



**Rules of Procedure of the Discipline Committee
and of the Fitness to Practise Committee
(Effective October 19, 2022)**

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RULE 1 - INTERPRETATION AND APPLICATION

1.01 Definitions

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

- (2) In these Rules,

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

“Chair” means the Chair of the Committee; if the Chair of the Committee is absent, “Chair” means the Vice-Chair of the Committee; if both the Chair of the Committee and the Vice-Chair of the Committee are absent, “Chair” means the person elected by the Committee to act as the Chair temporarily.

“College” means the College of Early Childhood Educators.

“Committee” means, depending on the context, either the Discipline Committee of the College or the Fitness to Practise Committee of the College, and includes the Committee’s Chair or a Panel of the Committee.

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

“Electronic”
or **“Electronically”** means the use of teleconference or videoconference or some other form of electronic technology.

“Decision Maker” means the Committee, Panel, Chair, Chair’s delegate, or Pre-Hearing Conference Chair, depending on the context.

“Hearing” means the process before a Decision Maker required to be conducted pursuant to section 33, 34 or 36 of the ECE Act.

“Hearings Office” means the employee or employees of the College who are assigned the duty of providing administrative assistance to the Committee and its Decision Makers.

“Holiday” means

- a) any Saturday or Sunday;
- b) New Year’s Day;

- c) Family Day;
- d) Good Friday;
- e) Victoria Day;
- f) Canada Day;
- g) Civic Holiday;
- h) Labour Day;
- i) Thanksgiving Day;
- j) Christmas Day;
- k) Boxing Day;
- l) Where New Year's Day, Canada Day, Christmas Day, or Boxing Day falls on a Saturday or Sunday, the additional day designated by the College as a holiday;
- m) Any special holiday proclaimed by the Governor General or the Lieutenant Governor; and
- n) Any other day designated by the College as a holiday.

"Independent Legal Counsel"

means the lawyer appointed to provide legal advice to the Decision Maker, as permitted by section 35(5) of the ECE Act.

"Member"

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

"Motion"

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

"Motion Participant"

means a party or any other person who would be affected by the Order requested on a Motion.

"Notice of Hearing"

means a document issued by the College which contains one or more allegations of professional misconduct, incompetence, and/or incapacity of a Member.

“Order”	means any decision or ruling made by a Decision Maker in relation to the Proceeding.
"Panel"	means a panel of Committee and/or Roster members selected by the Chair in accordance with section 19 of the ECE Act.
“Party”	means the College and the Member or Members named in the Notice of Hearing.
“Pre-Hearing Conference”	means a meeting scheduled between the parties before a Pre-Hearing Conference Chair. The purpose of a Pre-Hearing Conference 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. They are informal in comparison to a Hearing and are private / confidential.
"Pre-Hearing Conference Chair"	means the person designated by the 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 conducting a prosecution against a Member before the Committee on behalf of the College.
"Record"	means a copy of all exhibits from a Proceeding, Orders and all written Reasons for Decision and includes any transcripts of the Hearing.
“Representative”	means a lawyer or paralegal authorized under the <i>Law Society Act</i> , R.S.O 1990, c. L.8, to represent a person in a Proceeding, or some other person chosen by the Party to represent them.
“Roster”	means the roster of eligible panelists established in accordance with the College’s By-Law No. 11 (Committees) .
“Rules”	means these <i>Rules of Procedure of the Discipline Committee and of the Fitness to Practise Committee</i> .
"Vulnerable Witness"	means a witness who, in the opinion of a Decision Maker, will have difficulty testifying for reasons related to age, disability, illness, trauma, emotional

state or similar reasons.

1.02 Interpretation of Rules

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

1.03 Application of Rules

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

1.04 Time

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

1.05 Compliance and Waiver

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

the waiver. Before doing so, the Decision Maker must notify the parties (and if applicable, the Motion Participants) and give them an opportunity to make submissions about whether waiving the Rule is fair and in the interest of the public.

