



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

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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,

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

“Business Day” means any day other than a Holiday.

“Chair” means the Chair of the Committee or, in his or her absence, the Vice-Chair of the Committee, and in the absence of both the Chair and the Vice-Chair, 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 a Panel of the Committee or the Committee's Chair.

“Electronic”
or **“Electronically”** means the use of conference telephone call or videoconference or some other form of electronic technology allowing persons to hear and communicate with one another at the same time.

"Hearing" means the process before a Panel convened to conduct a hearing into a matter under section 33, 34 or 36 of the Act.

“Hearings Office” means the employee or employees of the College who are 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) 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 Committee and/or Panel, as permitted by section 35(5) of the Act.

"Member"

means a member or former member of the College who has been named in a Notice of Hearing.

"Motion"

means a request for the Committee to make an Order regarding an issue or issues in a Proceeding.

"Motion Participant"

means a party and 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 any Committee.

"Panel"	means a Panel of Committee members selected by the Chair.
"Party"	means the College and the Member or Members named in the Notice of Hearing.
"Pre-hearing conference"	means a meeting scheduled between the parties at the college before a Presiding Officer. They are informal in comparison to a hearing and their purpose is to make the hearing run more smoothly by helping the parties narrow the issues, schedule the hearing, prepare for the hearing and reach agreement, if possible, with regard to the evidence and any or all of the allegations and penalty
"Presiding Officer"	means the person designated by the Committee Chair to preside over a pre-hearing conference.
"Proceeding"	means any step in the hearing process, and includes a Motion, a Pre-Hearing Conference, and a Hearing.
"Prosecutor"	means the lawyer prosecuting allegations against one or more Members before the Discipline 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 person 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 him or her.
"Rules"	means these <i>Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee</i> and includes any sub-Rule.
"SPPA"	means the <i>Statutory Powers and Procedures Act</i> , R.S.O. 1990, c. S. 22.
"Vulnerable Witness"	means a witness who, in the opinion of a Panel, will have difficulty testifying or will have difficulty testifying in the presence of a Party for reasons related to age, disability, illness, trauma, emotional state or similar cause of vulnerability.

1.02 Interpretation of Rules

- (1) Where matters are not specifically provided for in these Rules, the Act or the SPPA, the practice will be determined by analogy to them.
- (2) Where there is an inconsistency between these Rules and the Act or the SPPA, the provisions of the Act will govern.
- (3) Anything these Rules require or permit a Representative to do can be done by the Member if the Member is not represented.

1.03 Application of Rules

- (1) These Rules apply to all Proceedings before the Discipline Committee and the Fitness to Practise Committee, including, with all necessary changes, to applications for reinstatement under section 36 of the Act.
- (2) Where a Rule or sub-Rule applies only to the Discipline Committee or only to the Fitness to Practise Committee, the Rule or sub-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 that the first event happens on is not counted and the day that the second event happens on is counted.
 - (b) where a Rule mentions a period of time that is less than seven (7) days, Holidays are not counted.
 - (c) where a Rule mentions a period of time that is seven (7) days or more, Holidays are counted.
 - (d) where the deadline for doing something under these Rules falls on a Holiday, the deadline is extended to the next Business Day.
 - (e) where a Party does something that the Party is required to do under these Rules after 5 p.m., the Committee will consider the Party to have done that thing on the next Business Day.
 - (f) where a Rule mentions a time of day, it means the time that is observed in eastern standard time Ontario, Canada.
- (2) A Panel may extend or shorten any time required by these Rules, on such terms the Panel considers fair.

1.05 Compliance and Waiver

- (1) A person or Party failing to comply with a Rule does not make a Proceeding or a step in a Proceeding invalid.

- (2) The Committee may waive any Rule:
 - (a) where all the Parties (and if applicable, all the Motion Participants) consent to the waiver; and
 - (b) where it is fair and in the public interest to do so.
- (3) 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 5 requesting the waiver.
- (4) 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 Committee will consider whether the motion was brought in a timely manner.
- (5) The Committee may choose to waive a Rule even if the parties do not request the waiver, if the Committee first gives notice to the parties (and if applicable, the Motion Participants) and provides them with 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 Committee may make any Order that is necessary to control its process. In making such an Order, the Committee must take into consideration the public interest, the interests of witnesses and the Member's right to make full answer and defence to the allegations.

