



## COLLEGE OF CHIROPODISTS OF ONTARIO

*Regulating Chiropodists and Podiatrists in Ontario*

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April 6, 2016

**Re: Discipline Committee Rules of Procedure**

As Chair of the Discipline Committee, I am pleased to report that following an extensive consultation process, the Committee has enacted Rules of Procedure, effective April 1, 2016.

The Rules are available on the College's website and will be provided to Members and their counsel involved in Discipline proceedings.

Sincerely,

Cesar Mendez, DPM  
Discipline Committee Chair

**RULES OF PROCEDURE**  
**OF THE DISCIPLINE COMMITTEE**  
**OF THE COLLEGE OF CHIROPODISTS OF ONTARIO**  
*Pursuant to the Statutory Powers Procedure Act*

GENERAL MATTERS .....	4
RULE 1. Interpretation .....	4
RULE 2. Application .....	5
RULE 3. Time .....	5
SERVICE AND FILING OF DOCUMENTS .....	5
RULE 4. Service of Documents .....	5
RULE 5. Filing of Documents .....	7
RULE 6. Information to Appear on Served or Filed Documents .....	7
SUBMISSIONS TO THE CHAIR.....	7
RULE 7. Procedure for Making Submissions to the Chair of the Discipline Committee .....	7
MOTIONS .....	8
RULE 8. General Procedure for Motions .....	8
RULE 9. Motions to Decide Preliminary Issues .....	9
NOTICE OF CONSTITUTIONAL QUESTIONS.....	9
RULE 10. Notice of Constitutional Questions .....	9
DISCLOSURE.....	10
RULE 11. Interpretation .....	10
RULE 12. Documentary Disclosure .....	10
RULE 13. Fact Witness Disclosure .....	10
RULE 14. Expert Opinion Disclosure .....	11
RULE 15. Disclosure Orders .....	12
PRE-HEARING CONFERENCES .....	12
RULE 16. Initiating a Pre-Hearing Conference .....	12
RULE 17. Subject Matter of a Pre-Hearing Conference .....	12
RULE 18. Procedure for a Pre-Hearing Conference .....	13
RULE 19. Discussion of Settlement at a Pre-Hearing Conference .....	14
RULE 20. Orders, Agreements and Undertakings at a Pre-Hearing Conference.....	15
ELECTRONIC HEARINGS .....	15
RULE 21. Initiating an Electronic Hearing .....	15
RULE 22. Procedure on Electronic Hearings.....	16
WRITTEN HEARINGS .....	16
RULE 23. Initiating a Written Hearing .....	16
RULE 24. Procedure on Written Hearings .....	17

ADJOURNMENTS .....	17
RULE 25. Requests for Adjournment .....	17
TIME LIMITS .....	17
RULE 26. Time Limits .....	17
SEIZURE BY A PANEL OF THE MERITS .....	18
RULE 27. Seizure by a Panel of the Merits.....	18
EVIDENCE AT HEARINGS .....	18
RULE 28. Evidence by Agreement .....	18
RULE 29. Evidence by Affidavit .....	18
RULE 30. Evidence by Witness Panel .....	19
Expert Opinion Witness Panel .....	19
Fact Witness Panel.....	19
Other Witness Panel.....	20
COSTS .....	20
RULE 31. Material to be Filed Regarding Costs.....	20
RULE 32. Costs to be Heard in Writing.....	21
GIVING NOTICE OF FINAL DECISION .....	21
RULE 33. Method of Notice .....	21
CORRECTING, CLARIFYING AND REVIEWING DECISIONS/ORDERS.....	21
RULE 34. Corrections and Clarifications.....	21
RULE 35. Reconsideration of Decisions.....	22
RULE 36. Initiating Reinstatement Applications.....	23
FORMS .....	24
Acknowledgement Form – Expert’s Duty .....	24

## GENERAL MATTERS

### RULE 1. Interpretation

1.1 In these rules, unless the context requires otherwise:

“**Code**” means the Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991*, as amended;

“**College**” means the College of Chiropractors of Ontario;

“**Discipline Committee**” means the Discipline Committee of the College;

“**Hearing**” means the process before a Panel in which the Panel receives evidence and/or submissions regarding an issue for determination in a Proceeding, including the merits of the Proceeding;

“**Holiday**” has the same meaning as in the *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194, as amended;

“**Independent Legal Counsel**” means a lawyer retained to give advice to the Discipline Committee, a Panel and/or a Pre-Hearing Conference Chair with respect to a Proceeding;

“**Member**” means a member of the College who is the subject of a Proceeding before the Discipline Committee and includes a former member;

“**Oral Hearing**” means a Hearing in which the Parties or their counsel or agents attend before the Discipline Committee in person;

“**Panel**” means a panel of members of the Discipline Committee selected by the Chair of the Discipline Committee to hold a Hearing, pursuant to s. 4.2 of the SPPA, or s. 38 or s. 73(2) of the Code;

“**Party**” means (a) a person specified by the Code as a party to a Proceeding or Hearing; or (b) a person otherwise entitled by law to be a party to a Proceeding or Hearing;