1.06 Power to Control Process

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

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

2.01 Delivery of Documents

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

2.02 Filing of Documents

- (1) All documents that are filed in a Proceeding must be filed:
 - (a) electronically with the Hearings Office following instructions provided by the Hearings Office or, if no instructions have been given, by sending them by email to the Hearings Office; or
 - (b) with the Decision Maker, but only if the document is filed during an in-person Proceeding.
- (2) Where a Proceeding is held in person, the Parties and, where relevant, Motion Participants must make inquiries with the Hearings Office 5 Business Days before the Hearing to determine whether, and how many, copies of all of the documents filed under sub-Rule 2.02(1) are required for distribution.
- (3) Where a Proceeding is held electronically or in writing but a Party or Motion Participant seeks to file non-electronic documents, that person must file a written

request with the Hearings Office for direction from the Decision Maker as to whether, when and how they may do so in the interests of conducting a fair, efficient and timely Proceeding. The written request must contain:

- (a) a list of the non-electronic documents they seek to file;
 - (b) the reasons why they seek to file these documents non-electronically; and
 - (c) the locations of the other Parties and participants to the Proceeding to whom copies would be sent after being filed.
- (4) Where a Proceeding is held by a combination of formats, the Decision Maker will provide instructions to the Parties and, where relevant, Motion Participants as to whether, when and how non-electronic documents, if any, must be filed.
 - (5) A document filed with the Hearings Office will not be considered to be filed until the document has actually been received by the Hearings Office.
 - (6) If a person calls or emails the Hearings Office, the Hearings Office will confirm whether a document that person attempted to file has been filed with it.

RULE 3 - 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) The Chair or their delegate may require a Pre-Hearing Conference, even if neither Party requests one. Before doing so, the Chair or their delegate must give notice to the Parties and give them with an opportunity to make submissions about whether it would be fair and in the interest of the public to hold the Pre-Hearing Conference.
- (3) When a Pre-Hearing Conference is to be scheduled, the Chair will designate a Committee or Roster member to act as the Pre-Hearing Conference Chair at the Pre-Hearing Conference. The Pre-Hearing Conference Chair must not be a member of the Panel presiding over the Hearing.
- (4) The College's Prosecutor, the Member and, if applicable, the Member's Representative must attend the Pre-Hearing Conference unless the Pre-Hearing Conference Chair agrees otherwise.
- (5) The Pre-Hearing Conference Chair may request that Independent Legal Counsel attend a Pre-Hearing Conference.

3.02 Pre-Hearing Conference Memorandum

- (1) The College must deliver a Pre-Hearing Conference Memorandum to the Member

and file a copy with the Hearings Office at least 15 Business Days before the Pre-Hearing Conference. The Pre-Hearing Conference Memorandum must identify the factual and legal issues in dispute, and briefly set out the College's position. The Pre-Hearing Conference Memorandum must use the format of Form 1, which is attached to these Rules.

- (2) The Member may deliver a Pre-Hearing Conference Memorandum to the College and file a copy with the Hearings Office at least 7 Business Days before the Pre-Hearing Conference. The Pre-Hearing Conference Memorandum must use the format of Form 1, which is attached to these Rules.

3.03 Confidentiality of the Pre-Hearing Conference

- (1) The Pre-Hearing Conference will not be open to the public. All communications made at or in connection with a Pre-Hearing Conference must be kept confidential and are considered without prejudice, unless both Parties agree otherwise. This includes any Pre-Hearing Conference Memoranda and the Pre-Hearing Conference Chair's notes and records.
- (2) The Parties must be prepared to discuss all of the topics set out in the Pre-Hearing Conference Memorandum at the Pre-Hearing Conference, including the following:
 - (a) the strengths and weaknesses of each Party's case;
 - (b) whether there are any facts the Parties agree about;
 - (c) whether the Parties can settle or narrow any or all of the issues;
 - (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 if a Panel makes findings of professional misconduct, incompetence, or incapacity at the Hearing;
 - (g) the delivery and form of documents, written arguments and books of authorities that will be used at the Hearing and whether the Panel will review them before the Hearing;
 - (h) the estimated length of the Hearing and when it can be scheduled; and
 - (i) any other topic that could help resolve the matter in a just, efficient and timely way.

RULE 4 - MOTIONS

4.01 Initiating Motions

- (1) A Motion Record must include a Notice of Motion in the same format as Form 2A, which is attached to these Rules, and the affidavits and any other materials the Party bringing the Motion will rely upon in the Motion.

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

4.02 How Motions to Be Heard

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

4.03 Timing, Delivery and Filing of Materials

- (1) At least 20 Business Days before the Motion is to be heard, the person or Party initiating a Motion must
 - (a) deliver to all Parties and any Motion Participants the Motion Record, Factum, Book of Authorities and a draft Order (in the format of Form 2B); and
 - (b) file all documents listed in sub-Rule (a) with the Hearings Office with evidence that they were already delivered to the Parties and any Motion Participants.
- (2) The person or Party initiating a Motion must file with the Hearings Office and deliver

to the other Party and any Motion Participants the Motion Record, Factum, Book of Authorities and a draft Order (in the format of Form 2B, which is attached to these Rules) with the Hearings Office with evidence that all of these materials were already delivered to all Parties and Motion Participants.

