



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

**April 2014**

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# **RULE 1 - INTERPRETATION AND APPLICATION**

## **1.01 Definitions**

1.01(1) In these rules, unless the context requires otherwise, words that are not defined in sub-rule (2) have the meaning defined in the *Early Childhood Educators Act, 2007*, or the *Statutory Powers Procedure Act*.

1.01(2) In these rules, unless the context requires otherwise,

“Act” means the *Early Childhood Educators Act, 2007*, S.O. 2007, c. 7, Sched. 8;

“best interests of the witness” includes the avoidance or reduction of emotional or psychological distress associated with involvement in legal proceedings, including testifying in the presence of the member whose conduct is the subject matter of the proceeding or in a hearing room;

“Chair” means the Chair of the full Committee appointed by Council of the College or, in his or her absence, the Vice-Chair elected by the Committee under section 18.06 of the *Committees By-Law* or, in the absence of both the Chair and the Vice-Chair, the person elected by the Committee to act temporarily;

“College” means the College of Early Childhood Educators;

“College counsel” means a lawyer or lawyers appointed by the College to prosecute allegations of professional misconduct, incompetence or incapacity as the case may be of a member before the Committee, sometimes referred to as the prosecutor;

“Committee” means, depending on the context, either the Discipline Committee or the Fitness to Practise Committee of the College, and includes a Panel of them or its Chair;

“counsel” means “lawyer” and is used interchangeably with that word;

“defence counsel” means a lawyer or lawyers retained by or on behalf of a member;

“deliver” means to serve, in accordance with rule 2.03, on every other party or, in the case of a motion, motion participant, and to file with the hearings office with proof of service, and “delivery” and “delivering” have corresponding meanings;

“Discipline Committee” means the Discipline Committee of the College and includes a Panel of the Discipline Committee, convened to conduct a hearing into a matter directed or referred to the Discipline Committee under sections 31, 32 or 36 of the Act, or to conduct any related proceedings;

“electronic” with respect to a proceeding means a proceeding held by telephone conference call or some other form of electronic technology allowing persons to communicate with and hear one another;

“Fitness to Practise Committee” means the Fitness to Practise Committee of the College and includes a Panel of the Fitness to Practise Committee, convened to conduct a hearing into a matter directed or referred to the Fitness to Practise Committee under sections 31, 32 or 36 of the Act, or to conduct any related proceedings;

“hearings office” means the employee or employees of the College who are specifically assigned the duty of providing administrative assistance to the Committee;

“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 a lawyer or lawyers appointed by the Committee to provide advice in accordance with subsection 35(5) of the Act;

“lawyer” means a licensee under the *Law Society Act*, R.S.O. 1990, c. L 8 and is used interchangeably with “counsel”;

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

“motion” means a request for a ruling or decision by the Committee on a particular issue at any stage in the proceeding;

“motion participant” means any person who would be affected by the order sought from the Committee or who has indicated a desire to present evidence or submissions on the order unless the Committee directs otherwise;

“order” means any decision made by the Committee, the Chair or a Panel of the Committee and includes a direction given by the Committee or the Chair;

“party” means a party under subsection 35(2) of the Act;

“presiding officer”, in respect of a pre-hearing conference, means the person designated by the Chair to preside over the pre-hearing conference;

“prior testimonial statement” means a record of testimony given under oath or affirmation and admitted in a previous criminal, civil or administrative proceeding to which the member whose conduct is the subject matter of the proceeding was a party;

“proceeding” means any step in the hearing process and includes a motion, a pre-hearing conference, the hearing itself and any post-hearing procedure including reprimands;

“record” means a copy of the documents upon which a decision will or has been based and includes all exhibits from a proceeding and all written Reasons for Decision, Decision and Orders but may exclude legal authorities and written submissions;

“vulnerable witness” means a witness who, in the opinion of the 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.

## **1.02 Interpretation of Rules**

1.02(1) These rules shall be liberally construed to secure the determination of all proceedings in a manner that is just and, where justice for the member would not be compromised, expeditious and protects the best interests of witnesses.

1.02(2) Where matters are not provided for in these rules or the *Statutory Powers Procedure Act*, the practice shall be determined by analogy to them.

1.02(3) Except as otherwise provided, where a member is not represented by a lawyer, anything these rules require or permit a lawyer to do shall be done by the member.

1.02(4) The Committee may issue practice directions from time to time to explain or clarify these rules.

### **1.03 Application of Rules**

1.03(1) These rules apply to all proceedings before the Discipline Committee and the Fitness to Practise Committee of the College including, with all necessary modifications, applications for reinstatement made under section 36 of the Act.

1.03(2) Where a provision applies to proceedings before just the Discipline Committee or the Fitness to Practise Committee, the provision will state this fact.

### **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 5:00 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) Where a time of day is mentioned in these rules, in an order or in any document in a proceeding, the time referred to shall be taken as the time observed locally.

1.04(3) The Chair of the Committee or the Committee may extend or abridge any time required by these rules or an order on such terms or conditions as are considered just, either before or after the expiration of the time.

### **1.05 Substantial Compliance**

1.05(1) Substantial compliance with a form or notice required by or under these rules is sufficient.

1.05(2) No proceeding is invalid by reason only of a defect or other irregularity in form.

## **RULE 2 - DOCUMENTS**

### **2.01 Form of Documents**

2.01(1) Every document prepared for the Committee shall, to the extent practical, comply with the standards and requirements for documents filed under the *Ontario Rules of Civil Procedure*.

2.01(2) The first and last page of documents shall be coloured as follows:

- (a) buff if prepared by College counsel;
- (b) blue if prepared by defence counsel; and
- (c) green if prepared by any other person.

### **2.02 Notice to be in Writing**

2.02 Where these rules require notice to be given, it shall be given in writing.

### **2.03 Serving Documents**

2.03(1) Subject to any other provision in these rules, “service” means the effective delivery of the documentation to any person or to the person's lawyer.

2.03(2) Service is deemed to be effective when delivered to the last known address, e-mail address or facsimile number of the person:

- (a) by regular, registered or certified mail on the fifth day after the day of mailing;
- (b) by e-mail, on the same day as the transmission if receipt of the e-mail is confirmed by the recipient (and every recipient has a duty to confirm receipt of all e-mail messages in proceedings covered by these rules);
- (c) by facsimile transmission on the same day as the transmission;
- (d) by courier, including Priority Post, on the second day after the document was given to the courier by the party serving; or
- (e) as directed by the Committee,

unless the person to whom the notice is to be given establishes that he or she, acting in good faith and through absence, accident, illness or other causes beyond his or her or its control, failed to receive the notice until a later date or at all.

2.03(3) Documents delivered after 5:00 p.m. shall be deemed to have been delivered on the next day that is not a holiday.

2.03(4) A person who serves or files a document, or who causes a document to be served or filed, shall include with it a statement of the person's address, telephone number and the name of the proceeding to which the document relates.

## **2.04 Filing of Documents**

2.04(1) All documents to be filed in a proceeding shall be filed in the hearings office, except where they are filed in the course of a hearing.

2.04(2) Any document may be filed in the hearings office by leaving it with a person at the hearings office or by mailing it or by sending it by courier to the address of the College listed on its website at [www.collegeofece.on.ca](http://www.collegeofece.on.ca), or, if it is less than 16 pages, as an attachment in PDF format sent by e-mail to [discipline@collegeofece.on.ca](mailto:discipline@collegeofece.on.ca)

2.04(3) A document filed in the hearings office shall be filed in an envelope clearly marked "Attention: Hearings Office".

2.04(4) A document shall not be considered filed until it is actually received by the hearings office.

2.04(5) A party can confirm whether a document has been filed by telephoning the hearings office.

2.04(6) The party filing a document, unless it is sent by e-mail, shall file seven copies of the document.

2.04(7) A party filing a document shall also file proof that the document was served on every person entitled to receive it.

2.04(8) Filing shall not be deemed to be complete without proof of service.

## **RULE 3 – WAIVER OF A RULE**

### **3.01 Methods of Waiving a Rule**

3.01(1) Any provision of these rules may be waived on the consent of the parties and where relevant, motion participants, or upon an order of the Committee.

3.01(2) A party or motion participant requesting that a provision of these rules be waived who does not have the consent of the parties and where relevant, motion participants, shall bring a motion to the Committee.

3.01(3) A motion under this rule may be made after a failure to comply with these rules has occurred.

