with such Particulars as the Panel considers

necessary for a full and satisfactory understanding of the issues in the Proceeding.

- (2) The College shall provide the Member with reasonable Particulars of any allegations prior to the Hearing.
- (3) At any time in a Proceeding, a Panel, after providing the Parties with an opportunity to make submissions, may order that Particulars be amended in accordance with the evidence entered at the Hearing.

6.05 FAILURE TO DISCLOSE

If a Party fails to comply with the provisions of this Rule 6 – Disclosure, the Party may not refer to the Document or thing or identity or testimony of a witness; or enter the Document or thing or identity or testimony of a witness in evidence at the Hearing without the consent of a Panel, which may be on such conditions as the Panel considers appropriate and the failure may be raised in any submissions on the payment of costs.

6.06 PRODUCTION OF DOCUMENTS FROM A THIRD PARTY

- (1) A summons for the production of Documents from a third party that are not in the possession of a Party shall not require the production of any Documents before the commencement of the Hearing.
- (2) A Motion relating to the production of Documents from a third party shall not be heard until the commencement of the Hearing.
- (3) The Notice of a Motion relating to the production of Documents from a third party shall be served on the person possessing the Documents and on any other person with a significant interest, including a privacy interest, in the Documents.
- (4) In considering such a Motion, the Panel may take into account:
 - (a) the relevance of the Documents to a significant issue in the Hearing;
 - (b) whether it would be unfair to require the Party bringing the Motion to proceed to the Hearing without the Documents;
 - (c) any claim that the Documents are privileged; and
 - (d) whether any person has a significant interest in the Documents, including a privacy interest.

Commentary: Disclosure by College

The timely disclosure of all relevant information in the College's possession is important to the fairness of proceedings before Discipline Panels or Fitness to Practise Panels. The College's disclosure obligation is a continuing one. After initial disclosure has been made, the College must provide timely disclosure of information subsequently coming into its possession and information previously considered irrelevant but whose relevance has subsequently come to light. There are, however, circumstances where the College is not required to disclose information because it is privileged.

These principles have been described by the Ontario Court of Justice (General Division) in *Markandey v. Board of Ophthalmic Dispensers*, [1994] O.J. No. 484. In that case, the Court stated, "the importance of full disclosure to the fairness of...disciplinary proceedings...cannot be overstated". The Court went on to explain that:

...tribunals should disclose all information relevant to the conduct of the case, whether it be damaging to or supportive of a respondent's position in a timely manner unless it is privileged as a matter of law. Minimally, this should include copies of all witness statements and notes of the investigators. The disclosure should be made by counsel to the Board after a diligent review of the course of the investigation. Where information is withheld on the basis of its irrelevance or a claim of legal privilege, counsel should facilitate [a] review of these decisions, if necessary. The absence of a request for disclosure, whether it be for additional disclosure or otherwise, is of no significance. The obligation to make disclosure is a continuing one. The Board has a positive obligation to ensure the fairness of its own processes. The failure to make proper disclosure impacts significantly on the appearance of justice and the fairness of the hearing itself. Seldom will relief not be granted for a failure to make proper disclosure.

In recognizing the importance of these principles to the fairness of proceedings before it, the College considers that, barring exceptional circumstances, disclosure should take place no later than 45 days prior to the pre-hearing conference and, in the case of documents that subsequently come into the College's possession, on a timely basis.

RULE 7 – PRE-HEARING CONFERENCES

7.01 INITIATING A PRE-HEARING CONFERENCE

- (1) A pre-hearing conference shall be held at the College or at another location directed by the Pre-hearing Conference Chair.
- (2) Once a pre-hearing conference has been requested or directed, full participation is mandatory for all Parties unless the Pre-hearing Conference Chair directs otherwise.

- (3) The Chair of the Committee shall designate a person who is a member of the relevant Committee, or an external chair, to act as the Pre-hearing Conference Chair.
- (4) The Pre-hearing Conference Chair must not be a member of the Panel presiding over the Hearing.
- (5) The Hearings Coordinator shall schedule a date for the pre-hearing conference to be held and shall notify the Parties of the date.
- (6) The Representatives of the Parties attending a pre-hearing conference shall either have authority to make decisions on the matters to be discussed or shall be readily able to obtain instructions on them.
- (7) The Pre-hearing Conference Chair may direct a pre-hearing conference to be held electronically.