“**Pre-Hearing Conference Chair**” has the meaning set out in sub-rule 17.1;

“**Proceeding**” means a process before the Discipline Committee that commences with the referral of a matter to the Discipline Committee pursuant to the Code, and may include one or more Hearings on issues for determination by a Panel, in addition to a Hearing on the merits of the referred matter;

“**Registrar**” means the registrar of the College;

“**SPPA**” means the *Statutory Powers Procedure Act*, as amended;

1.2 These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of all Proceedings on their merits.

**RULE 2. Application**

- 2.1 These rules apply to all Proceedings.
- 2.2 A Panel may exercise any of its powers under these rules on its own initiative or at the request of a Party.
- 2.3 A failure to comply with these rules is an irregularity and does not render a Proceeding or a step, document or order in a Proceeding a nullity.
- 2.4 In respect of any Proceeding before it, a Panel may waive or vary the requirements of any of these rules at any time:
  - (a) on the consent of the Parties; or
  - (b) where it is just and equitable, and/or in the public interest, to do so.
- 2.5 In respect of any Proceeding before it, a Panel may issue procedural directions or orders with respect to the application of the rules.
- 2.6 The Discipline Committee may, from time to time, issue procedural directions or practice guidelines with respect to the application of the Rules generally, as may be appropriate.

**RULE 3. Time**

- 3.1 In the computation of time 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;
  - (b) Where a period of less than seven (7) days is prescribed, Holidays shall not be counted.
  - (c) Where the time for doing any act under these rules or an order expires on a Holiday, the act may be done on the next day that is not a Holiday.
- 3.2 A Panel may extend or abridge any time prescribed by these rules or make an order on such terms that the Panel deems just.

**SERVICE AND FILING OF DOCUMENTS**

**RULE 4. Service of Documents**

- 4.1 All documents required to be served under these rules shall be served by one of the following methods:

- (a) by personal delivery to the Party or the representative of the Party;
- (b) by delivery to an adult person at the premises where the Party resides, is employed or carries on business, or where the representative of the Party carries on business;
- (c) by regular, registered or certified mail to the last known address of the Party or the representative of the Party;
- (d) electronically to the facsimile number of the Party or the representative of the Party;
- (e) electronically to the e-mail address of the Party or the representative of the Party, if the recipient has consented in advance to service by e-mail;
- (f) by courier to the last known address of the Party or the representative of the Party;  
or
- (g) by any other means authorized by a Panel.

4.2 Subject to sub-rule 4.3, service is deemed to be effective, when delivered:

- (a) by personal delivery, on the day of delivery;
- (b) by mail, on the fifth day after the day of mailing;
- (c) electronically, on the same day;
- (d) by courier, on the earlier of the date on the delivery receipt or the second day after it was sent; or
- (e) by any other means authorized by a Panel, on the date specified by the Panel;

unless the intended recipient of the document establishes that he or she, acting in good faith and through circumstances beyond his or her control, did not receive the document in a timely way.

4.3 Documents served by personal delivery or electronically after 4:00 p.m. shall be deemed to have been served on the next day that is not a Holiday.

4.4 Where a document has been served in a manner other than one set out in sub-rule 4.1, a Panel may make an order validating service where the Panel is satisfied that

- (a) the document came to the notice of the person being served; or
- (b) the document was served in such a manner that it would have come to the notice of the person served, except for the person's own attempts to evade service.

4.5 A Panel may make an order dispensing with service of a document on a person, other than a document whose purpose is to provide notice of a Hearing, where the Panel is

satisfied that all reasonable efforts have been made to serve the document on the person, and that it is necessary in the interest of justice to dispense with service.

**RULE 5. Filing of Documents**

- 5.1 Documents to be filed with the Discipline Committee in advance of a Hearing shall be filed together with an Affidavit indicating who has been served with the documents and what documents have been so served.
- 5.2 Documents to be filed should be directed to the Discipline Committee c/o the offices of the College, and may be filed (a) by personal delivery, (b) by regular, certified or registered mail, (c) by facsimile, (d) by courier, or (e) where the Chair of the Discipline Committee or a Panel consents, by email.
- 5.3 Documents are deemed to be filed on the date they are received at the offices of the College.
- 5.4 A Party filing a document other than by facsimile or by email shall file a sufficient number of copies of the document for:
  - (a) in the case of a Hearing, all members of the relevant Panel, Independent Legal Counsel, and the court reporter, or, if this is number is not known, seven (7) copies; and
  - (b) in the case of a Pre-Hearing Conference, the Pre-Hearing Conference Chair.

**RULE 6. Information to Appear on Served or Filed Documents**

- 6.1 A person who serves or files a document should include with it the following information:
  - (a) the person's name, address, telephone number, facsimile number and e-mail address, as applicable; or
  - (b) if the person is represented by a representative, the name, address, telephone number, facsimile number and e-mail address of the representative, as applicable; and
  - (c) the name of the Proceeding to which the document relates; and
  - (d) the name of the person or representative being served.

