



**Discipline and
Fitness to Practise
Hearings Office**

Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee

(Effective April 1, 2025)

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RULE 1 - INTERPRETATION AND APPLICATION

1.01 Definitions

- (1) In these Rules, unless the context requires otherwise, words that are not defined in this rule have the meaning given in the *Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sched. 8 or the *Statutory Powers Procedure Act*, R.S.O. 1990 c. s.22.

- (2) In these Rules,

“Business Day”	means any day other than a Holiday.
“Case Conference”	means a meeting between a Facilitator and both Parties to support a Member’s understanding of the Hearings Process or facilitate the resolution of the matter.
“Case Conference Memorandum”	means a Party’s document identifying the factual and legal issues in dispute and a brief description of their position.
“Case Management”	means the process, set out in Rule 3, to facilitate a Member’s understanding of the Hearings process and the Parties’ negotiations and resolution of the matter.
“Chair”	means the Chair of the Committee; if the Chair of the Committee is absent, “Chair” means the Vice-Chair of the Committee; if both the Chair of the Committee and the Vice-Chair of the Committee are absent, “Chair” means the person elected by the Committee to act as the Chair temporarily.
“College”	means the College of Early Childhood Educators.
“Committee”	means, depending on the context, either the Discipline Committee of the College or the Fitness to Practise Committee of the College, and includes the Committee’s Chair or a Panel of the Committee.
“ECE Act”	means the <i>Early Childhood Educators Act, 2007</i> , S.O. 2007 c. 7, Sched. 8.
“Electronic” or “Electronically”	means the use of teleconference or videoconference or some other form of electronic technology.
“Decision Maker”	means the Committee, Panel, Chair, Chair’s delegate, or Facilitator, depending on the context.
“Discipline Resolution Process”	means the “Complaint resolution process” set out in s. 33.1 of the ECE Act.
“Facilitator”	means a person appointed by the Chair to facilitate Case Management between the Parties.

“Hearing”	means the process before a Decision Maker required to be conducted pursuant to section 33, 34 or 36 of the ECE Act.
“Hearings Office”	means the employee or employees of the College who are assigned the duty of providing administrative assistance to the Committee and its Decision Makers.
“Holiday”	means <ul style="list-style-type: none"> a) any Saturday or Sunday; b) New Year’s Day; c) Family Day; d) Good Friday; e) Victoria Day; f) Canada Day; g) Civic Holiday; h) Labour Day; i) Thanksgiving Day; j) Christmas Day; k) Boxing Day; l) Where New Year’s Day, Canada Day, Christmas Day, or Boxing Day falls on a Saturday or Sunday, the additional day designated by the College as a holiday; 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.
"Independent Legal Counsel"	means the lawyer appointed to provide legal advice to the Decision Maker, as permitted by section 35(5) of the ECE Act.
"Member"	means a member or former member of the College who has been named in a Notice of Hearing and/or named in the decision of the Complaints Committee referring the matter for a Hearing.
“Motion”	means a request for the Decision Maker to make

	an Order regarding an issue or issues in a Proceeding.
“Motion Participant”	means a party or any other person who would be affected by the Order requested on a Motion.
"Notice of Hearing"	means a document issued by the College which contains one or more allegations of professional misconduct, incompetence, and/or incapacity of a Member.
“Order”	means any decision or ruling made by a Decision Maker in relation to the Proceeding.
"Panel"	means a panel of Committee and/or Roster members selected by the Chair in accordance with section 19 of the ECE Act.
“Party”	means the College as represented by the Prosecutor and the Member or Members named in the decision of the Complaints Committee referring the matter for a Hearing.
"Proceeding"	means any step in the Hearing process, and includes Case Management, a Motion, and a Hearing.
“Proposed Resolution”	means the facts; findings of professional misconduct, incompetence or incapacity (if any); and final Order (if any) the Parties agree to recommend within the Discipline Resolution Process.
“Prosecutor”	means the lawyer conducting a prosecution against a Member before the Committee on behalf of the College.
"Record"	means a copy of all exhibits from a Proceeding, Orders and all written Reasons for Decision and includes any transcripts of the Hearing.
“Representative”	means a lawyer or paralegal authorized under the <i>Law Society Act</i> , R.S.O 1990, c. L.8, to represent a person in a Proceeding, or some other person chosen by the Party to represent them.
“Roster”	means the roster of eligible panelists established in accordance with the College’s By-Law No. 11 (Committees) .
“Rules”	means these <i>Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee</i> .
“Support Person”	means an individual invited to a Proceeding by the Member for support. A Support Person is not a Representative.
“System Navigation Meeting”	means a meeting between a Facilitator and a Member to introduce the Member to the Case

Management and Hearings processes.

"Vulnerable Witness"

means a witness who, in the opinion of a Decision Maker, will have difficulty testifying for reasons related to age, disability, illness, trauma, emotional state or similar reasons.

1.02 Interpretation of Rules

- (1) Where matters are not specifically addressed in these Rules, the ECE Act or the *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S. 22, the Decision Maker will find a reasonably similar process to address the matter.
- (2) If a Member is not represented, they can do anything these Rules require or permit a Representative to do

1.03 Application of Rules

- (1) These Rules apply to all Proceedings before the Discipline Committee and the Fitness to Practise Committee, including applications for reinstatement under section 36 of the ECE Act.
- (2) Where all or part of a Rule applies only to the Discipline Committee or only to the Fitness to Practise Committee, the Rule will specifically state this fact.

1.04 Time

- (1) Time under these Rules is calculated as follows:
 - (a) where a Rule mentions a period of time between two events, the day of the first event is not counted and the day of the second event is counted.
 - (b) where a Party does something that they are required to do under these Rules after 5 p.m. local time in the City of Toronto, the Decision Maker will consider the Party to have done that thing on the next Business Day.
- (2) A Decision Maker may extend or shorten any time required by these Rules when they consider it to be fair.

1.05 Compliance and Waiver

- (1) The Decision Maker may waive any Rule:
 - (a) where all the Parties (and, if applicable, all the Motion Participants) consent to the waiver; and
 - (b) where doing so is fair and in the public interest.
- (2) Where a Party does not have the consent of the other Parties (and if applicable, the other Motion Participants) to waive a Rule, the Party can bring a motion under Rule 4 requesting the waiver.
- (3) A motion to waive a Rule may be made at any time. However, in determining

whether waiver of the Rule is fair and in the interest of the public, the Decision Maker will consider whether the motion was brought in a timely manner.

- (4) The Decision Maker may choose to waive a Rule even if the parties do not request the waiver. Before doing so, the Decision Maker must notify the parties (and if applicable, the Motion Participants) and give them an opportunity to make submissions about whether waiving the Rule is fair and in the interest of the public.

1.06 Power to Control Process

- (1) Despite anything in these Rules, the Decision Maker may make any Order that is necessary to control its process. In making such an Order, the Decision Maker must consider the public interest, the interests of witnesses and the Member's right to make full answer and defence to the allegations.

RULE 2 - DOCUMENTS – FORM OF, DELIVERY OF, AND FILING OF DOCUMENTS

2.01 Delivery of Documents

- (1) Where the Rules require a document to be delivered to a person or Party, the document can be delivered by:
 - (a) giving it directly and in person to the recipient or their Representative. The document is considered to be delivered on the day that it was given to that person or Party;
 - (b) sending it by email or other electronic transmission. The document is considered to have been delivered on the same day the email was sent; or
 - (c) sending it by registered mail or courier. The document is considered to have been delivered on the day of the delivery receipt; or
 - (d) sending it by another method that is directed by the Decision Maker.
- (2) Documents delivered after 5 p.m. are considered to have been received on the next Business Day.

2.02 Filing of Documents

- (1) All documents that are filed in a Proceeding must be filed:
 - (a) electronically with the Hearings Office following instructions provided by the Hearings Office or, if no instructions have been given, by sending them by email to the Hearings Office; or
 - (b) with the Decision Maker, but only if the document is filed during an in-person Proceeding.
- (2) Where a Proceeding is held in person, the Parties and, where relevant, Motion Participants must make inquiries with the Hearings Office 5 Business Days before the Hearing to determine whether, and how many, copies of all of the documents

filed under sub-Rule 2.02(1) are required for distribution.