7.02 PRE-HEARING CONFERENCE MEMORANDUM

- (1) At least 20 days before the pre-hearing conference, the College will prepare a pre-hearing conference memorandum, which must be in Form 7A, and provide a copy to the Member and to the Pre-hearing Conference Chair. The pre-hearing conference memorandum must identify the factual and legal issues in dispute, and briefly set out the College's position.
- (2) The Member is not required to prepare a responding pre-hearing conference memorandum. However, if he or she wishes to do so, the Member may deliver a pre-hearing conference memorandum to the College and to the Pre-hearing Conference Chair at least 10 days before the pre-hearing conference. The Member may use Form 7A but is not required to do so.

7.03 PROCEDURE AT A PRE-HEARING CONFERENCE

- (1) At the pre-hearing conference, the Pre-hearing Conference Chair shall first discuss the following with the Parties on a without prejudice basis:
 - (a) whether any or all of the issues can be settled;
 - (b) whether the issues can be simplified;
 - (c) whether there are any agreed facts; and
 - (d) the advisability of attempting other forms of resolution of the matter.

- (2) After the discussion referred to in sub-rule (1), the Pre-hearing Conference Chair shall discuss with the Parties and then may give directions about the following:
 - (a) the scheduling of any Motions that can be heard before the Hearing;
 - (b) the content and timing of Delivery of any additional disclosure or particulars;
 - (c) the Delivery and form of any additional Documents to be used at the Hearing and whether the Documents can appropriately be reviewed by the Panel before the commencement of the Hearing;
 - (d) the Delivery of written arguments and books of authorities and whether these can appropriately be reviewed by the Panel before the commencement of the Hearing;
 - (e) the scheduling of the Hearing;
 - (f) the scheduling of any Motions that cannot be heard before the Hearing;
 - (g) when the witnesses to be called at the Hearing must be available to testify; and
 - (h) any other matter that may assist in the just and most expeditious disposition of the Proceeding, including steps to ensure that the best interests of witnesses will be protected.
- (3) If a Party becomes aware of additional circumstances that would materially affect the conduct of the Hearing before the commencement of the Hearing, the Party shall immediately Deliver a written notice of the circumstances and the Pre-hearing Conference Chair may schedule a supplementary pre-hearing conference.
- (4) The provisions of this Rule apply to further or supplementary pre-hearing conferences with necessary modifications.

7.04 RESOLUTIONS AT A PRE-HEARING CONFERENCE

- (1) Any resolution as to agreed facts, including a determination as to professional misconduct, incompetence or incapacity, or the terms of a final order does not become final until it is accepted and an order is given by a Panel.

7.05 CASE MANAGEMENT ORDERS

- (1) A Pre-hearing Conference Chair may give orders as to the timing and nature of procedural steps that must be taken by the Parties to ensure that the Hearing is fair and expeditious.

Commentary: Pre-Hearing Conferences

Pre-hearing conferences are a valuable and important stage in the Proceeding. They are convened for the purposes of:

- (a) ensuring that the Member has received sufficient disclosure of evidence;
- (b) determining whether any facts or evidence can be agreed upon;
- (c) simplifying or narrowing issues;
- (d) exploring the possibility of obtaining admissions which may facilitate the hearing;
- (e) identifying procedural and legal issues that may arise at the hearing;
- (f) exploring the possibility of other forms of resolving of the matter; and
- (g) any other matter that may assist in the just, most expeditious and least expensive disposition of the proceeding.

Because of the value and importance of pre-hearing conferences, the Discipline Committee and Fitness to Practise Committee have passed a Rule requiring all parties, along with their representatives, to attend a pre-hearing conference. Where it is impracticable for a Party to appear in person, the Committee endorses the use of telephone conference calls.

The College is required to provide a pre-hearing conference memorandum, but the Member is not required to provide a responding pre-hearing conference memorandum. It is expected that the College's pre-hearing conference memorandum will assist both parties to prepare for the pre-hearing conference and for the Hearing, and will assist the Member to understand the case against him or her.

The Committee expects that all parties will take steps to fully inform themselves about the facts of the case and the issues to be discussed at the pre-hearing conference.