**SUBMISSIONS TO THE CHAIR**

**RULE 7. Procedure for Making Submissions to the Chair of the Discipline Committee**



- 7.1 Where these rules provide that the Chair of the Discipline Committee can direct or order anything, a party or, in the case of a motion, a motion participant, may make submissions in writing to the Chair
- 7.2 A party or motion participant may make submissions to the Chair by addressing a letter to the Chair and delivering a copy of the letter to the Chair or to Independent Legal Counsel. Any such submissions shall be copied to all other parties or motion participants.
- 7.3 The other parties or motion participants may respond to the submissions described in subrule 7.2 by addressing a letter to the Chair and delivering a copy of the letter. Any such submissions shall be copied to all other parties or motion participants.
- 7.4 Where the submissions have been delivered under subrule 7.2, the Chair shall not give a direction or make an order unless at least 3 days have passed since the first submission was delivered unless it is urgent that the Chair do so.
- 7.5 Where the Chair has given a direction or made an order before receiving submissions under this rule, the Chair may reconsider the direction or order and may confirm, vary, suspend or cancel the direction or order.
- 7.6 Where appropriate the Chair may direct that a matter that has been the subject of written submissions under this Rule be dealt with in another manner.

## **MOTIONS**

### **RULE 8. General Procedure for Motions**

- 8.1 A motion in a Proceeding may be determined by a Panel by way of,
  - (a) Oral Hearing;
  - (b) electronic Hearing; or
  - (c) in writing without the attendance of the Parties.
- 8.2 Where a Party intends to bring a motion (“moving Party”), either at or prior to the Hearing on the merits, written notice shall be given to all other Parties and filed with the Discipline Committee, as early as possible, but in any event at least ten (10) days before the motion is to be heard setting out the grounds of the motion, the evidence to be relied upon, the proposed Hearing method and the relief sought.
- 8.3 The moving Party shall serve the documentary evidence relied upon, and any written submissions, and shall file sufficient copies of the Notice of Motion along with the documentary evidence relied upon with the Discipline Committee at least seven (7) days before the motion is to be heard.

- 8.4 The responding Party, or any other Party intending to rely upon any written submissions and/or documentary evidence, shall serve it and file sufficient copies of it at least five (5) days before the motion is to be heard.

**RULE 9. Motions to Decide Preliminary Issues**

- 9.1 Where a Party intends to bring a motion to decide an issue in a Proceeding prior to a Hearing on the merits, and proposes that the motion be heard orally or electronically, the Party shall obtain an appointment for the return date of the motion from the appropriate employee of the College operating under the direction of the Chair of the Discipline Committee.
- 9.2 The moving Party shall attempt to obtain agreement from the other motion participants as to a date and time for the Hearing of the motion. The moving Party shall inform the Discipline Committee, c/o the offices of the College, of the estimated length of time it will take to argue the motion when first seeking available dates and times.
- 9.3 In constituting a Panel to hear a motion to decide a preliminary issue in a Proceeding, the Chair of the Discipline Committee may assign a member or members of the Discipline Committee who are the same as or different from the members of the Panel assigned to hear the merits of the Proceeding.
- 9.4 The Chair or a Panel may direct that a motion filed under this rule be heard and determined at the Hearing on the merits of the Proceeding.
- 9.5 Each motion participant shall not exceed one (1) hour, to make oral submissions on a motion heard orally or electronically, including any reply submissions, except with permission of the Chair of the Discipline Committee or the Panel.

**NOTICE OF CONSTITUTIONAL QUESTIONS**

**RULE 10. Notice of Constitutional Questions**

- 10.1 Where a Party intends to raise a question concerning the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a Party claims a remedy under s. 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be served on the other Parties and the Discipline Committee 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.
- 10.2 Where the Attorneys General of Canada and Ontario are entitled to notice of a constitutional question, pursuant to s. 109(1) of the *Courts of Justice Act*, each is entitled to adduce evidence and make submissions to the Discipline Committee regarding the constitutional question.

## **DISCLOSURE**

### **RULE 11. Interpretation**

- 11.1 In Rules 11-15, “**document**” includes a sound recording, videotape, file, film, photograph, chart, graph, map, plan, survey, book of account, and information recorded or stored by means of any device.
- 11.2 “**Particulars**” includes:
- (a) the grounds upon which any remedy or order is being sought or opposed in the Proceeding; and
  - (b) a general statement of the alleged material facts upon which the Party relies in the Proceeding.
- 11.3 Nothing in Rules 11-15 limits the disclosure obligations otherwise imposed by law on the parties.

### **RULE 12. Documentary Disclosure**

- 12.1 Each Party to a Proceeding shall deliver to every other Party (a) a list of, and (b) if not previously produced, copies of, all documents and things that the Party intends to produce or enter as evidence at the Hearing on the merits, in the case of the College, as soon as is reasonably practicable after the Notice of Hearing is served, and in the case of any other party, as soon as is reasonably practicable after disclosure by the College under this Rule, but in any case at least ten (10) days before the commencement of the Hearing on the merits.
- 12.2 A Party who does not disclose a document or thing in compliance with sub-rule 12.1 may not refer to the document or thing or introduce it in evidence at the Hearing on the merits without leave of the Panel, which may be on any conditions that the Panel considers just.