3.01(4) The Committee may refuse to grant a motion for a waiver from a provision of these rules where a party or motion participant does not act on a timely basis.

3.01(5) The Committee may waive a provision of these rules on its own initiative, upon such terms as are just, if it first gives notice to the parties and motion participants and provides an opportunity for submissions to be made.

## **3.02 Plea of No Contest**

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Committee can accept as correct the facts alleged against the member on that allegation for the purposes of the proceeding only;
- (b) that the Committee can accept that those facts constitute professional misconduct, incompetence or incapacity as the case may be for the purposes of the proceeding only; and
- (c) that the Committee can make a finding without a hearing.

3.02(2) Where the member enters a plea of no contest, College counsel shall state the facts alleged and the findings requested by the College and the member or his or her representative shall state that the member does not contest those facts and findings for the purposes of the proceeding only.

3.02(3) A member shall not introduce any evidence on the issue of what finding ought to be made when the member pleads no contest.

3.02(4) A plea of no contest does not prevent the member from introducing evidence on the issue of what order the Committee ought to make so long as the evidence is consistent with the facts found and findings made by the Committee after the plea of no contest.

3.02(5) A plea of no contest does not constitute an admission by the member as to the facts or findings in any other civil, criminal or administrative proceeding.

### **3.03 Undertaking to Resign**

3.03(1) Where a member undertakes to resign, the member consents to the Committee disposing of the proceeding after hearing submissions from the parties, and issuing its decision accordingly without a hearing.

3.03(2) Notwithstanding sub-rule (1), nothing in this rule shall require the Committee to dispose of the proceeding and issue its decision without a hearing, in accordance with the Member's undertaking to resign, or limit the Committee's jurisdiction under subsection 18(3) of the Act, or any other provision of the Act.

### **3.04 Joint Submissions**

3.04(1) A joint submission occurs where both the College and the member make a submission to the Committee that specified facts are accurate, that a specific finding should be made by the Committee or that a specific order should be made by the Committee. A joint submission can address some or all of the issues in the proceeding.

3.04(2) When presenting a joint submission, the parties shall on agreement present sufficient information to permit the Committee to reasonably conclude that the joint submission is in the public interest.

3.04(3) Where a member does not attend for the presentation of a joint submission, he or she shall file a signed written plea inquiry form.

3.04(4) Where, after providing an opportunity for submissions to be made by the parties, the Committee does not accept the joint submission, the Committee, constituted with the same panel members, shall proceed with a contested hearing on those issues.

3.04 (5) Where a member has signed an Agreed Statement of Facts (ASF), a Statement of Uncontested Facts (SUF), a Joint Submission on Penalty (JSP), a Memorandum of Agreement (MOA), or a Guilty Plea, the panel may, on the consent of the parties, be provided with this document and the related Notice of Hearing (NOH) prior to the start of the hearing.

## **RULE 4 – PROCEDURES PRIOR TO HEARING**

### **4.01 Service of Materials**

4.01(1) A Notice of Hearing shall be served upon the member which shall include:

- (a) the time and place on which the Notice of Hearing is returnable before the Committee;
- (b) the statutory authority under which the hearing will be held;

- (c) the purpose of the hearing;
- (d) a statement that if the member does not attend at the hearing, the Committee may proceed in the member's absence and the member will not be entitled to any further notice in the proceeding;
- (e) a statement that a copy of these rules are on the College website and can be made available upon request; and
- (f) any provisions required by the *Statutory Power Procedures Act* if an electronic or written hearing is proposed.

4.01(2) Subject to sub-rule (3) a Notice of Hearing shall be served upon the member personally or by mailing a copy thereof in a registered letter addressed to the member at the member's last known residence or business address as shown in the records of the College.

4.01(3) Where a member has retained counsel before the issuance of a Notice of Hearing, service of the Notice of Hearing may be effected upon counsel, provided counsel endorse on the Notice of Hearing, or a copy of it, an acceptance of service and the date of the acceptance. By accepting service, counsel represents to the Committee that counsel has the authority of his/her client to accept service.

## **4.02 Setting Hearing Dates**

4.02(1) Subject to sub-rules (2) and (3), a Notice of Hearing shall be returnable before a Panel of the Committee to set a date for a hearing.

4.02(2) Where the College and the member are able to agree in advance to the date(s) to be scheduled for the hearing, provided a completed copy of Form 4A is filed with the hearings office, it is not necessary for the parties to attend before a Panel to set a date for hearing. The hearing will proceed on the date(s) agreed to by the parties as set out in Form 4A as filed.

4.02(3) A Notice of Hearing shall be returnable before a Panel of the Committee for the purpose of proceeding with the hearing where:

- (a) subject to sub-rule 5.05(4)(b), a hearing of another matter involving the member has already been scheduled for the same date;
- (b) the nature of the professional misconduct, incompetence or incapacity, as the case may be, alleged requires that the hearing be expedited; or

- (c) an expedited hearing is required pursuant to subsection 32(7) of the Act.

### **4.03 Location of Hearings**

4.03 All proceedings are held at the offices of the College, unless otherwise ordered by the Committee.

### **4.04 Language of Hearings**

4.04 Where feasible the hearings office will contact the member to ascertain whether the member prefers the hearing to be in English or French. The Committee will accommodate the member's election if it is made at least 20 days before the hearing.

## **RULE 5 – MOTIONS**

### **5.01 Initiating Motions**

5.01(1) A motion shall be made by a Notice of Motion which shall set out the grounds for the motion and the relief requested and shall be accompanied by any evidence to be relied upon, in accordance with Form 5A, unless the return of the motion or the circumstances make a Notice of Motion impractical.

5.01(2) Subject to sub-rule 5.05(3), the person bringing the motion shall deliver the Notice of Motion and motion materials by the Tuesday that is at least 10 days before the date specified for the hearing of the motion.

5.01(3) The other motion participants may adduce additional evidence and shall deliver such evidence no later than the Tuesday that is at least three days prior to the hearing of the motion.

5.01(4) Motions for an adjournment are governed by rule 14.

### **5.02 Scheduling a Motion**

5.02(1) A person who intends to bring a motion to be heard other than at a scheduled pre-hearing conference or at a hearing shall obtain available dates and times for the hearing of the motion from the hearings office and shall attempt to obtain agreement from the other motion participants as to a date and time for the hearing of the motion.

5.02(2) A person bringing a motion shall inform the hearings office of the estimated length of time it will take to argue the motion when obtaining available dates and times.

5.02(3) If the person bringing the motion cannot, after reasonable efforts, obtain agreement for a date and time, the person shall request the hearings office to fix a date and time for the hearing of the motion.

### **5.03 Assigning a Motion Panel**

5.03(1) The Chair shall, in accordance with section 4.2 of the *Statutory Powers Procedure Act*, assign a Panel of one or more members of the Committee to hear each motion. A Panel appointed to hear a motion that consists of more than one person shall include at least one person elected to the Council under paragraph 8(2)(a) of the Act and at least one person appointed to the Council under paragraph 8(2)(b) of the Act.

5.03(2) A party who believes that the motion ought to be heard by members of the Committee who will not sit on the hearing Panel shall request a direction from the motion Panel on the matter in the Notice of Motion or Notice of Cross-motion.

### **5.04 Motions Before a Single-Member Panel**

5.04(1) Except where the motion arises during the course of a hearing, motions respecting the following matters shall be heard by a single member Panel:

- (a) the abridgement or extension of any time prescribed by these rules or by a previous order of a single member Panel;
- (b) the holding of a pre-hearing conference, or the terms on which such a conference may be held;
- (c) the form of the hearing, including a request to hold a hearing electronically, or the form of some or all of the evidence to be tendered at the hearing;
- (d) the location of a pre-hearing conference, motion or other proceeding where it is proposed that it not be at the Toronto offices of the College; and
- (e) the consequences of non-compliance with a previous order of a single member Panel.

### **5.05 Motions before a Three-Member Panel**

5.05(1) Except where the motion arises during the course of a hearing, and subject to sub-rule (2), motions with respect to any matter not provided for in rule 5.04 shall be heard by a three member Panel, prior to the scheduled hearing of the matter on its merits.

5.05(2) Where a Panel has heard a motion in a proceeding, any further motion under this rule shall be heard by the same Panel, if practicable.

5.05(3) Any motion to which this rule applies shall be brought as soon as possible and shall be heard on a day that is at least two weeks prior to the scheduled hearing date on which the Notice of Hearing is returnable before a Panel of the Committee for the purpose of proceeding with a hearing on the merits, unless the nature of the motion requires that it be heard during the hearing itself.