The parties are entitled to the candid, non-binding view of the Pre-hearing Conference Chair conducting the pre-hearing conference regarding:

- (a) the strength of the College's case;
- (b) the Member's likelihood of being found guilty of professional misconduct and/or incompetence, or a finding that he/she is incapacitated; and
- (c) the appropriate sanction if there is a finding.

The Committees expect that the parties and their Counsel will have their calendars with them at the pre-hearing conference to facilitate the scheduling of the Hearing or any pre-hearing Motions.

The Pre-hearing Conference Chair may give guidance or give directions about any matter that may assist with the just and expeditious disposition of the Hearing, including:

- (a) a timeline for taking any steps in the proceeding;
- (b) scheduling of Motions;
- (c) delivery and form of documents, written arguments, and books of authorities that will be used at the Hearing, and whether the Discipline Committee or Fitness to Practise Committee will review them before the Hearing;
- (d) estimated length and scheduling of the Hearing; and
- (e) when witnesses must be available to testify.

RULE 8 – CONSTITUTIONAL QUESTIONS

8.01 NOTICE OF CONSTITUTIONAL QUESTION

- (1) Where a Party intends to raise a question about the constitutional validity or constitutional applicability of legislation, a Regulation or By-law made under legislation, or a rule of common law or to claim a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be Served on the other Parties and the Attorneys General of Canada and Ontario, if applicable, and Filed with the Hearings Coordinator as soon as the circumstances requiring notice become known and in any event, at least fifteen (15) days before the question is to be argued before the Panel and the Party shall be required to bring a Motion on the constitutional question.
- (2) Where the Attorneys General of Canada and Ontario are entitled to notice under this Rule, the Attorneys General of Canada and

Ontario are entitled to adduce evidence and make submissions to the Panel regarding the constitutional question.

- (3) Where the Attorneys General of Canada and Ontario are entitled to notice, they are entitled to notice of any appeal in respect of the constitutional questions.

RULE 9 – MOTIONS

9.01 PROCEDURE FOR MOTIONS

- (1) Notice is required for any Motion unless the Panel directs otherwise.
- (2) A request to have a Motion heard by a Panel who will not sit on the Panel presiding over the Hearing must be brought to the attention of the Hearings Coordinator at the time the Party files his or her Notice of Motion.
- (3) Where a Party intends to bring a Motion before a Panel at the Hearing, written notice shall be given to all Parties and Filed with the Hearings Coordinator at least fifteen (15) business days before the day the Motion is to be heard.
- (4) Except when a Motion is to be argued at a scheduled Hearing date, the Party bringing the Motion shall obtain an appointment from the Hearings Coordinator for the hearing of the Motion.
- (5) A Panel may direct that the Motion will be dealt with in writing or electronically or by any other means and may direct the procedure to be followed and set applicable time limits.
- (6) The Notice of Motion shall be as set out in Form 9A and shall set out the grounds for the Motion and the relief requested, and shall be accompanied by any evidence, to be in Affidavit form unless the Panel directs otherwise, to be relied upon.
- (7) The notice shall be Delivered to the other Parties to the Proceeding.
- (8) A Party who wishes to respond to a Motion shall Deliver a response, at least five (5) days before a Panel deals with the Motion, accompanied by any evidence, to be in Affidavit form unless the Panel directs otherwise, to be relied upon.
- (9) No Party to a Motion shall take more than one (1) hour to make oral submissions, including a reply, on a Motion without the prior permission of the Panel.

- (10) This Rule applies with necessary modifications to any person who is not a Party who is making or otherwise responding to a Motion.
- (11) Subject to sub-rule (12), the Party initiating the Motion shall, and other Motion participants may, prepare a draft of the Order in accordance with Form 9B, and deliver it to the other Motion participants appearing on the Motion.
- (12) This Rule does not apply to Orders made before the Court Reporter during a Hearing.