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

2.01 Delivery of Documents

Where the Rules require a document to be delivered to a person or Party, the document can be delivered by:

- (a) physically placing it in the hands of that person or Party or that person's or Party's 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. The document is considered to have been delivered on the same day the email was sent, with confirmation from that person or Party or electronic read receipt;
- (c) sending it by facsimile transmission. The document is considered to have been delivered on the same day as the facsimile transmission;
- (d) sending it by registered mail or courier. The document is considered to have been delivered on the day of the delivery receipt; or
- (e) sending it by another method that is directed by the Committee.

- (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) with the Hearings Office; or
 - (b) with the Panel, but only if the document is filed during the course of the Proceeding.
- (2) A document filed with the Hearings Office must be filed by:
 - (a) leaving seven (7) copies of the document with a person at the Hearings Office, unless another Rule or the Hearings Office states that a different number of copies must be filed; or
 - (b) sending seven (7) copies of the document by courier or registered mail, in an envelope clearly marked "Attention Hearings Office," to the College, unless another Rule or the Hearings Office states that a different number of copies must be filed.
- (3) 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.
- (4) A person can confirm whether a document has been filed with the Hearings Office by calling the Hearings Office or by emailing a request for confirmation to the Hearings Office.

RULE 3 - PRE-HEARING CONFERENCES

3.01 Scheduling

- (1) A Pre-Hearing Conference must be scheduled if a Party requests a Pre-Hearing Conference. Additional Pre-Hearing Conferences may be scheduled with the consent of both Parties.
- (2) When a Pre-Hearing Conference is scheduled, the Chair will designate a member of the Committee to act as the Presiding Officer at the Pre-Hearing Conference. The Presiding Officer must not be a member of the Panel presiding over the Hearing.
- (3) When a Pre-Hearing Conference is to be held, unless the Presiding Officer agrees otherwise, the College's Prosecutor, the Member and, if applicable, the Member's Representative must attend the Pre-Hearing Conference.
- (4) The Presiding Officer may request that Independent Legal Counsel attend a Pre-Hearing Conference.

3.02 Pre-Hearing Conference Memorandum

- (1) No less than twenty (20) days before the Pre-Hearing Conference, the College must prepare a Pre-Hearing Conference Memorandum, in the same format as Form 1 and deliver a copy to the Member and file a copy with the Hearings Office. The Pre-Hearing Conference Memorandum must identify the factual and legal issues in dispute, and briefly set out the College's position.
- (2) The Member may deliver a Pre-Hearing Conference Memorandum, in the same format as Form 1 to the College and file a copy with the Hearings Office no less than ten (10) days before the Pre-Hearing Conference.

3.03 Confidentiality of the Pre-Hearing Conference

- (1) The Pre-Hearing Conference will not be open to the public. Unless both Parties consent, all communications made at or in connection with a Pre-Hearing Conference must be kept confidential and are considered without prejudice. This includes any Pre-Hearing Conference Memoranda and the Presiding Officer's notes and records.
- (2) When a Pre-Hearing Conference is to be held, the Parties must be prepared to discuss all of the topics set out in the Pre-hearing Conference Memorandum, including the following:
 - (a) the strengths and weaknesses of each Party's case;
 - (b) whether any facts can be agreed to;
 - (c) whether any or all of the issues can be settled or narrowed;
 - (d) the content and timing of any additional disclosure;
 - (e) the scheduling of any Motions to be heard before the Hearing;
 - (f) the appropriate Order in the event that findings of professional misconduct, incompetence, or incapacity are made;
 - (g) the delivery and form of documents, written arguments and books of authorities that will be used at the Hearing and whether the Committee will review them before the Hearing;
 - (h) the estimated length and scheduling of the Hearing; and
 - (i) any other matter that may assist in the just and expeditious disposition of the Proceeding.

RULE 4 - RESCHEDULING A HEARING OR PRE-HEARING CONFERENCE

4.01 Timing

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

4.02 Requirement to Ask for Consent to Reschedule

- (1) The Party wanting to reschedule a Hearing or Pre-Hearing Conference must first ask the other Party to consent to rescheduling before requesting the rescheduling from the Committee.