5.05(4) A motion with respect to the following matters shall be heard by the Committee at the hearing of the allegations on the merits:

- (a) the exclusion of the public from all or part of a hearing;
- (b) subject to section 9.1 of the *Statutory Powers and Procedure Act*, whether two or more matters directed or referred to it, whether or not involving the same member, shall be heard together;
- (c) the exclusion of witnesses from the hearing;
- (d) constitutional issues subject to rule 12.01;
- (e) orders under rules 13.10, 13.11 and 13.13 respecting the accommodation of witnesses;
- (f) orders under rule 13.09 respecting the admission of sexual activity of a witness;
- (g) any matter which arises for the first time during the hearing of the allegations on the merits; and
- (h) any matter adjourned to the hearing Panel by a motion Panel.

## **5.06 Evidence on Motions**

5.06(1) Evidence on a motion shall be given by affidavit, unless otherwise ordered by the Committee, or with the consent of the motion participants.

5.06(2) An affidavit for use on a motion may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit but where, in the opinion of the Committee, better evidence could be adduced through direct evidence of a witness, the Committee may require the motion participant to file or call such direct evidence.

5.06(3) Unless the Committee directs otherwise, evidence by cross-examination of a deponent of an affidavit served by another motion participant is admissible in the hearing of a motion.

## **5.07 Materials on Motions**

5.07(1) The person bringing the motion shall deliver the Notice of Motion using Form 5A and any materials in support of the motion in the form of a motion record.

5.07(2) The motion record shall contain the Notice of Motion, all affidavits to be relied upon and any other material to be relied upon.

5.07(3) If another motion participant intends to rely upon materials, the motion participant shall deliver those materials in the form of a responding motion record.

5.07(4) A motion record and responding motion record shall have consecutively numbered pages and a table of contents describing each document, including each exhibit, by its nature and date and in the case of an exhibit, by exhibit number or letter.

5.07(5) Despite sub-rules (2) and (3), a motion participant may deliver separately from the motion record or responding motion record a book of authorities and a written statement of fact and law (called a factum) relied on by the motion participant.

## **5.08 Hearing Motions**

5.08 The Committee may hear a motion by way of an oral or electronic hearing or, if no motion participant objects, by way of a written hearing.

## **5.09 Written Order**

5.09(1) If required by the process, immediately after a motion has been determined, the person initiating the motion shall, and the other motion participants may, prepare a draft of the formal order, and deliver it to the other motion participants appearing on the motion.

5.09(2) The order shall be in accordance with Form 5B.

5.09(3) An order delivered in accordance with sub-rule (1) shall be treated as a submission along with any submissions on the draft order from other motion participants, and may be reviewed, amended if necessary and signed by the Chair of the Panel hearing the motion.

5.09(4) This rule does not apply to orders made on the record before the court reporter during the hearing.

## **5.10 Renewing or Rearguing a Motion**

5.10(1) A motion participant shall not renew or reargue a matter that has previously been determined on a motion unless prior permission has been obtained from the Committee.

5.10(2) Despite sub-rule (1), a motion participant may renew or reargue a motion if that is provided for in the order of the Panel hearing the motion.

5.10(3) Despite sub-rule (1), a motion participant may refer to a motion at the hearing solely for the purpose of putting on the record by stating before the court reporter, for the purpose of any appeal, that the motion participant does not agree with the previous ruling.

## **5.11 Time Limits on Oral Submissions**

5.11 No motion participant shall take more than one hour to make oral submissions, including a reply, on a motion without the prior permission of the Committee.

# **RULE 6 – PRE-HEARING CONFERENCES**

## **6.01 Initiating Pre-hearing Conferences**

6.01(1) The Chair or a Panel, on his or her or its own initiative, or at the request of a party, may direct the parties to participate in a pre-hearing conference to consider:

- (a) the settlement of any or all of the issues in the proceeding;
- (b) the identification and simplification of the issues;
- (c) facts or evidence that may be agreed upon;
- (d) issues relating to disclosure and the exchange of information;
- (e) the dates by which any steps in the proceeding are to be taken or begun;
- (f) the estimated duration of the hearing; and
- (g) any other matter that may assist in the just and most expeditious disposition of the proceeding.

6.01(2) The Chair shall designate a person to act as the presiding officer.

6.01(3) The presiding officer shall, after consultation with the hearings office, the member, or if the member is represented by counsel, defence counsel and College counsel, schedule a date for the pre-hearing conference to be held and shall notify the parties of the date, time and location.

6.01(4) College counsel and the member or, where the member is represented by counsel, defence counsel shall attend at the pre-hearing conference and where the member is represented by counsel, the member may attend the pre-hearing conference together with his or her counsel.

6.01(5) The presiding officer may direct a pre-hearing conference to be held electronically.

## **6.02 Pre-Hearing Conference Memorandum**

6.02(1) Where a pre-hearing conference is directed, the parties shall complete a Pre-hearing Conference Memorandum in accordance with Form 6A to the satisfaction of the presiding officer.

6.02(2) College counsel shall deliver its pre-hearing conference memorandum at least twenty days before the date of the conference.

6.02(3) The member shall deliver its pre-hearing conference memorandum, as well as any documents the member believes will assist in achieving the purposes of the pre-hearing conference, at least ten days before the date of the conference.

6.02(4) The member is not required to disclose in its pre-hearing conference memorandum evidence that is not otherwise disclosable by these rules or by law.

## **6.03 Procedure at Pre-Hearing Conferences**

6.03(1) At the pre-hearing conference, the presiding officer shall first discuss the following with the parties:

- (a) identification of the issues and whether the issues can be simplified;
- (b) whether any facts or evidence can be agreed upon;
- (c) whether any or all of the issues can be settled;
- (d) issues relating to disclosure and the exchange of information; and
- (e) the advisability of attempting other forms of resolution of the

matter.

6.03(2) After the discussion referred to in sub-rule (1), the presiding officer shall discuss with the parties and then may give directions or, if the presiding officer is a member of the Committee, make orders about the following:

- (a) the dates by which any steps in the proceeding are to be taken or begun;
- (b) the scheduling of any motions that can be heard before the hearing;
- (c) the content and timing of any additional disclosure;
- (d) the delivery and form of any documents to be used at the hearing and whether the documents can appropriately be reviewed by the Committee before the commencement of the hearing;
- (e) the delivery of written arguments and books of authorities and whether these can appropriately be reviewed by the Committee before the commencement of the hearing;
- (f) the estimated duration and scheduling of the hearing;
- (g) the scheduling within the hearing of any motions that cannot be heard before the commencement of the hearing;
- (h) when the witnesses to be called at the hearing must be available to testify; and
- (i) any other matter that may assist in the just and most expeditious disposition of the proceeding, including steps to ensure that the best interests of witnesses will be protected.

6.03(3) The presiding officer shall prepare a report after the pre-hearing conference in accordance with Form 6B listing every agreement reached under sub-rule (1), every direction given or order made under sub-rule (2) and every undertaking given by the parties and shall send a copy of the report to the parties.

6.03(4) If a party disagrees with a direction given at a pre-hearing conference, the party shall, within three days after the conference, deliver written notice of the proposed change to the direction and the Chair may direct a further pre-hearing conference be held before the same or another presiding officer.

6.03(5) If a party becomes aware of additional circumstances that would materially affect the conduct of the hearing before the commencement of the hearing, the party shall immediately, subject to sub-rule 6.02(4), deliver a written notice of the

circumstances and the presiding officer may schedule a supplementary pre-hearing conference.

6.03(6) The provisions of rule 6 apply to further or supplementary pre-hearing conferences with necessary modifications.

#### **6.04 Motions at the Pre-hearing Conference**

6.04 Where the presiding officer is a member of the Committee, a party may bring a motion to be heard at the pre-hearing conference in accordance with rule 5.

#### **6.05 Without Prejudice**

6.05 A pre-hearing conference shall not be open to the public, and all discussions at the pre-hearing conference shall be without prejudice and kept confidential unless the parties consent otherwise.

### **RULE 7 – DISCLOSURE AND PRODUCTION**

#### **7.01 Disclosure**

7.01(1) The parties shall make such disclosure as is required by law and may make such additional disclosure as will assist to make the pre-hearing conference and the hearing effective and fair.