- (3) Where a Proceeding is held electronically or in writing but a Party or Motion Participant seeks to file non-electronic documents, that person must file a written request with the Hearings Office for direction from the Decision Maker as to whether, when and how they may do so in the interests of conducting a fair, efficient and timely Proceeding. The written request must contain:
 - (a) a list of the non-electronic documents they seek to file;
 - (b) the reasons why they seek to file these documents non-electronically; and
 - (c) the locations of the other Parties and participants to the Proceeding to whom copies would be sent after being filed.
- (4) Where a Proceeding is held by a combination of formats, the Decision Maker will provide instructions to the Parties and, where relevant, Motion Participants as to whether, when and how non-electronic documents, if any, must be filed.
- (5) A document filed with the Hearings Office will not be considered to be filed until the document has actually been received by the Hearings Office.
- (6) If a person calls or emails the Hearings Office, the Hearings Office will confirm whether a document that person attempted to file has been filed with it.

RULE 3 - CASE MANAGEMENT

3.01 Mandatory Case Management

- (1) Every matter that was referred by the Complaints Committee to the Discipline Committee and is not required to proceed via Rule 8.14 must undergo Case Management as set out in this Rule.
- (2) A Panel or, upon the request of either Party, a Decision Maker may require that matters that were referred by the Complaints Committee to the Fitness to Practise Committee undergo Case Management with modifications as the Decision Maker deems necessary or appropriate.
- (3) The purposes of Case Management are to:
 - (a) provide information to the Member about Hearings processes;
 - (b) provide information to the Member about their options and the potential implications or consequences of those options;
 - (c) support discussion and negotiation between the Parties;
 - (d) identify areas of agreement between the Parties; and
 - (e) plan for a hearing, if necessary.

- (4) Case management will be overseen by the Hearings Office and conducted by a Facilitator.

3.02 Transitional Rules

- (1) Matters that were referred by the Complaints Committee for a Hearing before this Rule went into effect on April 1, 2025, will be subject to Case Management and,
 - (a) the Facilitator will order modifications to the Case Management process as they deem necessary or appropriate; and
 - (b) the Facilitator may request that Independent Legal Counsel attend a System Navigation Meeting or a Case Conference.

3.03 First Communication with the Member after Referral

- (1) Following referral by the Complaints Committee, the Hearings Office will contact the Member to explain the purpose of and to schedule a System Navigation Meeting with the Facilitator.
- (2) Communication with the Member will be through the Hearings Office or Facilitator until the Facilitator approves discussions between the Parties to resolve the matter, unless these Rules provide otherwise.

3.04 System Navigation Meeting

- (1) The Facilitator will hold a System Navigation Meeting with the Member and, if applicable, the Member's Representative.
- (2) Discussions that take place during the System Navigation Meeting will be confidential and held on a without prejudice basis. However, the fact of whether the Member attends or does not attend a System Navigation Meeting will not be confidential.
- (3) The Facilitator will explain to the Member procedural matters including
 - (a) what it means to have been referred to the Discipline Committee, including the possible outcomes of the matter;
 - (b) who participates in the Case Management, resolution and hearings processes and what their roles are;
 - (c) the stages of the Case Management, resolution and Hearing processes;
 - (d) the procedural options available to the Parties for resolving the matter; and
 - (e) what supports and resources are available to support the Member during the Case Management and resolution processes.
- (4) The Facilitator and the Member will schedule a Case Conference for Understanding, the details of which are set out in Rule 3.06.

- (5) After the meeting, the Facilitator will send resources to the Member that summarize the information discussed during the System Navigation Meeting.

3.05 Prosecutor's Disclosure, Theory of the Case, and Proposed Outcome

- (1) At least 10 Business Days before the scheduled Case Conference for Understanding, the Prosecutor must file with the Hearings Office
 - (a) a list of all documents that were previously provided or that will be provided to the Member by the College;
 - (b) any information and documents obtained by the College that were not previously disclosed to the Member;
 - (c) an outline of their theory of the case; and
 - (d) an outline of the penalty they would propose if their theory of the case were proved, as well as justification for that proposal.
- (2) At least 7 Business Days before the scheduled Case Conference for Understanding, the Hearings Office will send to the Member the information and documents that were filed by the Prosecutor under sub-Rule 3.05(1).
- (3) Before the Case Conference for Understanding, the Hearings Office will send to the Facilitator the documents filed by the Prosecutor under paragraphs (a), (c) and (d) of sub-Rule 3.05(1).

3.06 Case Conference for Understanding

- (1) The Member, the Member's Representative if applicable, the Prosecutor and the Facilitator will attend a Case Conference for Understanding.
- (2) A Case Conference for Understanding will not be open to the public. All communications made at or in connection with the Case Conference for Understanding must be kept confidential and are considered without prejudice, unless both Parties agree otherwise. This includes any documents filed in relation to the Case Conference for Understanding and the Facilitator's notes and records. However, the fact of whether the Member or the Prosecutor attends or does not attend the Case Conference for Understanding will not be confidential.
- (3) The purposes of the Case Conference for Understanding are for the Facilitator to support the Member's understanding of
 - (a) the Prosecutor's case against them;
 - (b) their rights in responding to the Prosecutor's case and, if relevant, proposed penalty;
 - (c) the possible outcomes if they are found guilty of professional misconduct, found to be incompetent or found to be incapacitated; and

- (d) the procedural options available to the Parties for resolving the matter.
- (4) An additional purpose of the Case Conference for Understanding is to support the Parties' understanding of the Facilitator's opinion of the strengths and weaknesses of the Prosecutor's case.
- (5) The Case Conference for Understanding is not required to be a forum for resolution and the Member will not be asked to respond to the information provided before or at the Case Conference for Understanding. However, after discussing the topics above, the Member may choose to
 - (a) share information about their position and both Parties may receive the Facilitator's opinion of the strengths and weaknesses of the Member's case; and/or
 - (b) engage in discussions with the Prosecutor and mediated by the Facilitator about possible resolution of any issues in the matter.
- (6) During the Case Conference for Understanding, the Member, the Prosecutor and the Facilitator will schedule a Case Conference to Plan for Finalization, the details of which are described in Rule 3.09.
- (7) After the Case Conference for Understanding, the Facilitator will prepare and send to both parties a report of the information discussed. All of the materials that the Prosecutor filed according to Rule 3.05 before the Case Conference for Understanding will be attached to the report.
- (8) If the Facilitator's report instructs the Prosecutor to send additional disclosure to the Member, the report will include direction as to the timeline for disclosure.

3.07 Discussion of Resolution Between the Parties

- (1) After the Facilitator approves discussions to resolve the matter, which may be done during the Case Conference for Understanding or in the report prepared by the Facilitator following the Case Conference or Understanding, the Parties can communicate directly.

3.08 Facilitator's Opinion of the Strengths and Weaknesses of the Member's Case

- (1) If the Parties did not receive the Facilitator's opinion of the strengths and weaknesses of the Member's case at the Case Conference for Understanding, the Member may request to receive that opinion later.
- (2) The Member must file their request with the Hearings Office in writing and enclose an outline of their theory of the case and, if relevant, an outline of the penalty they would propose if their theory of the case were proved, as well as justification for that proposal.
- (3) The Member must also deliver a copy of the request and enclosed documents with the Prosecutor.
- (4) The Facilitator will provide their opinion in writing to both Parties unless they

believe fairness requires that they provide their opinion orally, in which case an additional meeting will be scheduled to continue the Case Conference for Understanding. The Facilitator's opinion must be kept confidential, unless both Parties agree otherwise.

