



COLLEGE OF
PSYCHOLOGISTS
OF ONTARIO

DISCIPLINE COMMITTEE RULES OF PROCEDURE

MARCH 2023

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RULE 1: GENERAL

1.01 Fundamental objective

1.01(1) The fundamental objective of these Rules is to ensure that proceedings before the Discipline Committee of the College are dealt with according to legislative requirements, the rules of procedural fairness and natural justice, and in the public interest.

1.02 Definitions

1.02(1) In these Rules, unless the context requires otherwise,

“Chair” means the Chair of the full Discipline Committee or their designate;

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

“College” means the College of Psychologists of Ontario;

“counsel” means a person legally authorized to represent a party or other participant at a Discipline Hearing;

“Discipline Committee” means the Discipline Committee of the College, and includes a Panel of the Discipline Committee selected by the Chair;

“document” includes handwritten files, printed files, electronic media, sound recordings, video tapes, photographs, charts, graphs, plans, maps, surveys, book of accounts and information recorded or stored by means of any device;

“electronic”, with respect to a proceeding, means a proceeding held by video conference, telephone conference, or some other form of electronic technology, which allows persons to speak to and hear one another simultaneously, and “electronically” has a corresponding meaning;

“holiday” means,

- a. any Saturday or Sunday;
- b. New Year's Day;
- c. Family Day;
- d. Good Friday;
- e. Easter Monday;
- f. Victoria Day;
- g. Canada Day;
- h. Civic Holiday;

- i. Labour Day;
- j. Thanksgiving Day;
- k. Christmas Day;
- l. Boxing Day;
- m. any special holiday proclaimed by the Governor General or the Lieutenant Governor; and
- n. any other day designated by the College as a holiday, and where New Year's Day, Canada Day, Christmas Day or Boxing Day falls on a Saturday or Sunday, the day designated by the College is a holiday;

“independent legal counsel” means the counsel appointed to provide advice to a Panel of the Discipline Committee in accordance with section 44 of the *Code*;

“member” means a member of the College who is the subject of a proceeding before the Discipline Committee, and includes former members;

“motion” is a request made to the Discipline Committee to make an order in a particular proceeding;

“motion participant” means a party and any other person who would be affected by the order sought;

“Notice of Hearing” means a Notice issued by the College under the *Code* that is served on the member against whom allegations have been made, which contains allegations of professional misconduct and/or incompetence against a member;

“order” means any decision made by the Discipline Committee, the Chair or a Pre-Hearing Chair and includes a procedural direction given by the Discipline Committee, the Chair or a Pre-hearing Chair;

“Panel” means a Panel of the Discipline Committee selected by the Chair, presiding over a proceeding;

“Panel Chair” means the person chairing the Hearing or the motion;

“party” means a party or parties under section 41 of the *Code*; namely, the College and the member against whom allegations have been made;

“Pre-hearing Chair” means the person designated by the Chair to preside over the Pre-hearing Conference;

“proceeding” means any step in the Hearing process and includes a motion, a Pre-hearing Conference, and the Hearing itself;

“vulnerable witness” means a witness who, in the opinion of the Discipline Committee, will have difficulty testifying, or will have difficulty testifying in the presence of a party, for appropriate reasons related to age, handicap, illness, trauma, emotional state or similar cause of vulnerability.

1.03 Interpretation

- 1.03(1) These Rules shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding before the Discipline Committee.
- 1.03(2) Where matters are not provided for in these Rules, they shall be determined by analogy to them, and in a manner consistent with them and consistent with the *Regulated Health Professions Act, 1991* and the *Statutory Powers Procedure Act*.
- 1.03(3) Where a party or participant in the proceeding is not represented by counsel, anything these Rules permit or require counsel to do shall be done by the party.

1.04 Computation, Extension or Abridgement of Time

- 1.04(1) In the computation of time under these rules or under an order, except where the contrary intention appears,
- (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) where a period of less than seven days is required, holidays shall not be counted;
 - (c) 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
 - (d) 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.
- 1.04(2) Any time periods required by these rules may be extended or abridged with the agreement of both parties and notice to the Chair of the Discipline Committee.
- 1.04(3) Should the parties not agree on an extension or abridgement of time, the Discipline Committee may decide whether to extend or abridge any time required by these rules or an order, on such terms or conditions as the Discipline Committee considers just either before or after the expiration of the time.