7.01(2) Subject to sub-rule 7.04 (expert evidence), despite anything in these rules, a member is not required to disclose evidence that is not otherwise disclosable by law.

7.01(3) Subject to sub-rule 7.01(2), at any stage of the proceeding before completion of the hearing, the Committee may make orders for:

- (a) the exchange of documents;
- (b) the oral or written examination of a party;
- (c) the exchange of witness statements and reports of expert witnesses;
- (d) the provision of particulars;
- (e) a party to provide a list disclosing all relevant documents and things in the possession or control of the party;
- (f) the provision to a party of an opportunity to view documents; or

(g) any other form of disclosure.

7.01(4) Sub-rule (3) does not authorize the making of an order requiring disclosure of privileged information.

## **7.02 Motions for Disclosure**

7.02(1) All motions for disclosure shall be brought in accordance with sub-rule 5.05(3) unless special circumstances require that the motion be brought later.

7.02(2) On a motion for disclosure, the Committee may order that a party who will lead evidence at a hearing shall make disclosure in accordance with the requirements of law.

7.02(3) When the Committee orders disclosure it may, to protect the privacy of any person, impose terms or conditions upon the extent and method of disclosure or the use of the information disclosed.

## **7.03 Production of Documents**

7.03(1) A summons for the production of documents that are not in the possession of a party shall not require the production of any documents before the commencement of the hearing.

7.03(2) A motion relating to the production of documents that will likely require the examination of the documents by the Committee, including motions to which the provisions of the *Mental Health Act* may apply, shall not be heard until the commencement of the hearing.

7.03(3) Notice of a motion relating to the production of documents shall be delivered, in addition to the parties, to the person possessing the documents and on any other person with a significant interest, including a privacy interest, in the documents.

## **7.04 Expert Witnesses**

7.04(1) Despite sub-rule 7.01(2), a party who intends to call an expert witness at a hearing shall, not less than twenty days before the hearing, deliver to the other parties a report, signed by the expert, setting out the following:

- (a) The expert's name, address and area of expertise.
- (b) The expert's qualifications and employment and educational experiences in his or her area of expertise.

- (c) The instructions provided to the expert in relation to the proceeding.
- (d) The nature of the opinion being sought and each issue in the proceeding to which the opinion relates.
- (e) The expert's opinion respecting each issue and, where there is a range of opinions given, a summary of the range and the reasons for the expert's own opinion within that range.
- (f) The expert's reasons for his or her opinion, including:
  - i. a description of the factual assumptions on which the opinion is based;
  - ii. a description of any research conducted by the expert that led him or her to form the opinion; and
  - iii. a list of every document, if any, relied on by the expert in forming the opinion.
- (g) An acknowledgement of expert's duty using Form 7A signed by the expert.

7.04(2) If the expert report delivered by a party contains unexpected information, the other party may bring a motion for additional time to deliver a responding expert report and the Committee may grant such additional time upon such terms and conditions as are just.

7.04(3) No expert witness may testify, except with leave of the Committee, unless sub-rule (1) has been complied with.

## **RULE 8 – ELECTRONIC HEARINGS AND PROCEEDINGS**

### **8.01 Initiating an Electronic Hearing**

8.01 The Committee may, on motion by any party, order that some or all of a hearing be held electronically, unless it is satisfied that holding an electronic rather than an oral hearing is likely to cause a party significant prejudice.

### **8.02 Procedure on Electronic Proceedings**

8.02(1) This sub-rule applies to any proceeding or part of a proceeding that is held electronically including motions, pre-hearing conferences and hearings.

8.02(2) At least 48 hours before an electronic proceeding is scheduled to commence, the hearings office shall instruct participants on how to participate in the electronic proceedings and the participants shall comply with those instructions.

8.02(3) Unless otherwise provided for in the rules, every person participating in the proceeding shall deliver, at least 3 days before the proceeding, every document, in sequentially numbered pages, he or she intends to rely upon.

8.02(4) Every person participating in the proceeding shall ensure that he or she can be reached at the telephone number provided to the hearings office beginning at five minutes before the proceeding is scheduled to commence.

## **RULE 9 – WRITTEN HEARINGS OR PROCEEDINGS**

### **9.01 Initiating a Written Hearing**

9.01 The Committee may hold all or part of a hearing in writing with the consent of the parties.

### **9.02 Procedure on Written Proceedings**

9.02(1) This sub-rule applies to any proceeding or part of a proceeding that is held in writing including motions, pre-hearing conferences and hearings.

9.02(2) All documents in a written proceeding shall be delivered according to the schedule approved by the Committee or agreed to by the parties.

## **RULE 10 - TAKING EVIDENCE BEFORE THE HEARING**

### **10.01 Initiating the Taking of Evidence Before the Hearing**

10.01(1) A party who intends to introduce the evidence of a person at the hearing and who has made all required disclosure in respect of the evidence of that witness may, with the consent of the parties or by order of the Committee, examine the witness under oath or affirmation before the hearing for the purpose of having the witness' testimony available to be tendered as evidence at the hearing.

10.01(2) The Committee may make an order under sub-rule (1) if it is satisfied that the order would not cause significant prejudice to a party and would not prevent the Committee from fully and fairly understanding the evidence.

10.01(3) The party who intends to introduce the evidence of the witness under sub-rule (1) shall ensure that the evidence is recorded, at the party's cost, by a certified

court reporter or a person with similar qualifications acceptable to the Committee, and shall deliver a copy of the transcript of the evidence to all parties at least three days before the hearing is scheduled to commence.

10.01(4) The party who intends to introduce the evidence of the witness under sub-rule (1) shall also ensure that the evidence is videotaped, at the party's cost, unless the parties consent or the Committee orders otherwise and shall deliver a copy of the videotape at least three days before the hearing is scheduled to commence.

10.01(5) The examination shall take place at the date, time and place consented to or ordered by the Committee.

10.01(6) The Committee may impose terms or conditions in the order for an examination including a term or condition that the party intending to call the witness pay for the reasonable travel expenses of the other parties and the lawyers for the other parties.

## **10.02 Procedure at the Examination**

10.02(1) A witness examined under sub-rule 10.01(1) may, after being sworn or affirmed by a person authorized to do so, be examined, cross-examined and re-examined in the same manner as a witness at a hearing.

10.02(2) Where a question is objected to, the objector shall state briefly the reason for the objection, and the question and the brief statement shall be recorded.

10.02(3) Notwithstanding the objection, the witness shall answer the question.

10.02(4) A ruling on the propriety of a question that is objected to shall be obtained from the Committee at the hearing. If the objection is upheld, the recorded answer shall not be used at the hearing. If the objection is not upheld, the recorded answer shall be used at the hearing.

10.02(5) Any document used during the examination that is intended to be filed as an exhibit at the hearing shall be marked at the examination by the person introducing it so it can be identified later and the person introducing it shall deliver a copy of it to all other parties.

10.02(6) Rules 13.10, 13.11, 13.12 and 13.13 shall apply with necessary modifications to examinations under this rule.

## **10.03 Use of Examination at the Hearing**

10.03(1) At the hearing, any party may introduce into evidence the transcript and videotape of an examination made under this rule as the evidence of the witness unless the Committee orders otherwise.

10.03(2) A witness who has been examined under this rule shall not be called to give evidence at the hearing except on the order of the Committee.

10.03(3) Where a witness is ordered or requested to give evidence at the hearing under sub-rule (2), the party directed to do so by the Committee shall arrange for the witness to attend at the party's expense.

10.03(4) The transcript and any videotape need not be read or played during the hearing with the parties present unless the Committee requires the reading of a transcript or the playing of a videotape.

10.03(5) Where the reading of a transcript or the playing of a videotape is required under sub-rule (4), the party who initiated the examination under sub-rule 10.01(1) shall conduct the reading or playing during the presentation of that party's case unless the Committee orders otherwise.

## **RULE 11 - EXPEDITED HEARING**

11.01(1) A party may bring a motion for an order directing an expedited hearing.

11.01(2) The Committee may order that a hearing be expedited, where it believes appropriate, and may also direct that any pre-hearing conference be expedited accordingly.

## **RULE 12 - CONSTITUTIONAL QUESTION**

### **12.01 Notice of Constitutional Question**

12.01(1) Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a party claims a remedy under sub-section 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be delivered and shall also be served on the Attorneys General of Canada and Ontario as soon as the circumstances requiring notice become known and in any event, at least 15 days before the question is to be argued.