9.02 LIMITATIONS ON BRINGING A MOTION IN ADVANCE OF THE HEARING

- (1) Subject to sub-rule 9.02(2), only Motions which are procedural or temporary may be brought by a Party in advance of the Hearing. This may include Motions 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 additional details about the allegations;
 - (e) a Party to provide a list disclosing all relevant Documents and things in the possession or control of the Party;
 - (f) the ability of a party to view Documents;
 - (g) any other form of disclosure;
 - (h) adjourning the Hearing; and
 - (i) waiving a Rule.
- (2) A Motion with respect to the following matters must be heard at the Hearing:
 - (a) the exclusion of the public from all or part of a Hearing;
 - (b) whether two or more matters directed or referred to the Committee, whether or not involving the same Member, should be heard together;
 - (c) the exclusion of witnesses from the Hearing;
 - (d) constitutional issues;

- (e) orders respecting the accommodation of witnesses;
- (f) orders relating to the production of documents from third parties; and
- (g) any matter that a Panel hearing a Motion adjourns to the Panel presiding over the Hearing.

RULE 10 – ADJOURNMENTS

10.01 CONSIDERATIONS FOR ADJOURNMENTS

- (1) A Hearing may be adjourned from time to time by a Panel of its own accord or where it is shown to the satisfaction of a Panel that the adjournment is required to permit an adequate Hearing to be held.
- (2) Adjournment requests shall be made in a timely manner so as to minimize inconvenience to the Parties and the Panel.
- (3) When an adjournment is requested, the Panel may consider any relevant factors, including:
 - (a) the reason(s) for the request;
 - (b) the extent to which the requesting Party will suffer prejudice if the adjournment is refused;
 - (c) the extent to which any other Party will suffer prejudice if the adjournment is granted;
 - (d) the extent to which the requesting Party gave advance notice to other Parties and to the Panel of its request for an adjournment;
 - (e) the consent of other Parties to the request;
 - (f) whether the requesting Party previously consented to the Hearing proceeding on the scheduled date;
 - (g) the length of the proposed adjournment;
 - (h) previous delays including the number and length of previous adjournments granted at the request of or with the consent of the Party now requesting an adjournment; and
 - (i) the public interest in the efficient and timely conduct of Proceedings.

- (4) In granting an adjournment, a Panel may impose such terms and conditions as it considers appropriate.

Commentary: Late Requests for Adjournments

It is in the public interest to ensure that the Discipline Committee or Fitness to Practise Committee impartially hears and determines allegations of professional misconduct, incompetence or incapacity, or applications for reinstatement, in a fair and prompt manner. Accordingly, late requests for an adjournment of the Hearing without good reason may attract costs sanctions.

RULE 11 – SUMMONSES

11.01 REQUESTING SUMMONSES

- (1) A Party who requires the attendance of a person in Ontario as a witness at a hearing shall prepare the summons and Deliver it to the Hearings Coordinator for the Chair’s signature. The summons may also require the person to produce at the hearing, documents and things specified by the Panel in the summons in accordance with section 12 of the *Statutory Powers Procedure Act*.
- (2) A summons shall be served personally on the person to whom it is directed at least 48 hours before the time fixed for the attendance of the person unless otherwise directed by the Panel and, at the same time, attendance money calculated in accordance with the appropriate tariff in the Ontario Rules of Civil Procedure shall be paid or tendered.
- (3) The summons shall be in accordance with the form for summonses located on the Government of Ontario Central Forms Repository.
- (4) Upon a Motion made under Rule 9, the Panel may make an order quashing a summons previously issued by it where it is of the opinion that the required attendance of the witness is unnecessary, contrary to the best interests of the administration of justice, or an abuse of process.

Commentary: Summonses

Under section 12 of the *Statutory Powers Procedure Act*, the Chair of the Discipline Committee or Fitness to Practise Committee can issue a summons requiring a person to attend a Hearing, and to produce documents and other things at the Hearing.

A person can obtain a copy of the summons form by viewing the Government of Ontario Central Forms Repository at:

<http://www.forms.ssb.gov.on.ca/mbs/ssb/forms/ssbforms.nsf/FormDetail?OpenForm&ACT=RDR&TAB=PROFILE&SRCH=&ENV=WWE&TIT=summons&NO=004-0406E>