### **RULE 13. Fact Witness Disclosure**

- 13.1 A Party to a Proceeding shall serve every other Party a list of the witnesses the Party intends to call to testify on the Party’s behalf at the Hearing on the merits, in the case of the College, as soon as is reasonably practicable after the Notice of Hearing is served, and in the case of any other party, at least ten (10) days before the commencement of the Hearing on the merits.
- 13.2 If no affidavit has been served in accordance with Rule 29 (Evidence by Affidavit), and material matters to which a witness is to testify have not otherwise been disclosed, a Party to a Proceeding shall provide to every other Party a summary of the evidence that the witness is expected to give at the Hearing on the merits, in the case of the College, as soon as reasonably practicable after the Notice of Hearing is served, and in the case of any other party, as soon as is reasonably practicable after disclosure by the College under

this Rule, but in any case at least ten (10) days before the commencement of the Hearing on the merits.

13.3 A witness summary shall contain:

- (a) the substance of the evidence of the witness;
- (b) reference to any documents to which that the witness will refer; and
- (c) the witness's name and address or, if the witness's address is not provided, the name and address of a person through whom the witness can be contacted.

13.4 A Party who does not include a witness in the witness list or provide a summary of the evidence a witness is expected to give in accordance with these rules may not call that person as a witness without leave of the Panel, which may be on any conditions as the Panel considers just.

13.5 A witness may not testify to material matters that were not previously disclosed without leave of the Panel, which may be on any conditions that the Panel considers just.

**RULE 14. Expert Opinion Disclosure**

14.1 A Party who intends to call an expert to give expert opinion evidence at a Hearing shall:

- (a) inform the other Parties of the intent to call the expert;
- (b) identify the expert and the issue(s) on which the expert's opinion will be tendered;
- (c) serve the other Parties with a copy of the expert's written report or, if there is no written report, an affidavit in accordance with Rule 28 (Evidence by Affidavit), or a witness summary in accordance with sub-rule 12.3; and
- (d) file an "Acknowledgement Form – Expert's Duty" signed by the expert, in the form appended to these rules.

14.2 The College shall serve any expert report or affidavit upon which the College intends to rely at the Hearing at least sixty (60) days before the commencement of the Hearing.

14.3 The Member shall serve any expert report upon which he or she intends to rely at least thirty (30) days before the commencement of the Hearing.

14.4 The College may serve a reply expert report at least fifteen (15) days before the commencement of the Hearing.

14.5 Where a expert report is filed, it shall at a minimum include the following information:

- (a) qualifications of the expert;
- (b) the instructions provided to the expert;

- (c) the nature of the opinion being sought;
- (d) the factual assumptions upon which the opinion is based; and
- (e) a list of documents reviewed by the expert.

14.6 A Party who fails to comply with sub-rule 14.1 may not call the expert as a witness or file the expert's report or affidavit without leave of the Panel, which may be on any conditions that the Panel considers just.

**RULE 15. Disclosure Orders**

15.1 At any stage in a Proceeding, a Panel may order that a Party:

- (a) provide to another Party and to the Panel any particulars that the Panel considers necessary for a full and satisfactory understanding of the subject of the Proceeding; and/or
- (b) make any other disclosure required by these rules, within the time limits and on any conditions that the Panel may specify.

**PRE-HEARING CONFERENCES**

**RULE 16. Initiating a Pre-Hearing Conference**

16.1 The Chair of the Discipline Committee may direct the Parties to participate in a pre-hearing conference as soon as practical after a Notice of Hearing has been served.

**RULE 17. Subject Matter of a Pre-Hearing Conference**

17.1 Subject to Rule 25 (Adjournments), dates for the Hearing of a Proceeding on its merits shall be set at a pre-hearing conference.

17.2 The subject matter considered at a pre-hearing conference may include any of the following:

- (a) issues relating to disclosure and the exchange of information;
- (b) identification and simplification of issues;
- (c) identification of preliminary motions to be raised;
- (d) procedural issues, including the dates by which any steps in the Proceeding are to be taken or begun, and the scheduling of the various stages of the Hearing on the merits;

- (e) the estimated duration of the Hearing on the merits, and the time to be allotted to each Party, either globally for the entire Hearing, or for any component of the Hearing, including: opening statements; examinations in chief, cross-examinations and re-examinations of witnesses; closing submissions; and, subject to sub-rule 26.2, argument on objections or motions;
- (f) identification of potential intervenors;
- (g) identification of facts, documents or evidence that may be agreed upon;
- (h) the possibility of settlement of any or all issues between the Parties; or
- (i) any other matter that may assist in the just and expeditious disposition of the Proceeding.