12.01(2) Where the Attorneys General of Canada and Ontario are entitled to notice, he or she or both of them are entitled to adduce evidence and to make submissions to the Committee regarding the constitutional question.

12.01(3) Where the Attorneys General of Canada and Ontario are entitled to notice, they are entitled to notice of any appeal in respect of the constitutional questions.

## **RULE 13 - PROCEDURE DURING THE HEARING**

### **13.01 General Rule**

13.01 Nothing is admissible in evidence at a proceeding:

- (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
- (b) that is inadmissible by any statute.

### **13.02 Hearsay Evidence**

13.02(1) The Committee may, in its discretion, admit hearsay evidence in proceedings where it is satisfied that its admission is reasonably necessary to the determination of a fact in issue and, having regard to the surrounding circumstances, that the evidence is reliable.

13.02(2) In considering the admissibility of hearsay evidence, the Committee shall balance the best interests of the witness against any legitimate interests of the member in subjecting such hearsay evidence to cross-examination and may have regard to such factors as it considers relevant, including any potential detriment to the witness of requiring him or her to testify and the need to avoid or reduce the detrimental impact of recounting details of sexual misconduct in a legal proceeding.

### **13.03 Prior Testimonial Statements**

13.03(1) Unless there are reasonable grounds to believe that injustice to the member would result, the Committee shall admit prior testimonial statements in evidence at a proceeding where:

- (a) there is substantial similarity between the material issues to which the prior testimonial statement was relevant in the former proceeding and is relevant in the present proceeding; and
- (b) there was an opportunity at the former proceeding for the member or his or her counsel to cross-examine the maker of the prior testimonial statement.

13.03(2) The party who intends to introduce into evidence a prior testimonial statement shall ensure that the witness is available at the hearing to be cross-examined by all adverse parties, unless the Committee orders otherwise.

13.03(3) Where a prior testimonial statement is not admitted in evidence under sub-rule (1), but the maker thereof, while testifying, adopts its content, the Committee may

admit such statement in evidence subject to the adverse party's right of cross-examination.

### **13.04 Videotaped Interviews**

13.04 The Committee may, on a motion by any party, order that a videotape of an interview of a person who, while testifying, adopts the content of the videotape be admitted into evidence.

### **13.05 Proof of Prior Conviction or Discharge**

13.05(1) Proof that a person has, in proceedings before a court in Canada, been convicted or discharged of an offence following a finding of guilt is proof, in the absence of evidence to the contrary, that the offence was committed by the person, if:

- (a) no appeal of the conviction or discharge was taken and the time for an appeal has expired; or
- (b) an appeal of the conviction or discharge was taken but dismissed or abandoned and no further appeal is available.

13.05(2) Sub-rule (1) applies whether or not the convicted or discharged person is a party to the proceeding.

13.05(3) A certificate of conviction or discharge or certified copy of a Court Information meeting the requirements of sub-section 22.1(3) of the *Evidence Act* (Ontario) shall be accepted by the Committee as proof that the person was convicted or discharged of the offence for purposes of sub-rule (1).

### **13.06 Findings of Fact in Prior Proceedings**

13.06(1) Where a certificate of conviction or discharge or certified copy of a Court Information has been admitted in evidence under sub-rule 13.05(3), the Committee shall also admit as ancillary to the certificate of conviction or discharge or certified copy of a Court Information, the specific findings of fact contained in the court's reasons for judgment or reasons for sentence, which findings of fact are proof, in the absence of evidence to the contrary, of the facts so found.

13.06(2) The Committee may, in its discretion, admit as incidental to the certificate of conviction or discharge or certified copy of a Court Information, transcripts of the proceedings at which the conviction or discharge occurred for the purpose of explaining the finding of guilt made at such proceeding.

13.06(3) The Committee may, in its discretion, admit findings of fact, whether or not supportive of a finding of guilt, made in prior criminal, civil or administrative proceedings as proof, in the absence of evidence to the contrary, of the facts so found.

### **13.07 Evidence of Sexual Activity of Witnesses**

13.07(1) Subject to sub-rules (2) and (3), no evidence that a witness has engaged in sexual activity is admissible at a proceeding and no witness shall be cross-examined with respect to such sexual activity.

13.07(2) Sub-rule (1) does not apply to sexual activity that forms the subject matter of the proceeding, or evidence that is tendered as similar fact evidence of sexual activity on the part of the member whose conduct is the subject matter of the proceeding.

13.07(3) Upon application by a party, the Committee may, by order, allow evidence of sexual activity of a witness to be introduced and may allow a witness to be cross-examined with respect to such sexual activity where the Committee is satisfied that the evidence:

- (a) is of specific instances of sexual activity;
- (b) is relevant to an issue at the proceeding; and
- (c) has significant probative value that is not substantially outweighed by the best interests of the witness or the danger of prejudice to the proper administration of justice.

13.07(4) An application for an order under sub-rule (3) shall be made by motion under sub-rule 5.05(4).

13.07(5) The witness whose sexual activity is the subject matter of a motion for an order under sub-rule (3) shall be given notice of the motion but shall not be a compellable witness on the motion.

### **13.08 Witness Screens and Closed-Circuit Television**

13.08(1) A witness who:

- (a) is under the age of 18;
- (b) has made a complaint of sexual abuse against the member whose conduct is the subject matter of the proceeding; or
- (c) is a vulnerable witness,

may testify behind a screen or similar device that allows the witness not to see the member, if the Committee is of the opinion that this is likely to help the witness give complete and accurate testimony or that it is in the best interests of the witness, would not unduly impair the ability of the member to make full answer and defence and if the condition set out in sub-rule (4) is satisfied.

13.08(2) The Committee may order that closed-circuit television be used instead of a screen or similar device if the Committee is of the opinion that:

- (a) a screen or similar device is insufficient to allow the witness to give complete and accurate testimony;
- (b) a screen or similar device would unduly impair the ability of the member to make full answer and defence; or
- (c) the best interests of the witness require the use of closed-circuit television.

13.08(3) If the Committee makes an order under sub-rule (2), the witness shall testify outside the hearing room and his or her testimony shall be shown in the hearing room by means of closed-circuit television.

13.08(4) When a screen or similar device or closed-circuit television is used, the Committee and the lawyers for the parties shall be able to see and hear the witness testify and the parties shall be able to communicate with their lawyers while the witness is testifying.

## **13.09 Support Persons and Vulnerable Witnesses**

13.09(1) The Committee may, where appropriate, allow any vulnerable witness to be accompanied, while testifying, by a support person of his or her choice.

13.09(2) During the testimony of a witness under the age of 18 or a witness who has made a complaint of sexual abuse against the member whose conduct is the subject matter of the proceeding, a support person chosen by the witness shall be allowed, where appropriate, to accompany him or her on such terms and conditions as the Committee may prescribe.

13.09(3) If the Committee determines that the support person chosen by the witness is not appropriate for any reason, the Committee shall designate another support person who shall be allowed to accompany the witness while testifying.

13.09(4) The following are examples of the reasons why the Committee may determine that the support person chosen by a witness is not appropriate:

- (a) the Committee is of the opinion that the support person may attempt to influence the testimony of the witness;
- (b) the support person behaves in a disruptive manner; or
- (c) the support person is also a witness in the proceeding.

### **13.10 Examination and Cross-Examination of Witnesses**

13.10(1) Except as provided in rule 13.11, a party to a proceeding may, personally or by counsel, but not both, conduct such examinations or cross-examinations of witnesses called to testify at a hearing as are reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding.

13.10(2) The Committee may control and restrict a party's examination or cross-examination of a witness to the extent necessary to ensure that the hearing is conducted in a manner that is fair and expeditious and that respects the best interests of the witness while permitting the member to make full answer and defence.

### **13.11 Restrictions on Personal Cross-Examination by a Member**

13.11(1) If the Committee is of the opinion that personal cross-examination by a member whose conduct is the subject matter of the proceeding:

- (a) would be likely to affect adversely the ability of the witness to give evidence; or
- (b) would not be in the best interests of the witness;

it may, after giving consideration to the member's interests, prohibit cross-examination, if the witness:

- (a) is under the age of 18;
- (b) has made a complaint of sexual abuse against the member whose conduct is the subject matter of the proceeding; or
- (c) is a vulnerable witness.

13.11(2) If the Committee prohibits cross-examination by the member, the Committee may appoint counsel for the purpose of conducting the cross-examination or may order that the cross-examination may be conducted in some other appropriate way.