RULE 12 – VULNERABLE WITNESSES

12.01 VULNERABLE WITNESSES

- (1) A Panel may order that a support person be permitted to be present and to sit near a Vulnerable Witness while testifying and may issue directions regarding the conduct of the support person during the testimony of the Vulnerable Witness.
- (2) A Panel may order that a Vulnerable Witness testify outside the Hearing room or behind a screen or other device that would allow the Vulnerable Witness not to see the Member if the Panel is of the opinion that the exclusion is necessary to obtain a full and candid account of the matter.
- (3) A Panel shall not make an order under sub-rule (2) unless arrangements are made for the Member, the Panel and Counsel or Representatives for the Parties to watch the testimony of the Vulnerable Witness by means of closed-circuit television or otherwise and the Member is permitted to communicate with his/her Counsel or Representative while watching the testimony.
- (4) A Panel may order that a Member not personally conduct the cross-examination of a Vulnerable Witness if the Panel is of the opinion that the order is necessary to obtain a full and candid account of the Vulnerable Witness's testimony.

RULE 13 – COSTS

Commentary: Costs Against Member or College

A Discipline Panel can order either a Member or the College to pay costs to the other. Although the criteria for ordering the payment of costs is different for each party, the amount of costs awarded should be based on expenses actually incurred.

Any Panel should provide reasons when it grants or refuses to award costs.

13.01 ENTITLEMENT TO COSTS

- (1) A Discipline Panel may make an order as to costs payable by a Member, in accordance with section 46(5) of the Act.
- (2) A Discipline Panel may make an order that the College reimburse a Member for his/her costs, or the portion of them fixed by the Panel, if the Panel believes that the commencement of the Proceeding was unwarranted, in accordance with section 46(9) of the Act.
- (3) A Fitness to Practise Panel may make an order that the College reimburse a Member for his/her costs or the portion of them fixed by the Panel, if the Panel believes that the commencement of the Proceeding was unwarranted, in accordance with section 47(7) of the Act.
- (4) A Panel may at any stage of the Proceeding order a Party to pay costs where the conduct of the Party has been unreasonable, frivolous or vexatious, or a Party has acted in bad faith.

Commentary: Costs Payable by College

The Discipline Panel or Fitness to Practise Panel can only order costs of the Hearing in favour of a Member where it finds that the Proceeding should never have been started. In reaching a decision on whether or not costs are warranted, the Panel should consider the reasonableness of the College's decision to refer the matter to discipline or fitness to practise at the time it was made. The Panel should not consider whether, in hindsight, the evidence demonstrated that the Member was not guilty. For example, a referral to discipline would be unwarranted if it was done without reasonable justification or was made in bad faith.

13.02 PROCEDURE FOR REQUESTING COSTS

- (1) A Panel may fix costs after providing an opportunity for the Parties to make written submissions on the amount.
- (2) A Party requesting an order for costs shall deliver a detailed written explanation of the basis upon which the costs or expenses requested are calculated.
- (3) Where the request for costs includes disbursements or out-of-pocket expenses, these may, subject to any order of the Panel, be proved by an affidavit attaching a copy of any invoice or receipt.
- (4) This Rule 13.02 applies to requests for costs from either Party in a Hearing before a Discipline Panel and requests for costs from the Member in a Hearing before a Fitness to Practise Panel.

13.03 AMOUNT OF COSTS

- (1) The amount of costs that may be ordered include the following:
 - (a) the actual reasonable disbursements or expenses, excluding representation fees set out in (b) and (c) below, of the Party related to the Proceeding to a maximum of \$1,000;
 - (b) an amount representing legal fees of the Party equal to a maximum of \$3,000 per Hearing day (inclusive of preparation) by the Party's Counsel; and
 - (c) an amount representing the fees of a Party's Representative equal to a maximum of \$1,000 per Hearing day (inclusive of preparation) by the Party's Representative if the Party does not have Counsel for that Hearing day.
- (2) A Panel may order that a Party receive a proportion of the amount of costs described in this Rule.
- (3) In this Rule, Hearing days include Motions, pre-hearing conferences and similar appearances before a Panel.
- (4) A Panel may consider the failure of a Party to comply with these Rules as a factor in its decision on costs.

Commentary: Costs Payable by Member

This provision is intended to cover more than just legal costs. It extends to all expenses associated with the College's investigation and holding the hearing.