**RULE 18. Procedure for a Pre-Hearing Conference**

- 18.1 The Chair of the Discipline Committee may assign a member of the Discipline Committee or any other person to preside at a pre-hearing conference (the “**Pre-Hearing Conference Chair**”). Either on his or her own initiative or at the request of any Party, the Chair may determine that the Pre-Hearing Conference Chair shall be a professional member of the Discipline Committee.
- 18.2 A Pre-Hearing Conference Chair shall not sit on a Panel that hears preliminary motions or the merits of the Proceeding, unless the Parties consent.
- 18.3 If the Chair of the Discipline Committee assigns a lawyer to act as Pre-Hearing Conference Chair that lawyer shall not act as independent legal counsel at the Proceeding or on any motion scheduled in advance of the Proceeding.
- 18.4 A pre-hearing conference at which only procedural matters will be discussed may be held in person or electronically by videoconference or teleconference.
- 18.5 A pre-hearing conference at which matters other than procedural matters will be discussed may be held:
- (a) in person; or
  - (b) electronically by videoconference or teleconference, unless a Party satisfies the Chair of the Discipline Committee that the Party will suffer significant prejudice as a result of the electronic format.
- 18.6 Notice of a pre-hearing conference shall be issued by the Chair of the Discipline Committee and shall be served on the Parties at least twenty (20) days before the pre-hearing conference is scheduled to take place.
- 18.7 The notice of a pre-hearing conference shall include:
- (a) the date, time, place (or, in the case of an electronic pre-hearing, the manner of participation) and purpose of the pre-hearing conference;

- (b) any direction of the Chair of the Discipline Committee regarding whether the Parties are required to exchange or file documents or a pre-hearing memorandum as prescribed in sub-rule 18.7 of these rules and, if so, the issues to be addressed and the day when they are required;
- (c) any direction of the Chair of the Discipline Committee regarding whether the Parties are required to attend in person, and
  - (i) if so, that they may be represented by a legal representative or agent; or
  - (ii) if not, that their legal representative or agent must be given authority to make agreements and undertakings on their behalf respecting the matters to be addressed at the pre-hearing conference; and
- (d) a statement that, if a Party does not participate (in person or by a representative, as required) at the pre-hearing conference, the Pre-Hearing Conference Chair may proceed in the absence of that Party.

18.8 Unless otherwise directed by the Chair of the Discipline Committee or at the request of the Pre-Hearing Conference Chair, the College shall, at least ten (10) days prior to the pre-hearing conference, and the Member shall, at least five (5) days prior to the pre-hearing conference, serve on the other Party a pre-hearing memorandum in writing outlining the following,

- (a) a summary of the Party's case, including factual contentions;
- (b) a list of issues to be determined at the Hearing on the merits;
- (c) a list of outstanding motions to be brought at the Hearing;
- (d) any disclosure issues, including issues regarding expert opinion disclosure; and
- (e) any possibility of settlement.

18.9 The Pre-Hearing Conference Chair may direct the Parties to participate in a continuation of the pre-hearing conference at any stage of a Proceeding:

- (a) at his or her own initiative; or
- (b) at the request of any Party, setting out the reasons for believing it may be useful and effective.

**RULE 19. Discussion of Settlement at a Pre-Hearing Conference**

19.1 At the pre-hearing conference, the Pre-Hearing Conference Chair may meet with each Party separately to encourage settlement.

19.2 A pre-hearing conference shall be held in the absence of the public, and, any discussion of settlement at a pre-hearing conference and all statements made by the Parties regarding

settlement shall be on a without prejudice, confidential basis, unless the Parties consent otherwise.

**RULE 20. Orders, Agreements and Undertakings at a Pre-Hearing Conference**

- 20.1 On consent of the Parties, or after giving the Parties an opportunity to make submissions, a Pre-Hearing Conference Chair who is also a member of the Discipline Committee may make such orders, consistent with these rules, as he or she considers necessary or advisable with respect to the conduct of the Proceeding, including any procedural order that may be made by a Panel under these rules.
- 20.2 Orders, agreements and undertakings made at a pre-hearing conference:
- (a) shall govern the conduct of the Proceeding and are binding upon the Parties to the Proceeding, unless otherwise ordered by the Pre-Hearing Conference Chair; and
  - (b) shall be recorded in a memorandum prepared by or under the direction of the Pre-Hearing Conference Chair, which shall be provided to the Parties and to the Panel that hears the merits of the Proceeding.
- 20.3 If a Party disagrees with the accuracy of the Pre-Hearing Conference Chair's memorandum, the Party shall, within seven (7) days after receiving the memorandum, deliver to the Pre-Hearing Conference Chair and the other Party, written notice of the specific area of disagreement.
- 20.4 The Party receiving the written notice described in subrule 2.03 shall, within five (5) days, deliver any responding comments to the other party and to the Pre-Hearing Conference Chair, after which time the Pre-Hearing Conference Chair may revise the memorandum.