## **13.12 Oral and Written Argument**

13.12(1) The Committee may place reasonable limits on the length of oral submissions.

13.12(2) The Committee may, after hearing submissions, order the parties to submit written arguments on some or all of the issues at the hearing and may give directions as to the form and timing of such written arguments.

## **13.13 Summons to Witness**

13.13(1) A party who requires the attendance of a person in Ontario as a witness at a hearing shall prepare the summons and deliver it to the hearings office for the Registrar's signature. The summons may also require the person to produce at the hearing, documents and things specified by the Committee in the summons in accordance with section 12 of the *Statutory Powers Procedure Act*.

13.13(2) A summons shall be served personally on the person to whom it is directed at least 48 hours before the time fixed for the attendance of the person unless otherwise directed by the Committee and at the same time, attendance money calculated in accordance with the appropriate tariff in the *Ontario Rules of Civil Procedure* shall be paid or tendered.

13.13(3) A summons served under sub-rule (1) shall be in accordance with Form 13 and signed by the Registrar.

13.13(4) Upon motion made under sub-rule 5.05(1), the Committee may make an order quashing a summons previously issued by it where it is of the opinion that the required attendance of the witness is unnecessary, contrary to the best interests of the administration of justice or an abuse of process.

## **13.14 Exclusion of Witnesses**

13.14(1) The Committee may order that one or more witnesses be excluded from the hearing until called to give evidence.

13.14(2) An order under sub-rule (1) may not be made in respect of a party to the proceeding or a witness whose presence is essential to instruct counsel for the party calling the witness, but the Committee may require any such party or witness to give evidence before other witnesses are called to give evidence on behalf of that party.

13.14(3) Where an order is made excluding one or more witnesses from the hearing, no person shall communicate or permit the communication to an excluded witness of any evidence given during the witness' absence from the hearing, except with the leave of the Committee, until after the witness has been called and has given evidence.

### **13.15 Withdrawal of All or Portion of a Notice of Hearing**

13.15(1) Where the College intends to withdraw all or part of a Notice of Hearing, it shall so advise the Committee prior to the hearing of the allegations on the merits and shall state its reasons for withdrawing before the court reporter.

13.15(2) Where the College advises the Committee of its intention to withdraw all or part of the Notice of Hearing, the Chair of the Panel shall clearly endorse the particulars of such withdrawal on the exhibited copy of the Notice of Hearing, with the notation "withdrawn at the request of College counsel".

13.15(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 member of the public shall be given a copy of the exhibited copy with the endorsed withdrawal.

### **13.16 Access to Hearing Record by the Public**

13.16(1) This rule applies only to hearings held in public.

13.16(2) If a member of the public wishes to have access to all or part of the record of the Committee, subject to sub-rule (3), he or she shall bring a motion before the Committee upon notice to the parties. Unless the Committee directs otherwise, the motion shall be a written motion.

13.16(3) Subject to sub-rule (4), if a member of the public wishes to have access to the Notice of Hearing, Agreed Statement of Facts and/or Joint Submission on Order filed as exhibits in a proceeding, a motion is not necessary but he/she shall make a written request of the Committee and shall be provided with a copy of these documents, provided all reasonable photocopying charges are paid in advance. The Committee will advise the parties of the request and what documents have been released.

13.16(4) Where the hearing, or any part of the hearing, has been closed, or where any exhibit or document has been restricted from access to the public or otherwise appears to contain sensitive personal information, the hearings office shall consult with the Chair of the Panel before releasing the Notice of Hearing, Agreed Statement of Facts and /or Joint Submission on Order, and the Chair of the Panel may require that the requesting party bring a motion under sub-rule (2) to determine whether access should be granted to the Notice, Agreed Statement or Joint Submission.

13.16(5) The member may receive a copy of the Notice of Hearing, Agreed Statement of Facts and/or Joint Submission on Order without charge.

### **13.17 Information Relating to Member's Capacity (Discipline Committee Only)**

13.17 If there is information in a proceeding to suggest that the member may be incapacitated, the Discipline Committee may do any one or more of the following:

- (a) ask the parties if they have had an opportunity to consider the information and whether all or part of the conduct at issue in the allegations relates to the member's capacity;
- (b) ask the parties whether or not there are parallel incapacity proceedings;
- (c) grant an adjournment to permit the parties to consider whether to initiate incapacity proceedings to deal with all or part of the conduct in issue;
- (d) if a finding has been made by the Discipline Committee and if there are parallel incapacity proceedings, ask the parties for details of the status of the incapacity proceedings and any order made by the Fitness to Practise Committee; and
- (e) ask the parties if they would like to make submissions about whether the public should be excluded from all or part of the hearing.

### **13.18 Use of Electronic Devices in the Hearings Room**

13.18(1) This Rule is founded on the "open courts" principle, which requires transparency and accountability in the judicial system to foster public confidence in the administration of justice.

13.18(2) This Rule applies to all persons attending or participating in a location where public hearing proceedings at the College of Early Childhood Educators are being conducted or transmitted. Use of electronic communication devices should never interfere with hearing proceedings or the ability to have a fair hearing.

13.18(3) The use of electronic devices in silent or vibrate mode is permitted, except as follows:

- (a) the Committee orders otherwise; or
- (b) there is legislation or other order restricting public attendance.

13.18(4) The use of electronic devices in the hearings room is subject to the following restrictions:

- (a) device(s) must be used in an unobtrusive manner;
- (b) device(s) cannot interfere with hearing decorum or otherwise interfere with the proper administration of justice. Use of electronic communication devices should never interfere with hearing proceedings or the ability to have a fair hearing;
- (c) device(s) cannot interfere with the proper functioning of hearing recording equipment or other technology in the hearings room;
- (d) no photos or videos may be taken unless the Committee has granted permission to do so;
- (e) talking on electronic devices is not permitted in the hearings room while a hearing is in session; and
- (f) when there is a publication ban made in a hearing, the electronic device cannot be used to transmit publicly accessible live communications in breach of the ban. Anyone using an electronic device to transmit information has the responsibility to identify and comply with any publication bans, sealing orders, or other restrictions imposed by the Committee.

13.18(5) Audio recording of proceedings is permitted by legal counsel, College staff and members of the media but the Committee must be advised before the recording is commenced. Members of the public are permitted to make audio recordings for note-taking purposes only if the express permission of the Committee is first obtained. These audio recordings cannot be transmitted.

13.18(6) Anyone using an electronic communication device to transmit information has the responsibility to identify and comply with any publication bans, sealing orders, or other restrictions imposed by legislation or Committee order.

13.18(7) The Committee retains overriding responsibility to maintain hearing room decorum and to ensure that proceedings are conducted in a manner consistent with the proper administration of justice. In deciding whether to restrict the use of electronic communication devices, the Committee may consider whether there is reason regarding factors such as:

- (a) whether the use of electronic communication devices would disrupt the hearing proceedings or interfere with the proper functioning of

the hearing electronic equipment; or

- (b) whether the use of electronic communication devices would interfere with counsel submissions, witness testimony, or unreasonably infringe anyone's privacy or security.

13.18(8) Anyone who uses an electronic communication device in a manner that the Committee determines to be unacceptable may be ordered to:

- (a) turn off the device;
- (b) leave the device outside the hearings room;
- (c) leave the hearings room; or
- (d) abide by any other order the Committee may make.

## **RULE 14 - ADJOURNMENTS**

14.01(1) A hearing may be adjourned by the Chair or by the Committee.

14.01(2) In accordance with section 21 of the *Statutory Powers Procedure Act*, in deciding whether to grant an adjournment, the Committee may consider one or more of the following factors:

- (a) the sufficiency of the reasons advanced for the request to adjourn;
- (b) the time lines of the request;
- (c) the resources of the Committee;
- (d) any prejudice to the parties;
- (e) whether any adjournments have been granted previously;
- (f) the consent of the parties; or
- (g) any other relevant factor.

14.01(3) The Committee may grant adjournments on such terms and conditions as it considers just.

14.01(4) Any party seeking an adjournment shall seek the consent of the other party before bringing a motion before the Committee.

14.01(5) If consent is obtained pursuant to sub-rule (4), the party seeking the adjournment shall contact the hearings office and provide evidence in writing of the request for an adjournment, the reasons for the request and the consent of the other party.