4.03 If the Other Party Consents

- (1) If a rescheduling request is made before the scheduled date of the Pre-Hearing Conference or Hearing and the other Party consents, the Party requesting to reschedule must file a written request with the Hearings Office, containing the following information:
 - (a) the reason for requesting to reschedule;
 - (b) confirmation that the other Party has consented to rescheduling;
 - (c) dates that the Parties are available to reschedule the Hearing or Pre-Hearing Conference.
- (2) If the Hearings Office receives a written request to reschedule on consent under Rule 4.03(1), the Hearings Office will reschedule the Pre-Hearing Conference or Hearing. If the Hearings Office is unable to reschedule in accordance with the dates proposed by the Parties, the Hearings Office will consult with the Parties to schedule alternative dates.
- (3) If a Hearing 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 Hearing should be rescheduled and on what terms.

4.04 If the Other Party Does Not Consent

- (1) If a rescheduling request is made before the scheduled date of the Pre-Hearing Conference or Hearing and the other Party does not consent, then the Party requesting to reschedule must serve on the other Party and file with the Hearings Office a written request to reschedule containing the following information:
 - (a) the reason for requesting to reschedule;
 - (b) confirmation that the other Party was consulted about rescheduling;
 - (c) an explanation of the other Party's reason for refusing consent;

- (d) dates that the requesting Party is available to reschedule the Hearing or Pre-Hearing Conference.
- (2) The other Party may respond to the request and must serve on the requesting Party and file with the Hearings Office any such response 5 business days after the rescheduling request has been received.
- (3) The request will be considered and decided by the Chair, Presiding Officer or a member of the Committee appointed by the Chair.
- (4) If a Hearing 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 should be rescheduled and, if so, on what terms.

4.05 Factors to Be Considered

- (1) In deciding whether or not to grant a request to reschedule (and if so, on what terms), the Panel will consider the following factors:
 - (a) balancing the right of the Parties to a fair Hearing against the importance of a timely and efficient hearing;
 - (b) whether there is prejudice to a person or Party resulting from the acceptance or denial of the request to reschedule the Hearing;
 - (c) how long the requesting Party had to prepare for the Pre-Hearing Conference or Hearing;
 - (d) whether the request to reschedule was made as soon as possible;
 - (e) any efforts made to avoid the circumstances leading to the request to reschedule;
 - (f) the number of previous requests to reschedule;
 - (g) whether the public is at risk if the request to reschedule is granted;
 - (h) the proposed period of time before the rescheduled Hearing or Pre-Hearing Conference;
 - (i) the costs of rescheduling;
 - (j) the public interest; and
 - (k) any other factor deemed relevant to determine whether the request to reschedule should be granted.

4.06 Conditions May Be Imposed

- (1) The Presiding Officer, Chair, Committee member or Panel deciding a request to reschedule may grant the request on such terms and conditions as they consider fair.

RULE 5 - MOTIONS

5.01 Initiating Motions

- (1) A person can bring a Motion by filing with the Hearings Office and delivering to the other Party and any Motion Participants a Motion Record, which must include the Notice of Motion in the same format as Form 2A, and all affidavits and any other materials to be relied upon.
- (2) The Notice of Motion must contain the following information:
 - (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 reasons and arguments.
- (3) All issues must be raised by way of a Motion as soon as possible after the issue is identified, unless the nature of the Motion requires that it be heard during the Hearing itself.
- (4) Despite Rule 5.01(1), a Motion Record need not be filed if the nature of the Motion or the circumstances make it impractical to file a Motion Record.

5.02 How Motions to Be Heard

- (1) A Motion may be heard in person, in writing or electronically.

5.03 Timing, Delivery and Filing of Materials

- (1) The person or Party initiating a Motion must file initiating a Motion must file with the Hearings Office and deliver to the other Party and any Motion Participants a Notice of Motion.
- (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) at least twenty (20) days before the Motion is to be heard.
- (3) The responding Party and any Motion Participants must file with the Hearings Office and deliver to the person or Party who initiated the Motion a responding Motion Record, Factum and Book of Authorities at least ten (10) days before the Motion is to be heard.