**ELECTRONIC HEARINGS**

**RULE 21. Initiating an Electronic Hearing**

- 21.1 In the case of a Hearing whose only purpose is to deal with procedural matters, the Chair of the Discipline Committee, or a Panel, may direct that all or part of a Hearing be heard electronically.
- 21.2 In the case of a Hearing to deal with matters other than procedural matters, the Chair of the Discipline Committee, or a Panel, may direct that all or part of a Hearing be heard electronically, on consent of the Parties, or after giving the Parties an opportunity to make submissions, unless the Chair or the Panel is satisfied that holding an electronic Hearing is likely to cause significant prejudice to a Party.
- 21.3 Where the Chair of the Discipline Committee or a Panel orders that all or part of Hearing be held electronically and a notice of an electronic Hearing has not previously been given,



the College shall give notice of the electronic Hearing in accordance with section 6 of the SPPA unless the Parties waive the requirement.

**RULE 22. Procedure on Electronic Hearings**

- 22.1 Electronic Hearings may be conducted by telephone conference or videoconference.
- 22.2 At least 48 hours before an electronic Hearing is scheduled to commence, every person participating in the Hearing shall give notice to the Registrar of the telephone number or videoconference co-ordinates, as the case may be, where he or she can be reached for the Hearing.
- 22.3 Unless otherwise provided in the rules, or by an order of a Panel, every person participating in the Hearing shall serve and file every document, in sequentially numbered pages, he or she intends to rely upon at least three (3) days before the Hearing, in accordance with Rules 4 (Service of Documents), 5 (Filing of Documents) and 6 (Information to Appear on Served or Filed Documents).
- 22.4 Every person participating in the Hearing shall ensure that he or she can be reached at the telephone number or videoconference co-ordinates, as the case may be, provided to the Registrar beginning at least fifteen (15) minutes before the Hearing is scheduled to commence.
- 22.5 In the case of an electronic Hearing by videoconference:
  - (a) all participants at a site shall be in full view of the camera at all times;
  - (b) all participants connected to the video-conference shall be visible to one another at all times; and
  - (c) once the Hearing commences, the camera shall not be moved.

**WRITTEN HEARINGS**

**RULE 23. Initiating a Written Hearing**

- 23.1 In the case of a Hearing whose only purpose is to deal with procedural matters, the Chair of the Discipline Committee, or a Panel, may direct that all or part of a Hearing be heard in writing.
- 23.2 In the case of a Hearing to deal with matters other than procedural matters, the Chair of the Discipline Committee, or a Panel, may direct that all or part of a Hearing be heard in writing, on consent of the Parties, or after giving the Parties an opportunity to make submissions, unless the Chair or the Panel is satisfied that there is a good reason not to do so.

23.3 Where the Chair of the Discipline Committee or a Panel orders that all or part of Hearing be held in writing and a notice of a written Hearing has not previously been given, the College shall give notice of the written Hearing in accordance with section 6 of the SPPA unless the Parties waive the requirement.

**RULE 24. Procedure on Written Hearings**

24.1 Where a Panel holds all or part of Hearing in writing, the Panel may give direction to the Parties as to:

- (a) dates for service and filing of written materials;
- (b) the categories of information that must be included in the written materials; and/or
- (c) any other aspect of the procedure for exchanging and filing written materials.

**ADJOURNMENTS**

**RULE 25. Requests for Adjournment**

25.1 Requests for adjournment of a Hearing date shall be made at the earliest opportunity that the Party or counsel making the request becomes aware that an adjournment is required. A Party seeking an adjournment shall attempt to obtain the consent of the other Parties before bringing a request before the Discipline Committee.

25.2 Requests for adjournment of a Hearing date in advance of the Hearing date shall:

- (a) be expressed in writing;
- (b) be directed to the attention of the Chair of the Discipline Committee or his/her designate and Independent Legal Counsel;
- (c) be copied to all Parties or counsel involved in the Hearing; and
- (d) clearly set out the extenuating circumstances which necessitate an adjournment.

25.3 Unless the Chair of the Discipline Committee or the chair of the Panel directs otherwise, requests for adjournment of a Hearing date in advance of the Hearing date shall be heard and decided by the chair of the Panel and shall be heard electronically.

**TIME LIMITS**

**RULE 26. Time Limits**

- 26.1 A Panel may set time limits in an oral or electronic Hearing before it, in respect of all or part of a Hearing, after giving the Parties an opportunity to make submissions in that regard.
- 26.2 Where a Panel sets time limits in respect of all or part of a Hearing, the Panel may make an order that the total time spent by all Parties arguing an objection or motion shall be deducted from the time remaining for the Party who is unsuccessful on that objection or motion, subject to the discretion of the Panel.

## **SEIZURE BY A PANEL OF THE MERITS**

### **RULE 27. Seizure by a Panel of the Merits**

- 27.1 A Panel is seized of the merits of a Proceeding once the Notice of Hearing has been entered as an exhibit at a Hearing for the purpose of determining the merits of the Proceeding.
- 27.2 Whether or not a Panel has heard a preliminary issue in a Proceeding, if that Panel is not yet seized of the merits of a Proceeding, the Chair of the Discipline Committee may appoint a different Panel to hear and determine the merits of the Proceeding.