RULE 2: APPLICATION AND WAIVER OF RULES

2.01 Application of Rules

2.01(1) These Rules apply to all proceedings before the Discipline Committee of the College including, with all necessary modifications, to applications for reinstatement under sections 72 and 73 of the *Code*.

2.02 Initiation of Rules

2.02(1) The Discipline Committee may exercise any of its powers under these Rules at the request of a party, a motion participant, or on its own initiative.

2.03 Compliance and Waiver

2.03(1) 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 invalid.

2.03(2) If a party substantively complies with these Rules in every important way, the party will be deemed to have met the requirements of the Rules.

RULE 3: PRE-HEARING CONFERENCE

3.01 Pre-hearing Conference

3.01(1) The Chair of the Discipline Committee may direct the parties to participate in a pre-hearing conference.

3.01(2) If a party fails to attend a scheduled Pre-hearing Conference, the Discipline Committee Panel may, in an appropriate case, make an order with respect to the costs of the Pre-hearing Conference.

3.01(3) The Pre-hearing Chair appointed by Rule 3.02 shall, after consultation with the defense counsel and the prosecutor, schedule a date for the Pre-hearing Conference to be held, and shall notify the parties of the date. At least 30 days' notice of the Pre-hearing Conference will be provided, unless the parties agree to an earlier date.

3.01(4) Matters to be addressed at a Pre-hearing Conference shall include the following:

(a) issues related to the disclosure and exchange of information;

(b) identification and simplification of issues, including legal and jurisdictional questions;

- (c) identification of any preliminary motions, and motions to be raised during the Hearing;
 - (d) procedural matters related to the form of the Hearing (e.g. oral, electronic, written), requests for adjournment, etc.;
 - (e) identification of facts or other evidence upon which the parties are in agreement;
 - (f) settlement of any or all of the issues; and
 - (g) other matters that may assist in the timely disposition of the proceeding.
- 3.01(5) Prior to the Pre-hearing Conference the parties shall exchange Pre-hearing Conference memoranda that address the matters set out in 3.01(4) and that set out the essential facts and submissions of the parties.
- (a) Not less than 20 days before the Pre-hearing Conference, the College shall provide a copy of its Pre-hearing Conference memorandum to the Member and to the Pre-hearing Chair.
 - (b) Not less than 10 days before the Pre-hearing Conference, the Member shall provide a copy of its Pre-hearing Conference memorandum to the College and to the Pre-hearing Chair.

3.02 Pre-Hearing Chair

- 3.02(1) The Chair of the Discipline Committee shall appoint one member of the College to preside at the Pre-hearing Conference. The Chair of the Discipline Committee shall not appoint him or herself as Pre-hearing Chair.
- 3.02(2) The Pre-hearing Chair will facilitate dialogue between the parties on any matters identified in the notice of the Hearing, or that arise in the course of the conference.
- 3.02(3) The Pre-hearing Chair may express opinion on the matters being addressed, in order to assist the parties in reaching a settlement.
- 3.02(4) The Pre-hearing Chair may make any orders necessary or advisable with respect to the conduct of the Pre-hearing Conference.
- 3.02(5) The Pre-hearing Chair may also make orders with respect to the conduct of a Hearing not otherwise specifically dealt with in the *Health Professions Procedural Code* or the *Statutory Powers Procedure Act*, subject to review by the Panel of the Discipline Committee conducting the Hearing, or on consent of the parties.

3.02(6) The Pre-hearing Chair and any member of the Discipline Committee who attends a Pre-hearing Conference may not become a member of the Panel constituted to hear the matter, without the express written consent of the parties.

3.03 Without Prejudice Basis

3.03(1) A Pre-hearing Conference shall not be open to the public and, except for any orders, directions, agreements and undertakings made at a Pre-hearing Conference, it shall proceed on a without prejudice, confidential basis, unless the parties consent otherwise.