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

5.04 Assigning a Motion Panel

- (1) The Chair or the Chair's delegate will assign one or more members of the Committee to hear a Motion.
- (2) A Party or other Motion Participant who believes that the Hearing should not be heard by the member(s) of the Committee who sat on the Motion panel shall request a direction from the Motion panel on the matter in the Notice of Motion or Notice of Cross-Motion.

5.05 Scheduling

- (1) Where a Motion is to be heard in person, the Hearings Office will contact the participants to schedule a date for the Motion after the Party initiating the Motion has filed their Notice of Motion with the Hearings Office.
- (2) Where a Motion is to be held in writing or electronically, the member(s) of the Committee assigned to decide the Motion will do so after all of the materials referred to in this Rule have been filed.

5.06 Evidence

- (1) Evidence on a Motion will be given by a properly sworn affidavit unless the Chair or a member of the Committee orders that it be given in some other form, or unless otherwise provided 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 5.06(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 only if the Parties consent, or with the permission of the Committee, which permission will only be granted where 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 unless for the purpose of impeachment or with the permission of the Hearing Panel.

5.07 Limitations on Submissions

- (1) No Motion Participant shall take more than one hour, including a reply, to make oral submissions on a Motion without the prior permission of the Chair or a member of the Committee.

5.08 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 6 - NOTICE OF CONSTITUTIONAL QUESTION

6.01 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 of such to the Attorney General of Canada and the Attorney General of Ontario. Notice must be given at least fifteen (15) days before the issue or question is to be argued before a Panel.

6.02 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.

6.03 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 7 - DISCLOSURE AND PRODUCTION OF EVIDENCE

7.01 Exchange of Documents by Parties

- (1) Each Party to a Proceeding shall deliver to every other Party, in advance of the Hearing,
 - (a) a list of all documents and things that the Party intends to produce or enter as evidence at the Hearing;
 - (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 College must produce the information set out in sub-Rule 7.01(1) as soon as is reasonably possible after the Notice of Hearing is served, but in any case, at least fifteen (15) days before the start of the Hearing.
- (3) The other Party must produce the information set out in sub-Rule 7.01(1) as soon as is reasonably practicable after disclosure by the College under this Rule, but in any case, at least ten (10) days before the start of the Hearing.
- (4) A Party who does not disclose a document or thing in compliance with this Rule may not refer to the document or thing or introduce it into evidence at the Hearing without consent of the other Party, or if consent is withheld, permission of the Panel, which may be granted on any conditions that the Panel considers just.

7.02 Order for Disclosure

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

7.03 Motions for Production of Documents from a Third Party

- (1) A Motion by a Party requesting the Panel to Order a person who is not a Party to the Proceeding (a third party) to produce documents in the third party's possession so that the documents can be used as evidence in the Hearing cannot be brought before the start of the Hearing.
- (2) The Notice of Motion relating to the production of documents from a third party must be provided to the third party possessing the documents and to any other person having a significant interest, including a privacy interest, in the documents.
- (3) In considering such a Motion, the Panel must take into account:
 - (a) the relevance of the documents to a significant issue in the Hearing;
 - (b) whether it would be unfair to require the Party bringing the Motion to proceed to the Hearing without the documents;
 - (c) any claim that the documents are privileged; and
 - (d) whether any person has a significant interest in the documents, including a privacy interest.
- (4) Sub-Rules 7.03(5) to 7.03(8) apply to Motions for third party records 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.
- (5) Any one or more of the following assertions made by the Member are not sufficient on their own to establish 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.
- (6) The Panel or the Chair or their delegate may, on Motion by a Party, order that a person who has possession or control of the documents or things produce all or some of the requested documents or things to the Panel, Chair or delegate. To make this Order, the Panel, Chair or delegate must be satisfied that:
- (a) 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.

- (7) After reviewing the documents or things produced under sub-Rule 7.03(6), the Panel or the Chair or their delegate will produce the documents or things to the Parties if the Panel, Chair, or delegate is 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.
- (8) In determining whether to grant an Order for the production of documents or things under sub-Rule 7.03(7), the Panel 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 record sought;
 - (d) the nature and purpose of the record sought in the Motion; and
 - (e) any other factor deemed relevant to determine whether the request should be granted.
- (9) Despite anything in these Rules, the Panel will, upon the application of any person who has a privacy interest in the documents or things requested, grant the person standing on the Motion for production of the documents or things.