3.09 Case Conference to Plan for Finalization

- (1) The purposes of the Case Conference to Plan for Finalization are for the Facilitator to support the Parties in reaching a resolution of the matter, to conduct a Dispute Resolution Process if the matter meets the criteria in paragraphs (b) and (c) of subsection 33.1 of the ECE Act, and/or to assist the Parties to plan the hearing if no resolution can be reached.
- (2) The Member, the Member's representative if applicable, the Prosecutor and the Facilitator will attend a Case Conference to Plan for Finalization.
- (3) A Case Conference to Plan for Finalization will not be open to the public. Except as specified below, all communications made at or in connection with the Case Conference to Plan for Finalization must be kept confidential and are considered without prejudice, unless both Parties agree otherwise. This includes any documents filed in relation to the Case Conference to Plan for Finalization and the Facilitator's notes and records. However, the fact of whether the Member or the Prosecutor attends or does not attend the Case Conference to Plan for Finalization will not be confidential.
- (4) When the following criteria are met, the Facilitator shall refer the matter to the Discipline Resolution Process:
 - (a) the Parties have reached agreement on all aspects of the matter;
 - (b) the Parties have consented to participate in the Discipline Resolution Process;
 - (c) The matter does not involve an allegation of sexual abuse of a child, sexual misconduct, a prohibited act involving child pornography, or a prescribed sexual act; and
 - (d) the Parties' agreement does not include a proposed Order involving a fine under paragraph 2 or costs under paragraph 4 of subsection 33(5) of the ECE Act.
- (5) If the criteria listed in sub-Rule 3.09(4) have been met,
 - (a) at least 15 Business Days before a Case Conference to Plan for Finalization, the Prosecutor will deliver to the Member and file with the Hearings Office documents that have been signed by the Member and the College detailing the Parties' Proposed Resolution and their consent to enter into the Discipline Resolution Process;
 - (b) the purpose of the Case Conference to Plan for Finalization will be to confirm the details of the Proposed Resolution and the Parties' consent to enter into the Discipline Resolution Process; and

- (c) the Facilitator will prepare a report detailing the Parties' agreement, Proposed Resolution, and rationale for it, and their consent to enter into the Discipline Resolution Process and distribute the report to the Parties and to the Hearings Office; and
 - (d) the Facilitator's report will not be confidential. It will be disclosed by the Hearings Office to the Discipline Committee during the Discipline Resolution Process and its contents can be reflected in the Discipline Committee's final Order, decision and reasons.
- (6) If the Parties have reached agreement on all aspects of the matter but not all of the criteria listed in sub-Rule 3.09(4) have been met,
 - (a) at least 15 Business Days before a Case Conference to Plan for Finalization the Prosecutor will file documents that are signed by the Member and, where relevant, the College and detail the Parties' agreement, and, where relevant, a proposed final Order;
 - (b) the purpose of the Case Conference to Plan for Finalization is to support the Member's understanding of what will happen at an uncontested hearing, including but not limited to the Member's Plea and questions that will be asked at the Hearing to ensure the Member's plea is informed and voluntary; and
 - (c) The Facilitator will prepare a report detailing any orders, directions, undertakings and agreements and distribute it to the Parties.
- (7) If the Parties have not reached agreement on all aspects of the matter,
 - (a) at least 15 Business Days before the Case Conference to Plan for Finalization, the Prosecutor must deliver a Case Conference Memorandum to the Member and file a copy with the Hearings Office;
 - (b) the Member may deliver a Case Conference Memorandum to the Prosecutor and file a copy with the Hearings Office at least 7 Business Days before the Case Conference to Plan for Finalization;
 - (c) the purpose of the Case Conference to Plan for Finalization will be to plan for a Hearing, including
 - i discussing all of the topics set out in the Case Conference Memorandum;
 - ii whether there are any facts the Parties agree about;
 - iii whether the Parties can settle or narrow any issues;
 - iv the strengths and weaknesses of each Party's case;
 - v the content and timing of any additional disclosure;
 - vi the scheduling of any Motions to be heard before the Hearing;
 - vii the appropriate Order if a Panel makes findings of professional misconduct, incompetence; or incapacity at the Hearing;
 - viii the delivery and form of documents, written arguments and books of authorities that will be used at the Hearing and whether

- ix the Panel will review them before the Hearing;
 - ix the estimated length of the Hearing and when it can be scheduled; and
 - x any other topic that could help resolve the matter in a just, efficient and timely way;
- (d) the Facilitator may give directions or make any order(s) that they consider necessary or advisable with respect to the conduct of the proceeding; and
- (e) the Facilitator will prepare a report detailing any orders, directions, undertakings and agreements and distribute it to the Parties.
- (8) If a Party disagrees with the accuracy of the Facilitator's report, the party will, within 5 Business Days after receiving the report, deliver to the Hearings Office and the other Party, written notice of the specific area of disagreement. The party receiving written notice will, within 5 Business Days, deliver any responding comments to the other party and file them with the Hearings Office, after which time the Facilitator may revise the report if indicated. If the Facilitator does not revise the report, they must add a note indicating the specific area of disagreement and their decision not to revise the report.
- (9) The Facilitator will prepare a written summary documenting the Member's attendance or non-attendance at the System Navigation meeting and both parties' attendance or non-attendance at each Case Conference. This written summary will not be confidential.

3.10 Administration

- (1) The Member and, if applicable, the Member's Representative must attend scheduled System Navigation Meetings unless the Facilitator agrees otherwise.
- (2) The Prosecutor, the Member and, if applicable, the Member's Representative must attend scheduled Case Conferences unless the Facilitator agrees otherwise. If the Prosecutor is not a representative of the College, a Representative of the College may also attend all Case Conferences.
- (3) If a Party is unable to attend a scheduled System Navigation Meeting or Case Conference, they must inform the Hearings Office in writing at the earliest possible opportunity. The Party should include in their information to the Hearings Office:
 - (a) the reason they are unable to attend, with supporting documentation if available; and
 - (b) if they will be unable to attend for an extended period of time and not only on the scheduled date, how long that is expected to last.

This information can be communicated to the Panel that makes the final decision in the matter, as can the fact that a Party attended or did not attend scheduled System Navigation Meetings or Case Conferences.

- (4) The Member can have 1 Support Person attend a System Navigation Meeting or Case Conference with them. This is in addition to the Member's Representative, if

applicable. A Support Person cannot speak during the Meeting or Conference, but the Member can ask for an opportunity to speak privately with their Support Person. Upon request, the Facilitator may give permission for more than 1 Support Person to attend with the Member.

- (5) The Prosecutor can have 1 colleague attend a System Navigation Meeting or Case Conference with them. A colleague of the Prosecutor cannot speak during the Meeting or Conference, but the Prosecutor can ask for an opportunity to speak privately with their colleague. Upon request, the Facilitator may give permission for more than 1 colleague to attend with the Prosecutor.
- (6) A Facilitator or another Decision Maker can order, either of their own accord or following a request by one or more Parties, that the Parties attend additional Case Conference meetings. Additional Case Conferences can be ordered if the Facilitator or Decision Maker believes this is required to ensure the fairness and/or integrity of the Proceedings, is in the public interest or may facilitate agreement between the Parties for some or all of the issues involved in the matter.
- (7) A Facilitator or another Decision Maker, either of their own accord or following a request by one or more Parties, can dispense with the System Navigation Meeting or a Case Conference if
 - (a) the Facilitator or Decision Maker believes the Proceeding would be both fair and more expeditious without it; or
 - (b) the Facilitator or Decision Maker believes that is necessary to advance the matter towards finalization.
- (8) A Facilitator can make other procedural orders they believe will facilitate fair Proceedings.

RULE 4 - MOTIONS

4.01 Initiating Motions

- (1) A Motion Record must include a Notice of Motion in the same format as Form 2A, which is attached to these Rules, and the affidavits and any other materials the Party bringing the Motion will rely upon in the Motion.
- (2) A Party can bring a Motion by
 - (a) delivering a Motion Record to the other Party and any Motion Participants; and
 - (b) subsequently filing the Motion Record with the Hearings Office with evidence that it was already delivered to the other Party and any Motion Participants.
- (3) A person who is not a Party can bring a Motion by

- (a) delivering a Motion Record to all Parties and any Motion Participants; and
 - (b) subsequently filing the Motion Record with the Hearings Office with evidence that it was already delivered to the Parties and any Motion Participants.
- (4) The Notice of Motion must contain:
 - (a) The Order the Party is requesting on the Motion;
 - (b) The reasons and arguments in support of the requested Order; and
 - (c) A list of documents that will be used in support of the Party's arguments.
- (5) All issues must be raised by way of a Motion as soon as possible after the issue is identified. The only exception is for Motions that must be heard during the Hearing itself.
- (6) Despite Rules 4.01(2) and 4.01(3), if the circumstances make it impractical to file a Motion Record, a Motion Record does not need to be filed.

4.02 How Motions to Be Heard

- (1) A Motion will be held electronically unless the Decision Maker orders it to be heard in person or in writing.