In *Freedman v. Royal College of Dental Surgeons* (2001), 146 O.A.C. 157 (Div. Ct.) at

para. 4, the Court provided the following example of considerations that a Discipline Panel can take into account when ordering a member to pay costs:

It [the Discipline Panel] carefully reviewed the relevant factors including: the conduct of the hearing, the facts of the underlying case, [the member's] failure to recognize that the result achieved was unacceptable to his patient, his refusal throughout to acknowledge any error, thus prolonging the hearing to some 15 days, and his failure to act reasonably and professionally to address the concerns of the patient and avoid a hearing. These were all relevant and we can find no error in principle in the exercise of the discretion of the Committee as to costs.

RULE 14 – REINSTATEMENT APPLICATIONS

14.01 REINSTATEMENT APPLICATIONS

- (1) This Rule applies to applications for reinstatement or variation made under Part VI of the Act.
- (2) An applicant who applies for reinstatement or variation shall Deliver to the Registrar a notice of the application specifying the order sought, the grounds for the application, the documentary and a description of the oral evidence that the applicant will introduce, and the anticipated length of the hearing.
- (3) Unless the Panel directs otherwise, the Member who applies for reinstatement or variation shall deliver to the Registrar seven (7) copies of:
 - (a) the record of the original Hearing and the record of any previous applications for reinstatement or variation;
 - (b) the transcript of the original Hearing and any previous applications for reinstatement or variation (whether or not the transcript has previously been ordered); and
 - (c) any document the applicant will introduce at the Hearing.
- (4) The Hearings Coordinator shall not schedule a reinstatement or variation application for a Hearing until the applicant complies with sub-rules (2) and (3).
- (5) When a reinstatement or variation hearing has been scheduled, the Panel shall deliver a Notice of Hearing to the parties.

FORM 6A – ACKNOWLEDGEMENT OF EXPERT’S DUTY

File No. _____

DISCIPLINE COMMITTEE [*or FITNESS TO PRACTISE COMMITTEE*] OF THE
ONTARIO COLLEGE OF TRADES

B E T W E E N:

ONTARIO COLLEGE OF TRADES

- and -

[*NAME OF MEMBER*]

ACKNOWLEDGEMENT OF EXPERT’S DUTY

I [*name*] of [*city*] in the province of [*name*] **ACKNOWLEDGE:** that I have read Rule 6.03 of the Rules of Procedure and understand my duty to the [*Discipline or Fitness to Practise*] Committee.

1. I have been retained by [*name of party*] to give evidence in the above-noted hearing before a Panel of the [*Discipline or Fitness to Practise*] Committee.
2. I acknowledge that it is my duty to provide opinion evidence that is fair, objective and neutral.
3. I acknowledge that it is my duty to provide opinion evidence that is related only to the matters within my area of expertise.
4. I acknowledge that it is my duty to provide such additional assistance as the Panel may reasonably require to determine the matters in issue.
5. I acknowledge that these duties prevail over any obligation which I may owe to the party that retained me or the party’s representatives.

[*Date*]

[*Signature of Expert*]
[*Name, address, telephone and fax numbers*]

Note: This form must be attached to any report signed by the expert and provided for the purposes of Rule 6.02 of the Rules of Procedure.

FORM 7A – PRE-HEARING CONFERENCE MEMORANDUM

DISCIPLINE COMMITTEE [or FITNESS TO PRACTISE COMMITTEE] OF THE
ONTARIO COLLEGE OF TRADES

B E T W E E N:

ONTARIO COLLEGE OF TRADES

- and -

[NAME OF MEMBER]

PRE-HEARING CONFERENCE MEMORANDUM OF THE COLLEGE [OR OF THE MEMBER]

Date of Pre-hearing Conference:

College Counsel:

Defence Representative (if applicable):

BACKGROUND INFORMATION

1. Please attach a copy of the Notice of Hearing to this memorandum.
2. Set out a brief statement of the College's [Member's] case, including factual disputes and the anticipated evidence of witnesses.
3. Provide a description of the legal issues to be determined at the Hearing.
4. Attach a copy of any document that would assist the Pre-hearing Conference Chair at the pre-hearing conference.

ADDITIONAL STEPS BEFORE THE HEARING

5. Motions:
 - Will you be bringing any Motions?
 - If so, what order will you seek and on what grounds?
 - When do you intend to bring each Motion?