RULE 8 - WRITTEN AND ELECTRONIC HEARINGS AND PROCEEDINGS

8.01 Ability to Conduct a Proceeding in Writing or Electronically

- (1) A Panel may allow all or part of a Proceeding to be heard in writing and/or electronically if:
 - (a) the Parties consent; or
 - (b) the Parties do not consent, but the Panel, after hearing submissions from the Parties, makes an Order that the Proceeding should be heard in this way.
- (2) The Party requesting the Electronic Proceeding must make the request in writing to the Hearings Office setting out the following:
 - (a) the purpose of the Proceeding and the manner in which the Proceeding will be held;
 - (b) why the Party is requesting that the Proceeding be conducted Electronically;

- (c) why the Party believes that an Electronic Proceeding will not cause significant prejudice to the Panel's ability to hold a fair and adequate Hearing; and
 - (d) whether or not the other Party has consented to an Electronic Proceeding, and if not, the reason why the other Party has refused to consent.
- (3) The factors the Panel must consider in determining whether a Proceeding should be held Electronically include:
- (a) whether there is significant prejudice to the Party who objected; and
 - (b) whether the Panel's ability to hold a fair and adequate Hearing will be prejudiced.

8.02 Electronic Proceedings

- (1) This sub-Rule applies to any Proceeding or part of a Proceeding that is held electronically, including Motions, Pre-Hearing Conferences and Hearings.
- (2) At least two (2) 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, every person participating in the Proceeding must file with the Hearings Office and deliver to every other participant at least three (3) days before the Proceeding, every document the person intends to rely on in the Proceeding, in sequentially numbered pages.
- (4) Every person participating in the Proceeding must ensure that they can be reached at the telephone number provided to the Hearings Office.
- (5) At least five minutes before the Proceeding is scheduled to commence, every Party must call in to the conference number provided by the Hearings Office.
- (6) Where a Panel permits all or part of a Proceeding to be conducted Electronically, and the Proceeding involves witnesses or an oral reprimand, the Hearing must proceed by way of videoconference, unless the Parties consent and the Panel orders otherwise.

8.03 Written Proceedings

- (1) This sub-Rule applies to any Proceeding or part of a Proceeding that is held in writing, including Motions and Hearings.
- (2) Unless already specified by another Rule, all documents in a written Proceeding must be filed with the Hearings Office and delivered to the other Party and any other Proceeding participants according to the schedule approved by the Panel or agreed to by the Parties.

RULE 9 - PROCEDURE RELATED TO THE HEARING

9.01 Location of Hearings

- (1) All Hearings will be held at the offices of the College, unless otherwise directed by the Hearings Office. If the Hearing 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.

9.02 Discipline Committee Hearings to be Open to the Public

- (1) Except as set out in this Rule, Discipline Committee Hearings will be open to the public.
- (2) 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.

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

- (1) Except as set out in this Rule, Fitness to Practise 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 deliver the request to the College and file it in the Hearings Office before the day that the Hearing is scheduled to start.
- (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 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.

9.04 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 9.04(1) does not apply to:
- (a) a person unobtrusively making handwritten or typed notes, or sketches at a Proceeding;
 - (b) a Party or a Party's Representative unobtrusively making an audio recording at a Proceeding that is used only as a substitute for handwritten or typed notes for the purposes of the Proceeding, on notice to the Panel;
 - (c) a person or Party taking a photograph, audio or video recording or other record with the prior written authorization of the Panel;
 - (d) the court reporter; or
 - (e) a person or Party using a device to compensate for a disability.

9.05 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 and the Panel may make any order it considers necessary to prevent prejudice to the Member.

9.06 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 repetitious.
- (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 Act or any other statute.
- (3) The findings of a Panel shall be based exclusively on evidence admitted before it.