14.01(6) Where the College and member consent to an adjournment and are able to agree to the new date(s) to be scheduled for the hearing, they shall file a completed copy of Form 14A with the Hearings Office. The Chair of the Panel, or if there is none, the Chair of the Committee will consider the request, after consulting with Panel members where possible, and if he/she is in agreement, the parties will be notified and it will not be necessary for the parties to attend before the Committee to reschedule the hearing. The hearing will proceed on the date(s) agreed to by the parties as set out in Form 14A as filed. Where the Chair of Panel, or if there is none, the Chair of the Committee does not agree to the adjournment of the hearing, the party seeking the adjournment shall bring a motion before the Committee in accordance with rule 5.

## **RULE 15 - FINAL DECISION**

### **15.01 Giving Notice of Final Decisions**

15.01(1) In addition to the methods described in section 18 of the *Statutory Powers Procedure Act*, the Committee may send each party a copy of its final decision or order, including the reasons if any have been given:

- (a) by courier; or
- (b) by personal service.

15.01(2) If a copy is sent by courier, it shall be sent to the most recent address known to the Committee and shall be deemed to be received by the party on the day the copy is delivered at that address.

### **15.02 Correction of Minor Errors**

15.02(1) The Committee may, at any time, correct a typographical error, error of calculation or similar minor error made in a finding, a decision, an order, or reasons of a Panel.

## **RULE 16 – COSTS**

### **16.01 Costs for Non-compliance with Rules**

16.01 Where the Committee is entitled to order the payment of costs by a party, the Committee may consider as a factor in its decision the failure of a party to comply with these rules.

## **16.02 Costs Against the College**

16.02 Where the member seeks costs against the College pursuant to subsection 33(9) or subsection 34(7) of the Act, the Committee may direct that the issue be dealt with by a motion conducted separately from the hearing under rule 5 with any necessary modifications.

## **16.03 Costs Against the Member (Discipline Committee Only)**

16.03 Where the College seeks costs against the member pursuant to subsection 33(5) of the Act, the Discipline Committee may direct that the issue be dealt with by a motion conducted separately from the hearing under rule 5 with any necessary modifications.

## **16.04 Frivolous or Vexatious Proceedings**

16.04 The Committee may at any stage of the proceeding order a party to pay costs where the conduct of the party has been unreasonable, frivolous or vexatious, or a party has acted in bad faith.

## **16.05 Procedure for Requesting Costs**

16.05(1) A member requesting an order for costs shall deliver a detailed written explanation of the basis upon which the costs or expenses requested are calculated.

16.05(2) Where the request for costs includes disbursements or out-of pocket expenses, these may, subject to any order of the Committee, be proved by an affidavit attaching a copy of any invoice or receipt.

16.05(3) Where the request for costs 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. This sub-rule applies only to hearings before the Discipline Committee.

## **RULE 17 – REINSTATEMENT APPLICATIONS**

17.01(1) This rule applies to applications for reinstatement or variation made under section 36 of the Act.

17.01(2) An applicant making an application for reinstatement or variation shall deliver a notice of the application specifying the order sought, the grounds of the application, the documentary and oral evidence that the applicant will introduce and the anticipated length of the hearing.

17.01(3) Unless the Committee directs otherwise, the member making an application for reinstatement or variation shall deliver 7 copies of the record of the original hearing and the record of any previous applications for reinstatement or variation, 7 copies of the transcript of the original hearing and any previous applications for reinstatement or variation (whether or not the transcript has previously been ordered), and 7 copies of any document the applicant will introduce at the hearing.

17.01(4) The hearings office shall not schedule a reinstatement or variation application for a hearing until the applicant complies with sub-rules (2) and (3).

17.01(5) When a reinstatement or variation application has been scheduled, the Committee shall deliver a Notice of Hearing to the parties.



**FORM 3A  
WRITTEN PLEA INQUIRY**

*[General Heading]*

**PLEA INQUIRY**

The *[Discipline]* or *[Fitness to Practise]* Committee considers it essential to ensure that members of the profession who admit allegations of professional misconduct and/or incompetence *[or incapacity]* do so voluntarily and unequivocally, and understand the consequences of such admission. To that end, the Committee has adapted the concept of a “plea inquiry” for use in uncontested hearings.

You have provided this Panel with a statement that you admit (an) allegation(s) of professional misconduct *[and/or incompetence or incapacity]*. Before accepting your admission, the Panel asks that you answer the following questions, in order to ensure that your admission is voluntary, informed and unequivocal.

1. Do you understand the nature of the allegation(s) that has (have) been made against you? \_\_\_\_\_ *[answer yes or no]*
2. Do you understand that by admitting the allegation(s), you are waiving the right to require the College prove the case against you and the right to have a hearing? \_\_\_\_\_ *[answer yes or no]*
3. Did you voluntarily decide to admit the allegation(s) against you?  
\_\_\_\_\_ *[answer yes or no]*
4. *[In discipline cases only]* Do you understand that depending on the order made by the Panel, the Panel’s decision and a summary of its reasons may be published in the official publication of the College, *Connexions*, including reference to your name? \_\_\_\_\_ *[answer yes or no]*
5. Do you understand that any agreement between counsel for the College and your counsel with respect to the order proposed does not bind the Panel?  
\_\_\_\_\_ *[answer yes or no]*

ii.

*[Date]*

\_\_\_\_\_  
*[Signature of Member]*

*[Date]*

\_\_\_\_\_  
*[Signature of Witness]*



**FORM 4A  
CONSENT**

*[General Heading]*

**CONSENT**

The College and counsel on behalf of the Member ***[or the Member where appropriate]*** have agreed that the hearing in this matter will proceed on \_\_\_\_\_ *[insert date(s)]*. The parties certify that this/these date(s) has/have been cleared with the Hearings Office.

*[Date]*

\_\_\_\_\_  
*[Signature of College counsel]*

*[Date]*

\_\_\_\_\_  
*[Signature of Member or Counsel on behalf of the Member]*



**FORM 5A  
NOTICE OF MOTION**

*[General Heading]*

**NOTICE OF MOTION**

THE *[IDENTIFY MOVING MOTION PARTICIPANT]* WILL make a motion to the *[name of Committee]* 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, at 438 University Avenue, Suite 1900, Toronto, Ontario.

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

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

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

*[Date]*

*[Name, address, telephone and e-mail address of moving motion participant's lawyer or moving motion participant]*

TO: *[Name, address, telephone and e-mail address of responding motion participant's lawyer or responding motion participant]*





**FORM 6A  
PRE-HEARING CONFERENCE MEMORANDUM**

*[General Heading]*

**PRE-HEARING CONFERENCE MEMORANDUM OF THE COLLEGE  
[OR OF THE MEMBER, AS THE CASE MAY BE]**

Date of pre-hearing conference:

College Counsel:

Defence Counsel:

**BACKGROUND INFORMATION**

1. Please attach a copy of the Notice of Hearing to this memorandum.
2. Set out a brief statement of the theory of the College's case as you understand it, including factual contentions.
3. Set out a brief statement of the theory of the Member's case as you understand it, including factual contentions.
4. Provide a description of the legal issues to be determined at the hearing.
5. For every witness you may call at the hearing, set out or attach a statement of the substance of the evidence of the witness.
6. Attach a copy of any document that would assist the pre-hearing conference to be more effective.

**SETTLEMENT AND AGREEMENTS**

7. What are the prospects for settlement?
8. Have counsel discussed the matter and sought instructions?
9. Would this be a suitable case to attempt informal or dispute resolution?

10. Set out the facts in numbered paragraphs that you believe should be agreed to.
11. Set out a numbered list of documents that you believe should be admitted on agreement.
12. On the subject of witness accommodation:
  - Will you be bringing any motions for orders respecting the accommodation of witnesses under rules 13.08, 13.09 and 13.11, the taking of evidence prior to the hearing or the use of such evidence at the hearing under rules 10.01 to 10.03, or for the admission of evidence of sexual activity of a witness under rule 13.07?
  - If so, what order will you seek and on what grounds?
  - What is your position with respect to any such motions proposed to be brought by the party opposite?
  - Have you advised persons who you propose to call as witnesses at the hearing of the potential assistance of a support person under rule 13.09?
  - Having regard to the definition of the term "best interests of the witness" in sub-rule 1.01(2), are you satisfied that you have taken or will take, at or prior to the hearing of the merits of the allegations against the member, all steps reasonably available, including the bringing of appropriate motions, to ensure that the allegations against the member will be determined in a manner that protects the best interests of persons who you intend to call as witnesses?
13. On the subject of hearsay evidence and prior testimonial statements:
  - Will you be seeking to introduce hearsay evidence or prior testimonial statements of any person who you do not intend to call as a witness at the hearing of the merits of the allegations?
  - If so, identify the maker of such evidence/statements and the circumstances in which they were made.
  - Do you intend to oppose the admission of such evidence/statements tendered by the party opposite and/or to apply for an order requiring the maker of such evidence/statements to be produced for the purpose of cross-examination at the hearing of the merits of the allegations and if so, on what grounds?