6. Disclosure:
 - Are there any issues with respect to disclosure?
 - Has the College made full disclosure to the Member?
 - Have both parties produced all of the expert reports upon which they intend to rely?
 - If disclosure has not yet been completed, can the parties agree on a date by which it will be done?
7. Admissions:
 - Are there any facts or allegations that can be admitted?
 - Can the admissibility of documents be agreed upon?
 - Is it possible to develop an Agreed Statement of Facts?
 - Is it possible to develop a Joint Submission on Penalty?
8. Joint Book of Documents:
 - Is it a possible to develop a Joint Book of Documents?
 - If so, by what date will the Joint Book be delivered?
 - Should the Panel be able to review the Joint Book before the Hearing?
9. Written arguments:
 - Are there any issues which should be dealt with through written argument instead of oral argument during the Hearing or during a Motion?
 - When should written arguments be delivered by?
 - Should the Panel be able to review written arguments before the Hearing?

PLANNING THE HEARING

10. Hearing:
 - Are you ready for the Hearing?
 - Should the matter be expedited?
 - Are there any special considerations affecting the setting of a date (such as the availability of witness)?

- How long will the Hearing last?
- Estimate the length of time it will take to hear any Motions you anticipate bringing during the Hearing.
- List your witnesses and estimated length of time you anticipate it will take to hear their evidence.
- Will you be requesting that the Committee issue a summons (to require a person to attend or provide evidence at the Hearing)? If so, identify the person(s).
- Do you object to the Committee issuing a summons requested by a party and, if so, on what grounds?

11. Memorandum or Directions

- Should the Pre-hearing Conference Chair provide a signed Memorandum or written directions to the parties to record facts, documents or issues where the parties have reached agreement?
- Are there any matters that should be included in a Memorandum or written directions to be given by the Pre-Hearing Conference Chair?

(Date) (Signature of Party or Party's Representative
who will be attending the Hearing)

FORM 9A – NOTICE OF MOTION

File No. _____

DISCIPLINE COMMITTEE *[or FITNESS TO PRACTISE COMMITTEE]* OF THE
ONTARIO COLLEGE OF TRADES

B E T W E E N:

ONTARIO COLLEGE OF TRADES

- and -

[NAME OF MEMBER]

NOTICE OF MOTION

THE *[COLLEGE/MEMBER]* WILL make a Motion to a Panel of the Discipline Committee *[or Fitness to Practise Committee]* on *[date]* at *[time]*, or as soon thereafter that the Motion can be heard, at the Ontario College of Trades, 655 Bay Street, Suite 600, Toronto, Ontario *[unless a direction or order has been made to hear the Motion electronically]*. If you do not attend the Motion in accordance with this notice *[or participate if being held electronically]*, the Panel may proceed without you and you will not be entitled to any further notice in the Motion.

THE MOTION IS FOR *[state the precise relief sought]*.

THE GROUNDS FOR THE MOTION ARE *[specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on]*.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL be used at the hearing of the Motion: *[list the affidavits or other documentary evidence to be relied on]*.

[Date]

[Name, address, telephone and fax numbers of moving party or his/her agent or lawyer]

TO: *[Name, address, telephone and fax numbers of responding party or his/her agent or lawyer]*

FORM 9B – ORDER

File No. _____

DISCIPLINE COMMITTEE *[or FITNESS TO PRACTISE COMMITTEE]* OF THE
ONTARIO COLLEGE OF TRADES

[Names of panel members])
) *[Day and date of Order]*
)

B E T W E E N:

ONTARIO COLLEGE OF TRADES

- and -

[NAME OF MEMBER]

ORDER

THIS MOTION, made by *[moving party]* for *[state the relief sought in the Notice of Motion, except to the extent that it appears in the operative part of the Order]*, was heard this day *[or heard on (date)]*, at the Ontario College of Trades, 655 Bay Street, Suite 600, Toronto, Ontario *[unless the Motion was heard electronically]*.

ON READING the *[give particulars of the material filed on the Motion]* and on hearing the submissions of *[Counsel/agent for the moving party, or the moving party]*, *[where applicable insert which parties appeared/participated and which did not although properly served as appears from (indicate proof of service)]*.

1. **THIS PANEL OF THE *[NAME]* COMMITTEE ORDERS** that...
2. **THIS PANEL OF THE *[NAME]* COMMITTEE ORDERS** that...

Date: _____

_____ *[signature of Panel Chair]*