9.07 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 in the proper form.
- (2) The Party seeking to file affidavit evidence must inform the Hearings Office of their request to provide evidence in affidavit form and whether the Other Party consents to such request. The requesting Party must serve such evidence on the other Party at least twenty (20) days before the Hearing. The Other Party must advise whether they intend to cross-examine the affiant at least ten (10) days before the Hearing.

9.08 Obtaining a Summons to Compel the Attendance of a Witness

- (1) If a Party requires a witness to attend the Hearing, either in person or Electronically, and believes that they require a summons to compel the witness to attend, the Party must complete and file in the Hearings Office the Summons to Witness Form found on the Ontario government website: <http://www.forms.ssb.gov.on.ca>.
- (2) The summons must be physically placed in the hands of the person being summonsed or that person's Representative.

9.09 Excluding Witnesses

- (1) A Panel may order that one or more witnesses be excluded from the Hearing until called to give evidence.
- (2) An Order under sub-Rule 9.08(1) may not be made in respect of a Party to the Proceeding or a witness whose presence is required to instruct their Representative, but the Panel 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 Hearing, no person shall communicate or permit the communication to an excluded witness of any evidence given during the witness's absence from the Hearing until after the witness has been called and has given evidence.

9.10 Vulnerable Witnesses

- (1) A Panel may order that a support person be permitted to be present and to sit near a Vulnerable Witness while testifying and may issue directions regarding the conduct of the support person during the testimony of the witness.
- (2) A Panel 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 Panel 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 Chair or the Panel may order that a representative be appointed to cross-examine the witness.

9.11 Expert Witnesses and Reports

- (1) A Party who intends to call an expert witness at a Hearing must, at least ten (10) days before the Hearing, serve an expert report on the other Party. The expert report must be signed by the expert, and must set out the expert's name, address and qualifications, and the substance of their proposed testimony; or, if the expert has not prepared a written report, a written summary of the expert's evidence.
- (2) Each Party must inform any prospective expert witness that it is the duty of an expert to assist the Panel 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 written report (or, if there is no written report, during the expert's testimony) that the expert is aware of and understands this duty.
- (3) Where the Panel hears testimony of an expert witness, it may also admit the expert witness's report as an exhibit at the Hearing.
- (4) A Panel 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.

9.12 Non-party Participation in Hearing

- (1) On application by a person who is not a Party to the Proceeding, a Panel may allow a non-party to participate in a Hearing if,
 - (a) the good character, propriety of conduct or competence of the non-party is in issue at the Hearing; or
 - (b) the participation of the non-party would, in the opinion of the Panel, be of assistance to the Panel.
- (2) If permitted to participate, the Panel will determine the extent of participation of a non-party (and their Representative, if applicable), including the ability of the person or Representative to make oral or written submissions, to lead evidence and to cross-examine witnesses.

9.13 Public Access to Hearing Record

- (1) This sub-Rule applies only to Hearings held in public under sub-Rules 9.02 or 9.03.
- (2) A member of the public has, subject to any order prohibiting publication, a right to access the following Hearing documents without having to bring a Motion:

- (a) Notice of Hearing;
 - (b) a transcript of evidence, if available;
 - (c) any Agreed Statement of Facts; and
 - (d) any Joint Submission on Penalty.
- (3) If a member of the public wants to access any other part of the Hearing Record, the person must bring a Motion before the Panel or Committee 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;
 - (c) the intended use of the Hearing Record; and,
 - (d) if the person is requesting permission to duplicate an exhibit, sufficient details that would allow the Committee or Panel to consider whether or not duplication would adversely affect the integrity of the exhibit.
- (4) Before making a decision on a Motion to access all or part of the Hearing Record, the Committee or Panel will consider the submissions of the person requesting access to the Hearing Record, the Parties, and any other person having an interest in the Motion. The Committee or Panel may consider the following factors:
- (a) the general principle that Hearings be open to the public;
 - (b) the intended use of the exhibit;
 - (c) proprietary or privacy interests in the exhibit;
 - (d) the timing of the request and, specifically, whether it was made during or after the Hearing;
 - (e) interference with the proper and orderly conduct of the Hearing;
 - (f) interference with the Member's right to a fair hearing; and
 - (g) any other factor that may be relevant to the Committee's or Panel's decision.
- (5) If the Committee or Panel 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 Committee or Panel must be satisfied that the security of any exhibit will be protected and may provide for supervision and control of any exhibit by a person designated by it.