4.03 Timing, Delivery and Filing of Materials

- (1) At least 20 Business Days before the Motion is to be heard, the person or Party initiating a Motion must
 - (a) deliver to all Parties and any Motion Participants the Motion Record, Factum, Book of Authorities and a draft Order (in the format of Form 2B); and
 - (b) file all documents listed in paragraph (a) with the Hearings Office with evidence that they were already delivered to the Parties and any Motion Participants.
- (2) The person or Party initiating a Motion must file with the Hearings Office and deliver to the other Party and any Motion Participants the Motion Record, Factum, Book of Authorities and a draft Order (in the format of Form 2B, which is attached to these Rules) with the Hearings Office with evidence that all of these materials were already delivered to all Parties and Motion Participants.
- (3) At least 10 Business Days before the Motion is to be heard, the responding Party and any Motion Participants may deliver a responding Motion Record, Factum and Book of Authorities to the person or Party who initiated the Motion and any other Motion Participants. Any Party or Motion Participant who delivers a responding Motion Record must also file it with the Hearings Office at least 10 Business Days before the Motion is to be heard with evidence that it was already delivered.

- (4) If the person or Party initiating a Motion wishes to file a reply, it must be delivered to the other Party and any Motion Participants and then be filed with the Hearings Office with evidence that it was already delivered at least 5 Business Days before the Motion is to be heard.

4.04 Assigning a Motion Panel

- (1) The Chair will assign one or more members of the Committee and/or Roster to a Motion Panel to hear a Motion. Roster members may only sit on a Motion Panel with 3 or more members.
- (2) A Party or other Motion Participant who believes that the Hearing should not be heard by the member(s) of the Motion Panel shall request a direction from the Motion Panel on the matter in the Notice of Motion or Notice of Cross-Motion.

4.05 Scheduling

- (1) After a Notice of Motion is filed with the Hearings Office as required above, the Hearings Office will schedule the Motion.

4.06 Evidence

- (1) Evidence on a Motion will be given by a properly sworn affidavit. However, the Motion Panel can make an Order that evidence be given in another form, unless prohibited by law.
- (2) In general, the content of an affidavit must be limited to facts that are within the personal knowledge of the affiant.
- (3) As an exception to sub-Rule 4.06(2), affidavits can contain information that the affiant believes to be true (even though the affiant does not personally know if the information is accurate). Information that the affiant believes (but does not personally know) to be true can only be included in an affidavit where the affidavit:
 - (a) states the source of the information the affiant believes to be true; and
 - (b) specifically states that it is the affiant's belief that the information is accurate.
- (4) A Motion Participant may cross-examine the affiant of an affidavit filed by another Motion Participant
 - (a) if the Parties consent; or
 - (b) if the Parties do not consent but the Motion Panel gives permission for cross-examination of the affiant because the interests of the case require it.
- (5) An affiant cannot be cross-examined on an affidavit sworn in support of a Motion during the Hearing except for the purpose of impeachment or with the permission of the Hearing Panel.

4.07 Limitations on Submissions

- (1) The maximum duration of a Motion Participant's oral submissions on a Motion is one hour, including a reply. However, the Motion Panel can give permission in advance for submissions that take more than one hour.

4.08 Communications

- (1) Any communications to the Hearings Office regarding a Motion shall be in writing and copied to all Parties and any Motion Participants.

RULE 5 - NOTICE OF CONSTITUTIONAL QUESTION

5.01 Timing for Notice

- (1) A Party who intends to raise a constitutional issue or question at a Hearing or on a Motion must formally give notice to the Attorney General of Canada and the Attorney General of Ontario at least 20 Business Days before the issue or question will be argued before a Panel.

5.02 Submissions by Attorney General

- (1) The Attorney General of Canada and the Attorney General of Ontario may give evidence and make submissions to the Panel regarding the constitutional issue or question.

5.03 Notice of Appeal

- (1) The Attorney General of Canada and the Attorney General of Ontario are entitled to notice of any appeal in respect of the constitutional question.

RULE 6 - DISCLOSURE AND PRODUCTION OF EVIDENCE

6.01 Exchange of Documents by Parties

- (1) Each Party to a Proceeding shall deliver to every other Party, in advance of the Proceeding,
 - (a) a list of all documents and things that the Party intends to produce or enter as evidence at the Proceeding;
 - (b) if not previously produced, copies of the documents and things listed; and
 - (c) a list containing the identity of any witnesses the Party intends to call.
- (2) The Prosecutor must produce the information set out in sub-Rule 6.01(1) as soon as is reasonably possible after the Notice of Hearing is delivered, but in any case, at least 10 Business Days before the start of the Proceeding.

- (3) The other Party must produce the information set out in sub-Rule 6.01(1) as soon as is reasonably practicable after disclosure by the Prosecutor under this Rule, but in any case, at least 7 Business Days before the start of the Proceeding.
- (4) Even if a Party has not disclosed a document or thing in accordance with the Rules, that item can be referred to or used at a Proceeding with the consent of the other Party. If consent is not given, the Decision Maker will consider a request to use the document or thing and whether it is fair to allow its use, and the Decision Maker may grant the request with any conditions it considers just.

6.02 Order for Disclosure

- (1) At any stage in a Proceeding, a Decision Maker may order that a Party provide to another Party and to the Decision Maker any information or documentation that the Decision Maker considers necessary for a full and satisfactory understanding of the Proceeding.

6.03 Motions for Production of Documents or Things from a Third Party

- (1) For the purposes of this Rule, a person who is not a Party to the Proceeding is a third party.
- (2) A Party may make a Motion requesting the Panel to Order that a third party produce documents or things that are in the third party's possession. The purpose of such a Motion is to obtain documents or things to use as evidence in the Hearing.
- (3) A Party who intends to make a Motion pursuant to this Rule must formally give notice to the Hearings Office, the other Party or Parties, and all known Motion Participants at or before the time when the Hearing is being scheduled.
- (4) The Notice of Motion relating to the production of documents or things from a third party must be provided to the third party possessing the documents. It must also be provided to any other person having a significant interest, including a privacy interest, in the documents or things.
- (5) In considering such a Motion, the Panel must take into account:
 - (a) the relevance of the documents or things 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 or things;
 - (c) any claim that the documents or things are privileged; and
 - (d) whether any person has a significant interest in the documents or things, including a privacy interest.
- (6) Sub-Rules 6.03(7) to 6.03(10) apply to Motions for documents or things from a third party that involve the following:
 - (a) allegations of a Member's misconduct of a sexual nature;

- (b) documents or things that contain information about a person who is not a Party to the Hearing; and
 - (c) documents or things where a person has a reasonable expectation of privacy in relation to the information contained within.
- (7) While the member may make one or more of the following assertions, these assertions themselves are not enough to show that the requested documents or things are likely relevant to an issue in the Hearing or to the competence of a witness to testify:
- (a) that the documents or things exist;
 - (b) that the documents or things relate to medical or psychiatric treatment, therapy or counselling that a person has received or is receiving;
 - (c) that the documents or things relate to the incident that is the subject matter of the Hearing;
 - (d) that the documents or things may disclose a prior inconsistent statement of a person;
 - (e) that the documents or things may relate to the credibility of a person;
 - (f) that the documents or things may relate to the reliability of the testimony of a person merely because he or she has received or is receiving psychiatric treatment, therapy or counselling;
 - (g) that the documents or things may reveal allegations of sexual abuse by a person other than the Member;
 - (h) that the documents or things relate to the sexual activity with any person, including the Member;
 - (i) that the documents or things relate to whether a person complained about sexual abuse shortly after the abuse was alleged to have occurred;
 - (j) that the documents or things relate to the sexual reputation of a person; or
 - (k) that the documents or things were made close in time to a complaint or report or to the activity that is the subject matter of the Hearing.
- (8) The Panel or the Chair or their delegate may order that the third party who has possession or control of the requested documents or things produce all or some of them to the Panel, Chair or delegate. To make this Order, the Panel, Chair or delegate must be satisfied that:
- (a) the documents or things or a portion of the documents or things are likely relevant to an issue in the Hearing or to the competence of a witness to testify in the Hearing; and
 - (b) the production of the documents or things is necessary in the interests of justice.