## **EVIDENCE AT HEARINGS**

### **RULE 28. Evidence by Agreement**

- 28.1 A Panel may receive, orally or in writing, a statement of facts that are agreed upon by the Parties as evidence of those facts.
- 28.2 A statement of agreed facts under sub-rule 28.1 may address some or all of the facts in issue in the Proceeding.

### **RULE 29. Evidence by Affidavit**

- 29.1 A Party may present, and a Panel may receive, the evidence of any of the Party's witnesses in the form of an affidavit that has been sworn or affirmed by the witness.
- 29.2 Where a Party presents the evidence of a witness in the form of an affidavit:
- (a) the Party may examine the witness for not more than 10 minutes, or such other time as the Panel may direct;
  - (b) each opposing Party may cross-examine the witness; and

- (c) if the witness is cross-examined, the Party who filed the affidavit may re-examine the witness.
- 29.3 Where a Party intends to present the evidence of a witness in affidavit form, the Party shall serve copies of the affidavit on all other Parties at least ten (10) days before the commencement of the Hearing, and file the original affidavit with the Discipline Committee at the Hearing.
- 29.4 Where an opposing Party is served with an affidavit of a witness, the opposing Party shall, at least five (5) days prior to the commencement of the Hearing, notify the Party who served the affidavit as to whether or not the adverse Party intends to cross-examine the witness at the Hearing.
- 29.5 If no opposing Party gives notice in accordance with sub-rule 29.4 that the opposing Party intends to cross-examine a witness whose evidence is to be presented by affidavit, the witness's attendance at the Hearing is not required, unless the Panel orders otherwise.
- 29.6 A Panel may make an order striking evidence that is presented in affidavit form and is inadmissible.

**RULE 30. Evidence by Witness Panel**

- 30.1 A Panel may receive evidence from a panel or panels of witnesses composed of two or more persons, on terms directed by the Panel, if the Parties have first had an opportunity to make submissions in that regard.

*Expert Opinion Witness Panel*

- 30.2 Where a Panel agrees to receive evidence from a panel of expert witnesses opining on the same question, unless the Panel directs that a different procedure should apply:
  - (a) each expert witness shall give their opinion and may:
    - (i) comment on the opinions of other expert witnesses on the panel;
    - (ii) pose questions to the other expert witnesses on the panel; and/or
    - (iii) make a concluding statement;
  - (b) the members of the witness panel may then be cross-examined and re-examined by counsel in the sequence directed by the Panel.

*Fact Witness Panel*

- 30.3 Where a Panel agrees to receive evidence from a panel of witnesses all of whom are called by the same Party, unless the Panel directs that a different procedure should apply:
  - (a) the Party who calls the witness panel may conduct an examination in chief of the witnesses on the panel and may:
    - (i) do so in any order;

- (ii) go back and forth between witnesses; and/or
  - (iii) address questions to the panel as a whole;
- (b) any Party who is adverse in interest to the Party who called the witness panel may cross-examine any of the witnesses on the witness panel, and may:
- (i) do so in any order;
  - (ii) go back and forth between witnesses; and/or
  - (iii) address questions to the panel as a whole;
- (c) if a witness on a witness panel is cross-examined, the Party who called the witness panel may re-examine that witness.

*Other Witness Panel*

- 30.4 Where a Panel agrees to receive evidence from any other type of witness panel, the Panel may give direction as to the applicable procedure.
- 30.5 Rule 29 (Evidence by Affidavit) applies to the evidence of witness panels, with necessary modifications.

**COSTS**

**RULE 31. Material to be Filed Regarding Costs**

- 31.1 Except where there is agreement between the Parties as to costs, where a Party seeks costs of a Proceeding under s. 53 or s. 53.1 of the Code, the Party shall, within 20 days of the release of the Panel's reasons for decision, or such other time as the Panel directs, serve and file:
- (a) an outline of the costs claimed, detailing:
    - (i) the total amount claimed by the Party for legal costs, inclusive of taxes, including:
      - (A) for each step in the Proceeding, the hours spent by the Party's legal representative(s), the rate sought for costs, and the rate actually charged by the Party's legal representative;
      - (B) a list of disbursement expenses incurred by the Party, and the amount incurred for each disbursement;
      - (C) the Party's legal representative's signature, certifying that the hours claimed were spent, the rates shown are correct and that each disbursement was incurred as claimed;

- (ii) where the College claims its costs and expenses incurred in investigating the matter and/or conducting the Hearing under s. 53.1 of the Code, the total amount claimed under each of these headings, inclusive of taxes, including:
  - (A) any information necessary to understand the calculation of such costs;
  - (B) a list of disbursement expenses incurred by the College in investigating the matter or conducting the Hearing, and the amount incurred for each disbursement;
- (b) a written submission in support of the claim for costs, not to exceed ten (10) pages in length; and
- (c) any other material ordered by a Panel.