3.03(2) If an Agreed Statement of Facts and a Joint Submission on Penalty result from a Pre-hearing Conference:

(a) The final versions of Agreed Statement of Facts and Joint Submission on Penalty may be provided by the parties to Independent Legal Counsel, who will provide these to the Pre-hearing Chair.

(b) The Pre-hearing Chair may provide a written view of the Agreed Statement of Facts and Joint Submission on Penalty to Independent Legal Counsel who will then provide such written view to the parties.

3.04 Binding Agreement

3.04(1) An agreement at the Pre-hearing Conference to settle any or all of the issues will be binding upon the parties, subject to the review and approval of the settlement by a Panel of the Discipline Committee, following a written, electronic or oral Hearing.

3.05 Pre-hearing Conference Report

3.05(1) The Pre-Hearing Conference Chair shall prepare a report listing any orders, directions, undertakings, and agreements made at a Pre-hearing Conference and a copy of the report shall be distributed to the parties.

RULE 4: DISCLOSURE

4.01 Reciprocal Disclosure

4.01(1) Each party to a Hearing shall disclose to the other party the existence of every document and thing that the party, or a witness called by or on behalf of the party, may seek to adduce in evidence or put to any witness at a Hearing.

- (a) The College must produce the information as set out in (1) above as soon as is reasonably practicable after the Notice of Hearing is served, and not less than 30 days before the commencement of the Hearing.
 - (b) The Member must produce the information as set out in (1) above as soon as reasonably practicable after disclosure by the College, but not less than 15 days before the commencement of the Hearing.
- 4.01(2) Where a party, after making disclosure, comes into possession or control of or obtains power over another document or thing that the party may seek to adduce in evidence or put to any witness at a Hearing, the party shall forthwith disclose to the party opposite the existence of the document or thing, and shall produce a copy of it, if requested.
- 4.01(3) Each party to a Hearing shall provide to the other party, at least 10 days before the Hearing, the name of each witness the party intends to call as a witness at the Hearing, and a summary of the evidence of each witness.
- 4.01(4) A party who does not disclose a witness, document or thing in compliance with the Rule may not call the witness or refer to the document or thing or introduce it in evidence at the Hearing, without leave of the Discipline Panel, which may be granted on any conditions that the Discipline Panel considers just.

RULE 5: WRITTEN AND ELECTRONIC PROCEEDINGS

5.01 Written Hearings

- 5.01(1) Either party to a proceeding, the Pre-hearing Chair or the Panel constituted to hear a matter, may propose that a Pre-hearing Conference or a Hearing be conducted entirely or partially through written submissions. Such a proposal may be made prior to a Hearing or Pre-hearing Conference, at a Pre-hearing Conference, or at any point during the course of the Hearing.
- 5.01(2) A written Hearing will only be conducted upon the consent, in writing, of the parties.
- 5.01(3) Upon consent, a date will be established by which submissions must be received at the College offices. Members of the Panel constituted to hear the matter will then review the submissions and arrive at a binding decision.
- 5.01(4) The written submissions will be available at the College offices for public review at the same time as the materials are made available to the Panel, which will normally be no later than five business days after the date established for submission of the material.

5.02 Electronic Hearings

- 5.02(1) Either party to a proceeding, the Pre-hearing Chair or the Panel constituted to hear a matter, may propose that a Pre-hearing Conference or a Hearing be conducted entirely or partially through electronic means. Such a proposal may be made prior to a Hearing or Pre-hearing Conference, at a Pre-hearing Conference, or at any point during the course of a Hearing.
- 5.02(2) Conducting a Hearing electronically will not occur if either party satisfies the Hearing Chair that holding an electronic rather than an oral Hearing is likely to cause the party significant prejudice.
- 5.02(3) Subject to 5.02(2), the Panel constituted to hear a matter may require that a Hearing be conducted entirely or partially through electronic means, when this is desirable in order to achieve a timely disposition of the matter. When a Hearing has been scheduled or is underway, notice of the decision to conduct the Hearing electronically will be given as soon as possible prior to the scheduled start or resumption of the Hearing. When no date for the start or resumption of the Hearing has yet been set, the date will be established after consultation with the parties.
- 5.02(4) When an electronic Hearing is to be conducted, and upon consent of or after consultation with the parties, a date and mechanism will be arranged for conduct of the electronic Hearing.
- 5.02(5) The College will provide a facility in Toronto through which any party to the proceeding may participate in an electronic Hearing, and through which members of the public may observe and/or hear the proceeding.