- (9) The Panel or the Chair or their delegate will review the documents or things produced under sub-Rule 6.03(7) and determine which, if any, of the requested documents or things, or parts thereof
 - (a) are likely relevant to an issue in the Hearing or to the competence of a witness to testify in the Hearing; and
 - (b) are necessary to produce in the interests of justice.
- (10) In making a determination under sub-Rule 6.03(8), the Panel or the Chair or their delegate must consider
 - (a) the regulatory nature of the Proceeding;
 - (b) the primary purpose of the Proceeding, which is to protect the public and regulate the profession in the public interest;
 - (c) the privacy interest of the person in the document or thing sought;
 - (d) the nature and purpose of the document or thing sought; and
 - (e) any other factor deemed relevant to determine whether the request should be granted.
- (11) The Panel or the Chair or their delegate they shall grant an Order for the production of those documents or thing or portions thereof that they determined do meet the test set out in sub-Rule 6.03(8).
- (12) Any person who has a privacy interest in the requested documents or things can apply for standing in a Motion for the production of documents or things from a third party. Despite anything in these Rules, the Panel, the Chair or their delegate will grant the person standing on the Motion if they are satisfied that the person has a privacy interest in the requested documents or things.

RULE 7 – FORMAT OF PROCEEDINGS

7.01 Proceedings to be Held Electronically

- (1) Proceedings will be held electronically unless the Decision Maker orders otherwise or unless taking place under Rule 8.14.

7.02 Ability to Conduct a Proceeding in Writing or in Person

- (1) A Decision Maker may Order all or part of a Proceeding to be heard in writing or in person if:
 - (a) the Parties consent; or
 - (b) the Parties do not consent, but the Decision Maker makes an Order that the Proceeding should be heard in this way after hearing submissions from

the Parties.

- (2) Before denying a request from consenting Parties to have a Proceeding heard in writing or in person, the Decision Maker must give an opportunity for the Parties to comment.
- (3) The Party requesting that all or part of the Proceeding be in writing or in person must make the request in writing to the Hearings Office setting out:
 - (a) the purpose of the Proceeding and the format in which the Proceeding will be held;
 - (b) why the Party is requesting that the Proceeding be conducted in writing or in person;
 - (c) why the Party believes that an Proceeding in writing or in person will not cause prejudice to the Committee's ability to hold a fair Hearing; and
 - (d) whether or not the other Party has consented to a Proceeding in writing or in person and, if not, the reason why the other Party has not consented.
- (4) In determining whether a Proceeding should be held in writing or in person, the Decision Maker must consider whether either Party would be prejudiced and whether the Committee's ability to hold a fair, efficient and timely Hearing would be compromised by a particular Proceeding format. The Decision Maker must consider the following factors:
 - (a) accommodations for protected grounds under the Human Rights Code;
 - (b) the type of Proceeding;
 - (c) the issues in the Proceeding;
 - (d) the expected duration of the Proceeding;
 - (e) the nature or form of the evidentiary record;
 - (f) whether the Member is represented;
 - (g) the Parties' and witnesses' access to relevant technology;
 - (h) the Parties' and witnesses' level of ability in using relevant technology;
 - (i) geographical access, including Parties' and witnesses' ability to travel;
 - (j) the Member's and witnesses' financial circumstances;
 - (k) statutory or security related impediments; and
 - (l) any other factor the Decision Maker deems relevant.
- (5) For clarity, sub-Rules (1), (2) and (3) allow a Decision Maker to direct that a hybrid

Proceeding be held using a combination of formats.

7.03 Electronic Proceedings

- (1) This sub-Rule applies to any Proceeding or part of a Proceeding that is held electronically.
- (2) At least 2 Business Days before an Electronic Proceeding is scheduled to begin, the Hearings Office will instruct participants on how to participate in the Electronic Proceeding, and the participants will comply with those instructions.
- (3) Unless already specified by another Rule, at least 3 Business Days before the Proceeding, every person participating in the Proceeding must file with the Hearings Office and deliver to every other participant every document the person intends to rely on in the Proceeding, in sequentially numbered pages.
- (4) At least 3 Business Days before a Proceeding, every person participating in the Proceeding must provide to the Hearings Office the email address and telephone number where they can be reached during the Proceeding.
- (5) At least 5 minutes before the Proceeding is scheduled to commence, every Party must connect to the Proceeding using the details provided by the Hearings Office.
- (6) Where a Proceeding is conducted electronically, and the Proceeding involves witnesses or an oral reprimand, the Proceeding must proceed by way of videoconference, unless the Decision Maker orders otherwise.

RULE 8 - PROCEDURE RELATED TO PROCEEDINGS

8.01 Location of In-Person Proceedings

- (1) All in-person Proceedings will be held at the offices of the College, unless otherwise directed by the Hearings Office. If a Proceeding is to be held anywhere other than the offices of the College, the Hearings Office will provide notice to the Parties in writing as soon as is reasonably possible to do so.

8.02 Discipline Committee Hearings to be Open to the Public

- (2) Except as set out in this Rule, Discipline Committee Hearings will be open to the public.
- (3) The Discipline Committee can make an Order that a Hearing will be closed to the public, which includes members of the College. The Discipline Committee will order that a Hearing be closed to the public when, in the opinion of the Discipline Committee, the possibility of serious harm or injustice to any person justifies a departure from the general principle that Hearings should be open to the public.

8.03 Fitness to Practise Committee Hearings to be Closed to the Public

- (1) Except as set out in this Rule, Fitness to Practise Committee Hearings will be closed to the public, which includes members of the College.

- (2) The Member can make a written request that the Hearing be open to the public. The Member must file the request with the Hearings Office before the day that the Hearing is scheduled to start and deliver a copy to the Prosecutor or other Parties to the Proceeding.
- (3) After hearing submissions from the Parties, the Fitness to Practise Committee will grant the Member's request for the Hearing to be open to public unless, in the Fitness to Practise Committee's opinion:
 - (a) matters of public security may be disclosed in the Hearing;
 - (b) financial, personal, or other matters may be disclosed at the Hearing and the interest of a person affected by this disclosure outweighs the Member's interest in having the Hearing open to the public;
 - (c) a person involved in a civil or criminal proceeding may be prejudiced; or
 - (d) a person may be put in danger.

8.04 Electronic Devices and Publication of Proceedings

- (1) No person or Party may:
 - (a) take or attempt to take a photograph, audio or video recording or other record 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 this sub-Rule.
- (2) Sub-Rule 8.04(1) does not apply to:
 - (a) a person discreetly making handwritten or typed notes or sketches at a Proceeding;
 - (b) a Party or a Party's Representative who has received prior authorization from the Decision Maker to discreetly make 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 or Party taking a photograph, audio or video recording or other record with the prior written authorization of the Decision Maker;
 - (d) the court reporter;
 - (e) the Hearings Office making a record of the Proceeding; or
 - (f) a person or Party who has given notice to the Decision Maker using a device to accommodate a disability.

8.05 Notice of Hearing

- (1) At any time, a Panel may permit a Notice of Hearing of allegations against a

Member to be amended to correct errors or omissions of a minor or clerical nature if it is of the opinion that it is just and equitable to do so. In addition, the Panel may make any Order it considers necessary to prevent prejudice to the Member.

8.06 Use of Evidence by Hearing Panel

- (1) The Panel may admit as evidence at a Hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
 - (a) any oral testimony; and
 - (b) any relevant document or other thing, but the Panel may exclude anything unduly repetitive.
- (2) Nothing is admissible in evidence at a Hearing,
 - (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
 - (b) that is inadmissible by the ECE Act or any other statute.
- (3) The findings of a Panel must be based exclusively on evidence admitted before it.

8.07 Examination-in-Chief by Affidavit

- (1) If a Party requests or if the Panel on its own initiative considers it to be appropriate, the Panel can order that Examination-in-Chief at a Hearing be given by an affidavit.
- (2) The Party seeking to file affidavit evidence must inform the Hearings Office of their request and whether the other Party consents to such request.
- (3) The requesting Party must deliver such evidence to the other Party at least 15 Business Days before the Hearing. The other Party must advise whether they intend to cross-examine the affiant at least 7 Business Days before the Hearing.

8.08 Obtaining a Summons to Compel the Attendance of a Witness

- (1) If a Party requires a witness to attend a Proceeding, either electronically or in person, and believes that they require a summons to compel the witness to attend, the Party must file with the Hearings Office a completed Summons to Witness Form. The blank form can be found on the Ontario government website: <https://forms.mgcs.gov.on.ca/>.
- (2) The summons must be given directly and in person to the person being summonsed or that person's Representative.

8.09 Excluding Witnesses

- (1) A Decision Maker may order that one or more witnesses be excluded from the Proceeding until called to give evidence.
- (2) An Order under sub-Rule 8.09(1) may not be made in respect of a Party to the

Proceeding or a witness whose presence is needed to instruct their Representative. However, the Decision Maker may require any such witness to give evidence before other witnesses are called to give evidence on behalf of that Party.