31.2 Any Party that is served with a request for costs may, within 20 days thereafter, or such other time as the Panel directs, serve and file responding submissions in writing, not to exceed ten (10) pages in length.

#### **RULE 32. Costs to be Heard in Writing**

32.1 The issue of costs of a Proceeding shall be heard at the same time and in the same manner in which the issue of penalty is heard, unless the Panel is satisfied that there is a good reason for not doing so.

### **GIVING NOTICE OF FINAL DECISION**

#### **RULE 33. Method of Notice**

33.1 In addition to the methods described in section 18 of the SPPA, the Discipline Committee may direct College staff to send each Party a copy of its final decision or order, including the reasons if any have been given, by any of the methods set out in sub-rule 4.1.

33.2 The time at which delivery of any such copy is deemed to be effective shall be determined in accordance with sub-rules 4.2 and 4.3.

### **CORRECTING, CLARIFYING AND REVIEWING DECISIONS/ORDERS**

#### **RULE 34. Corrections and Clarifications**

34.1 A Panel may at any time, on the request of a Party or at its own initiative, correct a typographical error, error of calculation, technical error or other similar error made in an order or decision of that Panel.

- 34.2 A Panel may at any time, on the consent of the Parties, clarify an order or decision of that Panel that contains a misstatement, ambiguity or other similar error.
- 34.3 If any member of the Panel that made the original order is unable, for any reason, to participate in the consideration of a request for a correction or clarification, a quorum of the original Panel will suffice for the purpose of this rule.

## **RECONSIDERATION OF DECISIONS**

### **RULE 35. Reconsideration of Decisions**

#### **35.1 In this Rule,**

- (a) “Request for Reconsideration” means an application under sub-rule 35.2,
- (b) “other participants in the Hearing” refers to non-Parties permitted to participate in a Hearing under s.41.1 of the Code, if any.

35.2 With the consent of the other Party to the Hearing, a Party may apply for reconsideration of a decision released by the Discipline Committee if the decision contains a substantive error or omission that may have affected the outcome of the Hearing.

35.3 A Request for Reconsideration must be:

- (a) Served on the other Party, other participants in the Hearing (if any), and ILC; and
- (b) Filed, with the Discipline Committee c/o the offices of the College. The Request for Reconsideration will be provided to the Panel that released the decision under reconsideration or if the Panel is not available, to the Chair of the Discipline Committee.

35.4 A Request for Reconsideration should set out, in consecutively numbered paragraphs, the facts and reasons upon which the Party requesting reconsideration submits that the panel of the Discipline Committee should reconsider its decision, and the relief sought.

35.5 A responding Party may, within five (5) days of receiving the Request for Reconsideration,

- (a) Serve brief written submissions supporting or opposing the a Request for Reconsideration on the other Party, other participants in the Hearing, if any, and ILC;
- (b) File the submissions referred to in paragraph (a), above, with the Panel that released the decision under reconsideration.

35.6 The Panel may release its decision on the reconsideration in writing, without an oral Hearing.

- 35.7 A decision that has been reconsidered by a Panel in accordance with this rule shall contain reference to the date of the reconsideration and, where applicable, the fact that an amendment or variance was made.

## **REINSTATEMENT APPLICATIONS**

### **RULE 36. Initiating Reinstatement Applications**

- 36.1 The following rules apply, in addition to all other rules, to applications for reinstatement made under sections 72 and 73 of the Code.
- 36.2 A person making an application for reinstatement shall serve and file a notice of the application specifying the order sought, the grounds of the application, the evidence that the person will introduce, the proposed method of Hearing and the anticipated length of the Hearing.
- 36.3 Unless the Chair of the Discipline Committee directs otherwise, the person making an application for reinstatement shall serve and file sufficient copies of the record of the original Hearing and the record of any previous applications for reinstatement, copies of the transcript of the original Hearing and any previous applications for reinstatement and copies of any document the person will introduce.
- 36.4 The Registrar shall assist the person making an application for reinstatement to comply with sub-rule 36.3 by providing reasonable access to the necessary documents maintained in the College's files including extra copies of transcripts or documents that are already available.
- 36.5 The Discipline Committee shall not schedule a reinstatement application for a Hearing until the person making an application complies with sub-rules 36.2 and 36.3.
- 36.6 When a reinstatement application has been scheduled, the Chair of the Discipline Committee shall provide a copy of the application to the members of the Panel who will be Hearing the application at least ten days prior to the Hearing date.



## FORMS

### Acknowledgement Form – Expert’s Duty

*(Title of Proceeding)*

#### ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is ..... *(name)*. I live at ..... *(city)*, in the ..... *(“Province” or “State”)* of ..... *(name of province/state)*.
2. I have been engaged by or on behalf of ..... *(name of Party/Parties)* to provide evidence in relation to the above-noted Proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this Proceeding as follows:
  - (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 my area of expertise; and
  - (c) to provide such additional assistance as the Discipline Committee may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any Party by whom or on whose behalf I am engaged.

Date .....

\_\_\_\_\_  
*Signature*