RULE 6: WITHDRAWAL OF A NOTICE OF HEARING OR ALLEGATIONS

6.01 Withdrawal of Allegations

- 6.01(1) Where a Hearing has or has not commenced, and the parties consent, and an explanation has been provided, the College may seek permission, from the Discipline Committee, to withdraw some or all of the allegations contained in a Notice of Hearing.
- 6.01(2) Where the Discipline Committee grants the College permission to withdraw all or part of a Notice of Hearing, the Committee will clearly note on the exhibited copy of the Notice of Hearing which allegation(s) it has permitted to be withdrawn.

- 6.01(3) Where a Notice of Hearing has been withdrawn in whole or in part and a member of the public seeks access to the Notice of Hearing, and the Notice is otherwise available, the College shall provide a copy of the exhibited Notice referred to in subrule 6.01(2).

RULE 7: MOTIONS

7.01 Motions Before a Plea is Entered

- 7.01(1) A motion shall be made by Notice of Motion that specifies the relief requested and the grounds for the motion.
- 7.01(2) All procedural or interlocutory matters and issues shall be raised as soon as possible and shall be heard on a day fixed by the Chair of the Discipline Committee Panel. The motion may be heard by means of a written or an electronic Hearing unless the Chair of the Discipline Committee Panel determines that the motion should be heard at an oral Hearing.
- 7.01(3) The party or person bringing a motion shall deliver the Notice of Motion, all material in support of the motion, and brief written argument, at least 20 days before the motion is to be heard.
- 7.01(4) Any other motion participant who wishes to reply shall deliver responding material 10 days before the motion is scheduled to be heard.

RULE 8: PROCEDURES FOR THE HEARING

8.01 Notice of Constitutional Questions

- 8.01(1) Section 109 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, applies in respect of any Constitutional Question before the Discipline Committee at a Hearing.

8.02 Vulnerable Witnesses

- 8.02(1) The Discipline Committee will ensure that a vulnerable witness participating in a Hearing has access to a private room in which to wait so that they do not have to come into contact with the defendant member.
- 8.02(2) The Discipline Committee will ensure the availability of a translator, or other communication assistance, to assist the witness where language or disability compromises the witness' ability to hear, understand and otherwise communicate freely and fully.

- 8.02(3) The Discipline Committee 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 witness.
- 8.02(4) The Discipline Committee 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 Discipline Committee is of the opinion that the exclusion is necessary to obtain a full and candid account of the matter.
- 8.02(5) The Discipline Committee shall not make an order under subrule 8.02(4) unless arrangements are made for the member, the Discipline Committee, and counsel 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 counsel while watching the testimony.
- 8.02(6) The Discipline Committee may order that a member not personally conduct the cross-examination of a vulnerable witness if the Discipline Committee is of the opinion that the order is necessary to obtain a full and candid account of the vulnerable witness' testimony or to prevent an abuse of the process.
- 8.02(7) Where the Discipline Committee makes an order under subrule 8.02(6), it may appoint counsel for the purpose of conducting the cross-examination.
- 8.02(8) The Discipline Committee may make other orders protecting vulnerable witnesses, such as an order prohibiting the publication of their identities where required by law or where it concludes it is just and fair to do so.

8.03 Oral and Written Argument

- 8.03(1) The Discipline Committee may place reasonable limits on the length of oral submissions.
- 8.03(2) The Discipline Committee may, before or after Hearing oral submissions, order the parties to submit written submissions on some or all of the issues at the Hearing and may give directions as to the form and timing of such written submissions.