## **ADDITIONAL STEPS BEFORE THE HEARING**

14. On the subject of other motions:
  - Will you be bringing any other motions before or during the hearing? If so, what order will you seek and on what grounds?
  - When do you intend to bring each motion?
15. On the subject of disclosure:
  - Are there any issues with respect to disclosure?
  - Has the College made full disclosure to the member?
  - Have you produced all of the expert reports upon which you intend to rely?
  - If you have not yet made all required disclosure, why not and by what date will it be done?
16. On the subject of a documents brief:
  - Who will prepare and deliver a brief containing the Notice of Hearing, the documents admitted by agreement, and the presiding officer's report?
  - By what date will the brief be delivered?
  - Should the hearing Panel be able to review the brief before the hearing?
17. On the subject of written arguments:
  - Are there any issues which should be the subject of written argument? If so, identify them.
  - When should the written arguments be delivered by?
  - Should the hearing Panel be able to review the written arguments before the hearing?
18. On the subject of a book of authorities:
  - Will you be referring to any authorities other than the *Early Childhood Educators Act, 2007* and the regulations defining professional misconduct? If so, list them.

- Should those authorities be copied for the hearing Panel or for independent legal counsel?
- If so, who should prepare the authorities brief and when should it be delivered?
- Should the hearing Panel or independent legal counsel be able to review the authorities brief before the hearing?

**PLANNING THE HEARING**

19. On the subject of scheduling the hearing:

- Are you ready for the hearing?
- Are there any special considerations affecting the setting of a date arising from the availability of witnesses or otherwise?
- How long will the hearing last?
- Other than the motions listed above, the witnesses listed above and the normal submissions, is there anything else that will have to be dealt with during the hearing itself?
- Estimate the length of time it will take to dispose of any motions you will bring during the hearing including adequate time for deliberation by the Committee.
- In numbered paragraphs, list your witnesses in the order that you will call them and estimated length of time it will take to hear their entire evidence, including cross-examination and questions from the Committee.

<u>Number</u>	<u>Witness' Name</u>	<u>Estimated Time</u>
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1.

- How long will it take you to make your opening and closing submissions on the issue of finding?

20. List the witnesses you intend to have available to testify for each day of your case:

<u>Day</u>	<u>Witnesses Available Beginning That Day</u>
------------	---

1.

21. Will you be requesting that the Committee issue a summons to require any person to give evidence or to produce any document or thing in evidence at a hearing and if so, identify the person?
22. Do you object to the issuance by the Committee of a summons requested by the party opposite and if so, on what grounds?

*[Date]*

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*[Signature of most responsible counsel who  
will be attending at the hearing]*



**FORM 6B  
REPORT OF PRESIDING OFFICER**

*[General Heading]*

**REPORT OF PRESIDING OFFICER**

A pre-hearing conference was held in this matter on *[date]*. In attendance were *[list people and their capacity]*.

**Agreements**

The parties agreed that the following facts can be assumed to be correct for the purpose of the hearing:

*[list facts]*

The parties agree that the following documents can be admitted in the hearing on consent:

*[list documents]*

**Directions and Orders**

The outstanding pre-hearing motions and the dates that they will be heard are as follows:

<u>Number</u>	<u>Nature of Motion</u>	<u>Date to be Heard</u>
1.		

The following motions will be argued at the hearing itself:

<u>Number</u>	<u>Nature of Motion</u>	<u>Estimate Length of Argument</u>
1.		

Other than for information that is discovered after the conference, disclosure is now complete *[or will be completed by (date)]*.

The following document brief(s) will be delivered before the hearing:

<u>Number</u>	<u>Description</u>	<u>Party Preparing</u>	<u>Date to be Delivered</u>
1.			

The hearing Panel may/should not *[choose one]* review them before the hearing. The following written arguments and book of authorities will be delivered before the hearing:

<u>Number</u>	<u>Description</u>	<u>Party Preparing</u>	<u>Date to be Delivered</u>
1.			

The hearing Panel may/should not *[choose one]* review them before the hearing.

The hearing is scheduled to begin on *[date]* for *[number]* day(s).

The proposed schedule for the hearing is as follows:

<u>Date</u>	<u>Motions/Arguments/Witnesses</u>	<u>Estimated Length of Time</u>
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The witnesses will be immediately available when their evidence is reached on the day scheduled for their testimony and will be available on any following days. There are no other matters anticipated to occur during the hearing itself.

#### **Other Matters**

*[insert any other matters the parties should be aware of]*

The parties are reminded of the provisions of sub-rule 6.03(4) regarding notification of proposal not to comply with a direction given at a pre-hearing conference and sub-rule 6.03(5) regarding notifying the presiding officer of any circumstances that would materially affect the conduct of the hearing.

*[Date]*

\_\_\_\_\_  
*[Signature of Presiding Officer]*

To: *[List parties' counsel]*



**FORM 7A  
ACKNOWLEDGEMENT OF EXPERT'S DUTY**

*[General Heading]*

**ACKNOWLEDGEMENT OF EXPERT'S DUTY**

1. My name is *[name]*. I live at *[city]* in the province of *[name of province]*.
2. I have been retained by *[name of party]* to give evidence in the above noted hearing before the College of Early Childhood Educators.
3. I acknowledge that it is my duty to provide opinion evidence that is fair, objective and neutral.
4. I acknowledge that it is my duty to provide opinion evidence that is related only to matters within my area of expertise.
5. I acknowledge that it is my duty to provide such additional assistance as the Committee may reasonably require to determine the matters in issue.
6. I acknowledge that these duties prevail over any obligation which I may owe to the party that retained me or the party's representatives.

*[Date]*

\_\_\_\_\_  
*[Signature of Expert]*

Note: This form must be attached to any report signed by the expert and provided for the purposes of sub-rule 7.04(1).



**Schedule A**

**FORM 13  
SUMMONS**

*(College of Early Childhood Educators, 2007)*

SUMMONS TO A WITNESS BEFORE THE *[NAME OF COMMITTEE]*  
COMMITTEE OF THE COLLEGE OF EARLY CHILDHOOD EDUCATORS

TO: *[name and address of witness]*

*(For oral hearing)*

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding on *[day]*, *[date]*, at *[time]*, at *[place]*, and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things: *[Set out the nature and date of each document and give sufficient particulars to identify each document and thing].*

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS REQUIRES, THE SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.

*(For electronic hearing)*

YOU ARE REQUIRED TO PARTICIPATE IN AN ELECTRONIC HEARING on *[day]*, *[date]*, at *[time]*, in the following manner: *[Give sufficient particulars to enable witness to participate].*

IF YOU FAIL TO PARTICIPATE IN THE HEARING IN ACCORDANCE WITH THE SUMMONS, THE SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.

Date: \_\_\_\_\_

*[NAME OF COMMITTEE] COMMITTEE OF  
THE COLLEGE OF EARLY CHILDHOOD  
EDUCATORS*

---

S.E. Corke  
Registrar and Chief Executive Officer

NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Superior Court of Justice.



**FORM 14A  
CONSENT ADJOURNMENT**

*[General Heading]*

**CONSENT**

The College and counsel on behalf of the Member ***[or the Member where appropriate]*** have agreed that the hearing in this matter, originally scheduled to proceed on \_\_\_\_\_ *[insert date(s)]* shall be adjourned on consent to proceed on \_\_\_\_\_ *[insert date(s)]*. The parties certify that this/these date(s) has/have been cleared with the Hearings Office.

*[Date]*

\_\_\_\_\_  
*[Signature of College counsel]*

*[Date]*

\_\_\_\_\_  
*[Signature of Member or Counsel  
on behalf of the Member]*

The Chair of the Committee hereby signifies his/her consent to this request for an adjournment.

*[Date]*

\_\_\_\_\_  
*[Signature of Chair of the Committee]*

**OR**

The Chair of the Committee hereby signifies his/her refusal to consent to this request for an adjournment.

*[Date]*

\_\_\_\_\_  
*[Signature of Chair of the Committee]*



**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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