- (3) Where an Order is made excluding one or more witnesses from the Proceeding, no person shall communicate or permit the communication to an excluded witness of any evidence given during the witness's absence from the Proceeding until after the witness has been called and has given evidence.

8.10 Vulnerable Witnesses

- (1) A Decision Maker 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.
- (2) A Decision Maker may order that a Vulnerable Witness provide their testimony in a manner that would allow the Vulnerable Witness not to see the Member if the Decision Maker is of the opinion that this is necessary.
- (3) Where there is a Vulnerable Witness and a Member is not represented, the Prosecutor may apply to have a representative appointed to conduct the cross-examination of the Vulnerable Witness, and the Decision Maker may order that a representative be appointed to cross-examine the witness.

8.11 Expert Witnesses and Reports

- (1) When a Party intends to call an expert witness at a Proceeding, at least 15 Business Days before the Proceeding, they must deliver an expert report to the other Party.
- (2) An expert report must:
 - (a) be signed by the expert;
 - (b) set out the expert's name, address and qualifications; and
 - (c) set out the substance of the expert's proposed testimony or a written summary of the expert's evidence.
- (3) Each Party must inform any prospective expert witness that it is the duty of an expert to assist the Decision Maker on matters within the expert's expertise and that this duty overrides any obligation to the Party from whom they have received instructions or payment. The expert must certify, in the expert's report that the expert is aware of and understands this duty.
- (4) Where the Decision Maker hears testimony of an expert witness, it may also admit the expert witness's report as an exhibit at the Proceeding.
- (5) A Decision Maker may, in its discretion, allow a Party to introduce expert evidence that is inadmissible under this Rule, and may make directions it considers necessary to ensure that the other Parties are not prejudiced.

8.12 Non-Party Participation in a Proceeding

- (1) A person who is not a Party to the Proceeding can apply to the Decision Maker to participate in the Proceeding. The Decision Maker may allow the person to participate in a Proceeding if,
 - (a) their good character, propriety of conduct or competence is in issue; or
 - (b) their participation would assist the Decision Maker.
- (2) If permitted to participate, the Decision Maker will determine how a person who is not a Party (and their Representative, if applicable) can participate in the Proceeding. This may include making oral or written submissions, leading evidence or cross-examining one or more witnesses.

8.13 Public Access to Hearing Record

- (1) This sub-Rule applies only to Hearings held in public under Rules 8.02 or 8.03.
- (2) Subject to any order prohibiting publication, a member of the public has a right to access, at their own expense, the following Hearing documents without having to bring a Motion:
 - (a) Notice of Hearing;
 - (b) a written transcript of evidence;
 - (c) any Agreed Statement of Facts; and
 - (d) any Joint Submission on Penalty.
- (3) If a member of the public wants to access, at their own expense, any other part of the Hearing Record, they must bring a Motion before the Committee or Panel and must give notice to the Parties and any other interested person. The Notice of Motion must set out the following information:
 - (a) the purpose for which access to the Hearing Record is sought;
 - (b) whether all or only a part of the Hearing Record is requested; and
 - (c) if the person is requesting permission to duplicate an exhibit, sufficient details that would allow the Decision Maker to consider whether or not duplication would damage the integrity of the exhibit.
- (4) Before making a decision on a Motion to access all or part of the Hearing Record, the Decision Maker will consider the submissions of the member of the public requesting access to the Hearing Record, the Parties, and any other person having an interest in the Motion. The Decision Maker may consider the following factors:
 - (a) the general principle that Hearings be open to the public;
 - (b) the intended use of the exhibit;

- (c) the integrity of the exhibit;
 - (d) proprietary or privacy interests in the exhibit;
 - (e) the timing of the request and, specifically, whether it was made during or after the Hearing;
 - (f) interference with the proper and orderly conduct of the Hearing;
 - (g) interference with the Member's right to a fair hearing into allegations of professional misconduct, incompetence or incapacity; and
 - (h) any other factor that may be relevant to the Decision Maker's decision.
- (5) If the Decision Maker decides to grant access to all or part of the Hearing Record, it may decide to limit who may access the Hearing Record and how it may be used. The Decision Maker must be satisfied that the security of any exhibit will be protected and may designate a person to provide for supervision and control of any exhibit.
 - (6) Before granting a member of the public access to any part of the Hearing Record, the Hearings Office must redact any portion of the material that is the subject of an Order prohibiting publication and may redact the material to prevent disclosure of the names and any other identifying personal information of any complainants, patients, or witnesses, and the names of any institutions.
 - (7) For clarity, Proceedings taking place under Rules 8.14 and 8.15 are not Hearings and have no Hearing Record. Except for the decision of the Panel once it has been made available on the College's website, there shall be no public access to materials related to Proceedings that have taken place under Rules 8.14 and 8.15.

8.14 Proceedings Under Subsection 33.2 (8) of the ECE Act

- (1) Any time a matter meets the criteria to be resolved without a hearing under subs. 33.2 (8) of the ECE Act, the Prosecutor must file with the Hearings Office as soon as is practicable a copy of Form 3A and all required enclosures.
- (2) The matter will proceed for consideration by the Discipline Committee when
 - (a) the Hearings Office has received Form 3A and all required enclosures from the Prosecutor if the Prosecutor has not made submissions supporting an Order under paragraph 33(4)(5), paragraph 33(4)(6), paragraph 33(5)(2), and/or paragraph 33(5)(4) of the ECE Act; or
 - (b) The Hearings Office has otherwise received Form 3A and all required enclosures from the Prosecutor; and the Member has had 25 Business Days to respond to those documents or the Member is currently incarcerated and 50 Business Days elapsed after delivery of those documents; and, if the Member has delivered and filed a response as set out in Form 3B, the Prosecutor has had 5 Business Days to file a written reply with the Hearings Office.

- (3) A Panel of the Discipline Committee will consider the matter in a private meeting.
 - (a) The Panel will consider the decision of the Complaints Committee and documentation filed by the Prosecutor to show the criteria set out in paragraph (b) of subs. 33.2(8) of the ECE Act have been met. The Panel will determine whether the Member is guilty of professional misconduct.
 - (b) If the Panel finds the Member guilty of professional misconduct, it will consider all of the other materials filed by the Prosecutor and the Member.
- (4) The Panel's Order will be limited to
 - (a) what is required by subs. 33.2(1) of the ECE Act; and
 - (b) the aspects of subs. 33(4) and (5) of the ECE Act about which the Prosecutor provided written submissions and to which the Member had an opportunity to respond.
- (5) If the Panel finds the Member guilty of professional misconduct, the Panel will issue a written decision reflecting the finding of professional misconduct, the Order, and its reasons. The decision will be available on the College's website. The decision shall not disclose the identity any person who is under 18 years old, any affiant, or any person identified in an affidavit aside from the Member.
- (6) If the Panel determines that matter does not meet the requirements in subs. 33.2(8) of the ECE Act to proceed with no hearing, the Hearings Office will notify the Prosecutor and the Member of this fact. This determination will not be available on the College's website. The College will proceed with a prosecution via a Hearing, and the Panel members who considered the matter under subs. 33.2(8) of the ECE Act shall not sit on the Panel for the Hearing.
- (7) For clarity, none of the processes described in this Rule constitute a Hearing.

8.15 Discipline Resolution Process

- (1) When a Facilitator's report detailing the Parties' Proposed Resolution is received by the Hearings Office under sub-Rule 3.09(5), the Discipline Committee will consider the matter in accordance with s. 33.1 of the ECE Act.
- (2) If the Panel adopts the Proposed Resolution or modifies the Proposed Resolution and the modifications are agreed to by both Parties, the Panel will issue a written decision. The decision will be available on the College's website. The decision shall not disclose the identity any person who is under 18 years old, any affiant, or any person identified in an affidavit aside from the Member.
- (3) If the Panel rejects the proposed resolution or modifies the Proposed Resolution and the modifications are not agreed to by both Parties, the Hearings Office will notify the Member and the Prosecutor of this fact. This determination will not be available on the College's website. The College will proceed with a prosecution via a Hearing, and the Panel members who considered the matter under s. 33.1 the ECE Act shall not sit on the Panel for the Hearing.

- (4) For clarity, none of the processes described in this Rule constitute a Hearing.