8.04 Reprimands

- 8.04(1) When an order of the Discipline Committee includes a reprimand, the reprimand will be delivered in public, which can include electronic means where public access can be facilitated.
- 8.04(2) When an appeal of the Panel's decision is waived, the reprimand may be delivered at the conclusion of a Hearing.

- 8.04(3) If not delivered on the date of the Hearing, the reprimand will be delivered on a date fixed by the College after the appeal period expires, or after an appeal is finally disposed of and the Courts uphold the decision of the Discipline Committee.
- 8.04(4) The reprimand will be delivered by the Chair of the Hearing Panel, or any other member(s) of the Panel, professional or public, that the Panel agrees would be appropriate.
- 8.04(5) If the reprimand is delivered at the conclusion of the Hearing, the entire Hearing Panel is present for the reprimand. All those in attendance at the Hearing will have the option of remaining to hear the reprimand.
- 8.04(6) If the reprimand is delivered at a later date, all available members of the Hearing Panel, or at minimum, a quorum of the Hearing Panel, shall be present in person or electronically. If a quorum of the Hearing Panel is not available, a quorum of any Discipline Committee Panel, as appointed by the Chair of the Discipline Committee, may present the reprimand. The date fixed for the reprimand will be public information, and the delivery of the reprimand open to the public.
- 8.04(7) The reprimand will be recorded by the court reporter.
- 8.04(8) Upon delivery of the reprimand the Discipline Committee Hearing is concluded.
- 8.04(9) Copies of the transcript of the reprimand will be provided to the member and the College as soon as they are available.

8.05 Public Access

- 8.05(1) If a member of the public wishes to have access to all or part of the record of the Discipline Committee, other than the Notice of Hearing or the transcript of evidence, he or she shall bring a motion before the Discipline Committee, upon notice to the parties, and such motion shall be made, considered and decided in writing by the Chair of the Discipline Committee or by a Panel of the Discipline Committee appointed by the Chair, without an oral Hearing.
- 8.05(2) The provision of the transcript of evidence and any other part of the record of the Discipline Committee shall exclude any part of the Hearing, and corresponding record, from which the public is excluded, as well as that part of the transcript and record that is the subject of an order prohibiting publication. The Chair or Panel of the Discipline Committee shall determine those parts of the transcript and record requested that are subject to an order excluding the public or to an order prohibiting publication.

8.05(3) A member of the public granted access to all or part of the transcript or record of the Discipline Committee shall first pay to the College the cost of the transcript requested, the expense of redaction, as required, of the transcript or record or part thereof that is requested, and the cost of reproducing the record, before any part of the record and transcript are released to the member of the public.

8.06 Interfering with a Hearing

8.06(1) No person may take or attempt to take a photograph, audio or video recording or other record by any means at a proceeding or publish, broadcast, reproduce or otherwise disseminate a photograph, audio or video recording or other record taken unless permitted to do so by the Rules or an order of the Discipline Committee.

8.06(2) Subrule 8.06(1) does not apply to:

- (a) a person unobtrusively making handwritten or typed notes or sketches at a proceeding;
- (b) a party or a party's counsel unobtrusively making an audio recording at a proceeding that is used only as a substitute for handwritten or typed notes for the purposes of the proceeding;
- (c) a person taking a photograph, audio or video recording or other record with the prior written authorization of the Discipline Panel;
- (d) the court reporter; or
- (e) a person using a device to compensate for a disability.

RULE 9: COSTS

9.01 Procedure for Requesting Costs

9.01(1) A party requesting an order for costs and expenses other than on consent shall, where practicable, deliver a detailed written explanation of the basis upon which the costs and expenses requested are calculated.

9.01(2) Where the request for costs and expenses includes disbursements or out-of-pocket expenses, these may be proved by an affidavit attaching a copy of any invoice or receipt.

9.01(3) Where the request for costs or expenses includes the cost or expense to the College of conducting a day of Hearing, no evidence of the cost or expense of a day of Hearing is needed if the request is equal to or less than the amount set out in Tariff A.