- (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 document(s) to prevent disclosure of the names and any other identifying personal information of any complainants, patients, or witnesses, and the names of any institutions.

RULE 10 - AWARDS OF COSTS

10.01 Costs for Non-compliance with Rules

- (1) Where a Panel is entitled to order the payment of costs and/or expenses by a Party, the Panel may consider, among other factors, the failure of a Party to comply with these Rules and whether the conduct of the Party has been unreasonable, frivolous or vexatious or the Party has acted in bad faith, including but not limited to, late requests to reschedule a Hearing or Pre-Hearing Conference.

10.02 Procedure for Requesting Costs

- (1) A Party requesting an Order for costs must provide an explanation and, where practicable, evidence of the costs they have incurred.
- (2) 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 11 - REINSTATEMENT APPLICATIONS

- (1) This Rule applies to applications for reinstatement made under section 36 of the Act.
- (2) A Member making an application for reinstatement must deliver 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) Unless the Committee directs otherwise, the Member making an application for reinstatement must deliver to the College and file with the Hearings Office seven (7) copies of:

- (a) the record of the original Hearing;
 - (b) the record of any previous applications for reinstatement (including the transcript of any previous reinstatement Hearing);
 - (c) the transcript of 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 reinstatement application has been scheduled, the Hearings Office shall deliver a Notice of Reinstatement Hearing to the Parties.



FORM 1: PRE-HEARING CONFERENCE MEMORANDUM

B E T W E E N:

COLLEGE OF EARLY CHILDHOOD EDUCATORS

and

[INSERT NAME OF MEMBER]

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

Date of Pre-hearing Conference:

College Counsel:

Member's Representative (if applicable):

BACKGROUND INFORMATION

1. Please attach a copy of the Complaints Committee Decision to this memorandum.
2. Set out a brief statement of your case, including factual disputes and the anticipated evidence of witnesses.
3. Provide a description of the legal issues to be determined at the hearing.
4. Attach a copy of any document that would assist the Presiding Officer at the pre-hearing conference.

ADDITIONAL STEPS BEFORE THE HEARING

5. Disclosure:

- Are there any issues with respect to disclosure?
- Has the College made full disclosure to the Member?
- Have both parties produced all of the expert reports upon which they intend to rely?
- If disclosure has not yet been completed, can the parties agree on a date by which it will be done?

6. Motions:

- Will you be bringing any motions?
- If so, what order will you seek and on what grounds?
- When do you intend to bring each motion?

7. Admissions:

- Are there any facts or allegations that can be admitted?
- Can the admissibility of documents be agreed upon?
- Is it possible to develop an Agreed Statement of Facts?
- Is it possible to develop a Joint Submission on Penalty?

8. Joint Book of Documents:

- Is it a possible to develop a Joint Book of Documents?
- If so, by what date will the Joint Book be delivered?
- Should the Discipline Panel be able to review the Joint Book before the Hearing?

9. Written arguments:

- Are there any issues which should be dealt with through written argument instead of oral argument during the Hearing or during a motion?
- When should written arguments be delivered by?
- Should the Discipline Panel be able to review written arguments before the Hearing?

PLANNING THE HEARING

10. Hearing:

- Are you ready for the Hearing?
- Should the matter be expedited?
- Are there any special considerations affecting the setting of a date (such as the availability of witness)?
- How long will the Hearing last?
- Estimate the length of time it will take to hear any motions you anticipate bringing during the Hearing.
- List your witnesses and estimated length of time you anticipate it will take to hear their evidence.
- Will you be requesting that the Committee issue a summons (to require a person to attend or provide evidence at the Hearing). If so, identify the person(s).
- Do you object to the Committee issuing a summons requested by a party and, if so, on what grounds?

11. Memorandum or Directions

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

Date

Signature of Party or Representative
attending the Pre-Hearing Conference



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, at 438 University Avenue, Suite 1900, Toronto, Ontario.

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 and facsimile number of the moving party or their representative]

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



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 at 438 University Avenue, Suite 1900, Toronto, Ontario on [day], [date], [or by conference call].

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

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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