RULE 9 - RESCHEDULING A PROCEEDING

9.01 Timing

- (1) Requests to reschedule a Proceeding must be made as soon as possible after the Party or Representative realizes that it will be necessary to reschedule.

9.02 Requirement to Ask for Consent to Reschedule

- (1) The Party wanting to reschedule a Proceeding must ask for consent from the other Party before requesting the rescheduling from the Committee.

9.03 If the Other Party Consents

- (1) If a rescheduling request is made before the scheduled date of a Proceeding and the other Party consents, the Party requesting to reschedule must file a written request with the Hearings Office. Their written request must contain the following information:
- (a) the reason for the request to reschedule, with supporting documents if applicable;
 - (b) confirmation that the other Party has consented to rescheduling; and
 - (c) dates that the Parties are available to reschedule the Proceeding.
- (2) If the Hearings Office receives a written request to reschedule under Rule 9.03(1), the Hearings Office will
- (a) reschedule the Proceeding if this is the first request to reschedule the Proceeding. If the Hearings Office is unable to reschedule on the dates proposed by the Parties, the Hearings Office will consult with the Parties to schedule alternative dates; or
 - (b) if the Proceeding was previously rescheduled, the Decision Maker will determine whether the Proceeding should be rescheduled and, if so, on what terms.
- (3) If a Hearing or Motion has already started and the other Party consents to rescheduling, the Party requesting to reschedule must make this request to the Panel. The Panel will determine whether the Proceeding should be rescheduled and, if so, on what terms.

9.04 If the Other Party Does Not Consent

- (1) If a Party makes a request for rescheduling before the date of the Proceeding and the other Party has not consented, the Party requesting to reschedule must deliver to the other Party and file with the Hearings Office a written request to reschedule.

The written request must include:

- (a) the reason for requesting to reschedule, with supporting documents if applicable;
 - (b) confirmation that the other Party was consulted about rescheduling;
 - (c) an explanation of the other Party's reason for refusing consent; and
 - (d) dates that the requesting Party is available to reschedule the Proceeding.
- (2) The other Party may respond to the request. That Party must deliver any such response to the requesting Party and file with the Hearings Office within 5 Business Days of receiving the rescheduling request.
- (3) The Decision Maker will consider the request and determine whether the Proceeding should be rescheduled and, if so, on what terms.
- (4) If a Hearing or Motion has already started and the other Party does not consent to rescheduling, the Party requesting to reschedule will make this request to the Panel. The Panel will determine whether the Hearing or Motion should be rescheduled and, if so, on what terms.

9.05 Factors to Be Considered

- (1) In deciding whether or not to grant a request to reschedule (and, if so, on what terms), the Decision Maker will consider the following factors:
- (a) the rights of the Parties to a fair Hearing;
 - (b) the importance of a timely and efficient disposition in the matter;
 - (c) whether there would be prejudice to a person or Party if the request is accepted or denied;
 - (d) how long the requesting Party had to prepare for the Proceeding;
 - (e) whether the request was made as soon as possible;
 - (f) any efforts made to avoid the circumstances that led to the request;
 - (g) the number of previous requests to reschedule;
 - (h) whether the public is at risk if the request is granted;
 - (i) the proposed period of time before the rescheduled Proceeding;
 - (j) the costs of rescheduling;
 - (k) the public interest; and
 - (l) any other factor deemed relevant to determine whether the request

should be granted.

9.06 Conditions May Be Imposed

- (1) The Decision Maker rescheduling or deciding any request to reschedule may process or grant the request on such terms and conditions as they consider fair.

RULE 10 - AWARDS OF COSTS

10.01 Procedure for Requesting Costs

- (1) The Prosecutor may request an Order for costs with respect to a Hearing or Motion either during the Proceeding or by Motion filed no later than 30 days from the date of the Decision Maker's final decision.
- (2) Where the Prosecutor requests an Order for costs in a Proceeding before the Discipline Committee
 - (a) at or below the rate in Tariff A, it is not required to provide evidence of its costs or expenses; or
 - (b) above the rate in Tariff A, it must provide during the Proceeding or in its Motion Record a bill of costs including invoices or receipts for any disbursements or out of pocket expenses claimed.
- (3) A Member may request an Order for costs with respect to a Hearing or Motion pursuant to s. 33 (9) or s. 34 (7) of the ECE Act by Motion filed no later than 30 days from the date of the Decision Maker's final decision or the withdrawal of the allegations.
- (4) Where a Member has filed a Motion requesting an Order for costs, the Member's Motion Record must include a bill of costs including invoices or receipts for any disbursements or out of pocket expenses claimed.

10.02 Costs for Non-compliance with Rules

- (1) Where a Panel is entitled to order the payment of costs and/or expenses, the Panel may consider, among other factors, the Parties' failure to comply with these Rules. It may also consider whether the conduct of a Party has been unreasonable, frivolous or vexatious or a Party has acted in bad faith. This can include but is not limited to late requests to reschedule a Proceeding.

RULE 11 - REINSTATEMENT APPLICATIONS

- (1) This Rule applies to applications for reinstatement made under section 36 of the ECE Act.
- (2) A Member making an application for reinstatement must file with the Hearing Office a Notice of Application specifying:
 - (a) the Order sought;
 - (b) the grounds of the application;
 - (c) the evidence that the Member intends to rely on; and
 - (d) the anticipated length of the Hearing.
- (3) A Member making an application for reinstatement must comply with the policies and practices of the College, including those related to credentialing requirements and re-entering practice.
- (4) The Member making an application for reinstatement file with the Hearings Office and deliver to the Prosecutor:
 - (a) the Record of the original Hearing;
 - (b) the Record of any previous applications for reinstatement (including the transcript of any pervious reinstatement Hearing);
 - (c) any transcripts from the original Hearing; and
 - (d) any document upon which the Member intends to rely.
- (5) The Committee will not schedule a reinstatement application for a Hearing until the Member complies with sub-Rules (2), (3) and (4).
- (6) Once a Hearing has been scheduled for a reinstatement application, the Hearings Office shall deliver a Notice of Reinstatement Hearing to the Parties.

FORM 1: REVOKED



**Discipline and
Fitness to Practise
Hearings Office**

FORM 2A: NOTICE OF MOTION

B E T W E E N:

COLLEGE OF EARLY CHILDHOOD EDUCATORS

and

[INSERT NAME OF MEMBER]

NOTICE OF MOTION

THE [IDENTIFY MOVING PARTY] WILL make a motion to the [Discipline Committee or Fitness to Practice Committee] of the College of Early Childhood Educators, on [day], [date], at [time], or as soon after that time as the motion can be heard in accordance with the Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee.

THE MOTION IS FOR [set out the specific Order you are requesting on the motion].

THE GROUNDS FOR THE MOTION ARE [specify the reasons and arguments in support of the requested Order, including a reference to any laws, regulations, or Rules used in your argument].

THE FOLLOWING DOCUMENTARY EVIDENCE WILL be used at the hearing of the motion: [list the affidavits or other documents you will rely on in your argument].

[Date] [Name, address, telephone number and email address of the moving party or their representative]

TO: [Name, address, telephone number and email address of responding party or their representative]



**Discipline and
Fitness to Practise
Hearings Office**

FORM 2B: ORDER

[names of Committee members])
) [day and date(s) of hearing]
)

B E T W E E N:

COLLEGE OF EARLY CHILDHOOD EDUCATORS

and

[INSERT NAME OF MEMBER]

ORDER

THIS MOTION, made by [identify moving party] for [state the relief sought in the Notice of Motion], was heard by the Discipline Committee of the College of Early Childhood Educators [electronically OR at {insert address} OR in writing] on [day], [date].

ON READING the [list the material filed on the motion] and on hearing the submissions of [(name of the moving party) or representative for (name of moving party), [where applicable, add "(name of moving party) appearing in person" or "no one appearing for (name of moving party), although properly served as appears from (indicate proof of service)],

THE COMMITTEE ORDERS that ...