9.01(4) The Discipline Committee may direct that the issue of costs, including how costs and expenses should be calculated, be dealt with through written submissions or at a motion conducted separately from the Discipline Hearing on the merits.

9.02 Costs for Non-Compliance with Rules or Unreasonable Conduct

9.02(1) Where the Discipline Committee is entitled to order the payment of costs or expenses by a party, the Discipline Committee may consider the failure of that party to comply with these Rules.

9.02(2) Subject to s.53 of the *Code*, where the Discipline Committee concludes that the conduct or course of conduct of a party was unreasonable, frivolous or vexatious or the party acted in bad faith, it may order the party to pay another party's costs.

9.02(3) Examples of unreasonable conduct by a party can include, depending on the circumstances, a late request for an adjournment, the late acceptance of an offer for a joint submission and an unreasonable refusal to conduct part or all of the proceedings in writing or electronically.

RULE 10: DECISIONS AND REASONS

10.01 Correction of Errors

10.01(1) A party may, within thirty (30) days after receiving a copy of the Discipline Committee's decision, order or written reasons, request that the Discipline Committee correct any typographical, formatting, calculation, or similar errors by delivering such request, in writing.

10.01(2) The Discipline Committee may, on its own initiative and at any time, correct any typographical, formatting, calculation, or similar errors made in its decision, order or written reasons.

10.01(3) Where the Discipline Committee makes a correction on its own initiative, it shall advise the parties.

10.02 Review of Decision and Order

- 10.02(1) The Panel of the Discipline Committee that issues a decision or order may review all or part of its decision or order, and may confirm, vary, suspend, or cancel all or part of its decision or order, upon application by either party.
- 10.02(2) An application to review shall be in writing and shall set out fully the submissions of the party that applies for the review. The application to review must be made within a reasonable time following the issuance of the decision or order sought to be reviewed.
- 10.02(3) If the Panel decides to review the matter, the other party may make submissions in writing in response to the application, and the applicant may make brief reply submissions, within the time periods prescribed by the Chair of the Panel.

RULE 11: REINSTATEMENT APPLICATIONS

11.01 Initiating a Reinstatement Application

- 11.01(1) A person making an application for reinstatement under sections 72 and 73 of the *Code* shall deliver to the Registrar a notice of the application specifying:
- (a) the order sought;
 - (b) the grounds of the application, including reasons why a certificate should be re-issued;
 - (c) a declaration of good conduct in a form acceptable to the Registrar;
 - (d) a statement, in a form acceptable to the Registrar, of every location where the person has been employed since the date of revocation and the number of hours the person has worked at each location;
 - (e) a statement, in a form acceptable to the Registrar, of every activity the person has taken since the date of revocation to maintain current knowledge, skills and judgment in practising the profession;
 - (f) an estimate of the anticipated length of the Hearing; and
 - (g) any document and a summary of any oral evidence that the person will introduce.

11.02 Scheduling a Reinstatement Hearing

- 11.02(1) The Discipline Committee shall not schedule a reinstatement application for a Hearing until the person making the application has complied with subrule 11.01.
- 11.02(2) When a reinstatement application has been scheduled for a Hearing, the Discipline Committee shall arrange for the service of a Notice of Hearing on the parties.
- 11.02(3) When a reinstatement application has been scheduled, the College shall deliver to the member making the application and have available at the reinstatement Hearing, the record of the original Hearing and a record of any previous application for reinstatement made by the member and arising out of that original Hearing. For the purpose of the reinstatement application, the record does not include a transcript of the evidence at the original Discipline Committee Hearing, unless the transcription is available irrespective of the reinstatement application.
- 11.02(4) Counsel for the College shall deliver to the applicant for reinstatement a copy of any documents, other than those referred to in subrule 11.02(3) that the College intends to rely upon at the reinstatement Hearing.

TARIFF A

COSTS AND EXPENSES FOR THE COLLEGE TO CONDUCT A HEARING

Costs and expenses of half a day of Hearing.....	\$6,372.50
Costs and expenses of a day of Hearing.....	\$10,155.00



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