Date

Signature of [the Chair], Chair of the
Discipline Committee



**Discipline and
Fitness to Practise
Hearings Office**

FORM 3A: PROSECUTOR'S FILINGS FOR A PROCEEDING PURSUANT TO RULE 8.14

THE PROSECUTOR ATTACHES AND FILES SWORN AFFIDAVITS CONTAINING THE FOLLOWING DOCUMENTS AND INFORMATION pursuant to s. 33.2(8) of the *Early Childhood Educators Act, 2007* (the "ECE Act") and Rule 8.14 of these Rules of Procedure:

1. The decision of the Complaints Committee of the College regarding [name and registration number of Member], made under subsection 31[(5) or (9)] of the ECE Act, dated [date];
2. [Name or describe the relevant document(s)], which confirm[s] that the Member has been convicted or found guilty of an offence under the Criminal Code (Canada) related to sexual abuse of a child, a prohibited act involving child pornography, or a prescribed sexual act for the same conduct or action that is the subject of the Complaints Committee's decision;
3. [Name or describe the relevant document(s)], which confirm[s] that the time for an appeal of the conviction or finding of guilt has expired or that the Member's appeal was dismissed or abandoned and no further appeal is available;
4. [Any statement from a child or their representative in accordance with subsections 33.2(4) and (5) of the ECE Act or A declaration that no statement will be made or filed in accordance with subsections 33.2(4) of the ECE Act]; and

[If the College feels it would be appropriate for the Discipline Committee to make an Order under paragraph 33(4)(5), paragraph 33(4)(6), paragraph 33(5)(2), and/or paragraph 33(5)(4) of the ECE Act, include the following, or delete the following section in its entirety:]

THE PROSECUTOR ALSO ATTACHES:

1. Written submissions in support of its belief that it would be appropriate for the Discipline Committee to make an Order requiring the Member to [delete those that do not apply]
 - a) Reimburse the College for funding it provides under its Funding for Therapy and Counselling program under paragraph 33(4)(5) of the ECE Act;
 - b) Post security for reimbursement for funding under the Funding for Therapy and Counselling program under paragraph 33(4)(6) of the ECE Act;
 - c) Pay a fine to the Minister of Finance under paragraph 33(5)(2); and/or
 - d) Pay costs to the College under paragraph 33(5)(4) of the ECE Act;
2. Any sworn affidavits containing documents or information to support the submissions described above; and

3. A sworn affidavit containing documents or information to show that the Prosecutor has delivered to the Member in accordance with Rule 2.01 of these Rules of Procedure
 - a) A copy of Form 3B of these Rules of Procedure; and followed by
 - b) A copy of this form and all attached documents.

Date

Signature of the College's Representative



Discipline and Fitness to Practise Hearings Office

FORM 3B: EXPLANATION OF PROCEEDINGS UNDER RULE 8.14

As you were previously informed, the Complaints Committee referred allegations of professional misconduct to the Discipline Committee about your conduct.

The *Early Childhood Educators Act, 2007* ("ECE Act"), allows specific types of cases to be decided by the Discipline Committee without a hearing. This document includes information about the procedures that will be followed in those cases, what the Discipline Committee is allowed to do, and how you can participate if you choose to do so.

**If you have received this document from the College,
you have 25 Business Days to respond.¹**

Please read this document carefully to understand what that means.

What is the Discipline Committee?

After the Complaints Committee alleges that a Member committed professional misconduct, the Discipline Committee is the independent decision-maker that decides whether those allegations are true or not. If it finds the allegations are true, it decides what penalty is appropriate. All of the possible penalties are listed in the ECE Act.

The Discipline Committee has an obligation to ensure that the proceedings it oversees are **fair**. One aspect of fairness is providing information to Members who are facing discipline proceedings to help them understand the process it follows. Another aspect is being free from bias, so the Discipline Committee operates separately from the Complaints Committee and from the College's prosecutor. The Discipline Committee follows the ECE Act, other legislation, the [Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee](#), and past cases to make sure its proceedings are fair.

When cases may proceed with no hearing

In most cases, the Discipline Committee holds a hearing before deciding if a Member is guilty of professional misconduct. At a hearing, the College Prosecutor presents evidence they believe will

¹ If you are **currently** incarcerated, you have 50 Business Days to respond. The Discipline Committee and the Hearings Office recognize it can take longer for incarcerated individuals to receive a letter after it is delivered and that incarceration minimizes current risks to the public.

show that the Member committed professional misconduct, and the Member has a chance to defend themselves.

However, the ECE Act (subsection 33.2 (8)) allows the Discipline Committee to make findings of professional misconduct without a hearing if

1. The Complaints Committee's allegations of professional misconduct relate to sexual abuse of a child, a prohibited act involving child pornography or a prescribed sexual act **and**
2. The Member was already convicted or found guilty of an offence under the *Criminal Code* for that conduct **and**
3. The Member has no more right to appeal the criminal conviction.

Rule 8.14 of the [Rules of Procedure](#) describes the processes that will be followed in cases with no hearing.

Penalty Order

If you are found of professional misconduct, The Discipline Committee will make an Order against you, which you would be required by law to follow. In cases that can be resolved without a hearing, an Order can also be made without a hearing.

Mandatory Order if you are found guilty of professional misconduct with no hearing

If you are found guilty of these allegations of professional misconduct, the ECE Act **requires** the Discipline Committee to order that

1. Your certificate of registration be revoked **and**
2. You be required to be reprimanded.

Other possible parts of an Order if you are found guilty of professional misconduct

There are also optional components for a penalty order in these types of cases. The Discipline Committee **may** also order you to

- Reimburse the College for funding it provides under its Funding for Therapy and Counselling program.
- Post security (ie pay in advance) for reimbursement for funding under the Funding for Therapy and Counselling program.
- Pay a fine to the Minister of Finance. The maximum fine is \$2,000.

- Pay costs to the College.

Out of fairness to you, the Discipline Committee will not include in its Order any of these optional components **unless**

1. You have had an opportunity to provide comments first. That is why you have received, along with this document, the Prosecutor's submissions with respect to penalty and all of the documents it will use to support those submissions. You can find a summary of which optional components the Prosecutor is arguing are appropriate in Form 3A under the words "THE PROSECUTOR ALSO ATTACHES". The other documents from the Prosecutor should include details about **why** it believes those components would be appropriate for the Discipline Committee to order.

And

2. The Discipline Committee itself finds that it is appropriate to do so. If it did, it would then provide reasons for its decision.

Your opportunity to respond

You have an opportunity to respond to the Prosecutor's submissions before the Discipline Committee makes its decision. You must do so **within 25 Business Days² of when this document was delivered** by the Prosecutor. (Business Days are defined in the [Rules of Procedure](#).) After that, the Discipline Committee will consider your case whether or not you have responded.

If you choose to respond, you can comment on the Prosecutor's submissions and/or state what you think the Discipline Committee should do and why. If you state or refer to any fact, you can attach sworn affidavits and/or documents to support your arguments.

To respond you must **both**

- Deliver your response to the College's Prosecutor according to Rule 2.01 of the [Rules of Procedure](#)
- and**
- File your response with the Hearings Office according to Rule 2.02 of the [Rules of Procedure](#) and by uploading your response to <https://cece.egnyte.com/ul/hNCDYhSkvQ>. Further instructions about how to upload documents can be found in the document titled "Sending Documents to the Hearings Office and the Prosecutor for Your Case" on the [Hearings Office's website](#).

If you require an accommodation to be able to respond, you must contact the Hearings Office at info@hearings-ecce.ca or 1 888 961-8558 as soon as possible. If you make a request for accommodation after your deadline for responding, it will not be granted.

² Or within 50 Business Days of when the College Prosecutor's correspondence was delivered to Correctional Service Canada or a provincial correctional facility if you are **currently** incarcerated.

Next steps

If you do not respond, the next step is for the Discipline Committee to consider the materials provided to it by the Prosecutor. If you do respond, the next step is for the Prosecutor to file a reply with the Hearings Office (if they choose to do so). Then the Discipline Committee will meet privately to consider the materials provided to it by both the Prosecutor and you.

The Discipline Committee will determine whether you are guilty of professional misconduct and, if so, make a penalty Order including the mandatory components described above and any optional components it decides are appropriate after considering all of the submissions. If you are found guilty of professional misconduct, you will receive a written decision from the Hearings Office.

If the Discipline Committee determines that the matter is not eligible to proceed without a hearing, the Hearings Office will notify you and the Prosecutor of that fact. The Prosecutor may then proceed with a full hearing on the evidence. If that were to happen and you were found guilty following a full hearing, the order of the Discipline Committee could be different from what the Prosecutor requested during the “no hearing” process.

TARIFF A

COSTS AND EXPENSES FOR THE COLLEGE TO CONDUCT A DAY OF HEARING

Fee of College counsel, fee of independent legal counsel and fee of court reporter.	\$10,000
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