- (3) At least 10 Business Days before the Motion is to be heard, the responding Party and any Motion Participants may deliver a responding Motion Record, Factum and Book of Authorities to the person or Party who initiated the Motion and any other Motion Participants. Any Party or Motion Participant who delivers a responding Motion Record must also file it with the Hearings Office at least 10 Business Days before the Motion is to be heard with evidence that it was already delivered.
- (4) If the person or Party initiating a Motion wishes to file a reply, it must be delivered to the other Party and any Motion Participants and then be filed with the Hearings Office with evidence that it was already delivered at least 5 Business Days before the Motion is to be heard.

4.04 Assigning a Motion Panel

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

4.05 Scheduling

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

4.06 Evidence

- (1) Evidence on a Motion will be given by a properly sworn affidavit. However, the Motion Panel can make an Order that evidence be given in another form, unless prohibited by law.
- (2) In general, the content of an affidavit must be limited to facts that are within the personal knowledge of the affiant.
- (3) As an exception to sub-Rule 4.06(2), affidavits can contain information that the affiant believes to be true (even though the affiant does not personally know if the information is accurate). Information that the affiant believes (but does not personally know) to be true can only be included in an affidavit where the affidavit:
 - (a) states the source of the information the affiant believes to be true; and
 - (b) specifically states that it is the affiant's belief that the information is accurate.
- (4) A Motion Participant may cross-examine the affiant of an affidavit filed by another

Motion Participant

- (a) if the Parties consent; or
 - (b) if the Parties do not consent but the Motion Panel gives permission for cross-examination of the affiant because the interests of the case require it.
- (5) An affiant cannot be cross-examined on an affidavit sworn in support of a Motion during the Hearing except for the purpose of impeachment or with the permission of the Hearing Panel.

4.07 Limitations on Submissions

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

4.08 Communications

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

RULE 5 - NOTICE OF CONSTITUTIONAL QUESTION

5.01 Timing for Notice

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

5.02 Submissions by Attorney General

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

5.03 Notice of Appeal

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

RULE 6 - DISCLOSURE AND PRODUCTION OF EVIDENCE

6.01 Exchange of Documents by Parties

- (1) Each Party to a Proceeding shall deliver to every other Party, in advance of the

Proceeding,

- (a) a list of all documents and things that the Party intends to produce or enter as evidence at the Proceeding;
 - (b) if not previously produced, copies of the documents and things listed; and
 - (c) a list containing the identity of any witnesses the Party intends to call.
- (2) The College must produce the information set out in sub-Rule 6.01(1) as soon as is reasonably possible after the Notice of Hearing is delivered, but in any case, at least 10 Business Days before the start of the Proceeding.
 - (3) The other Party must produce the information set out in sub-Rule 6.01(1) as soon as is reasonably practicable after disclosure by the College under this Rule, but in any case, at least 7 Business Days before the start of the Proceeding.
 - (4) Even if a Party has not disclosed a document or thing in accordance with the Rules, that item can be referred to or used at a Proceeding with the consent of the other Party. If consent is not given, the Decision Maker will consider a request to use the document or thing and whether it is fair to allow its use, and the Decision Maker may grant the request with any conditions it considers just.

6.02 Order for Disclosure

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

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

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

- (b) whether it would be unfair to require the Party bringing the Motion to proceed to the Hearing without the documents or things;
 - (c) any claim that the documents or things are privileged; and
 - (d) whether any person has a significant interest in the documents or things, including a privacy interest.
- (6) Sub-Rules 6.03(7) to 6.03(10) apply to Motions for documents or things from a third party that involve the following:
- (a) allegations of a Member's misconduct of a sexual nature;
 - (b) documents or things that contain information about a person who is not a Party to the Hearing; and
 - (c) documents or things where a person has a reasonable expectation of privacy in relation to the information contained within.
- (7) While the member may make one or more of the following assertions, these assertions themselves are not enough to show that the requested documents or things are likely relevant to an issue in the Hearing or to the competence of a witness to testify:
- (a) that the documents or things exist;
 - (b) that the documents or things relate to medical or psychiatric treatment, therapy or counselling that a person has received or is receiving;
 - (c) that the documents or things relate to the incident that is the subject matter of the Hearing;
 - (d) that the documents or things may disclose a prior inconsistent statement of a person;
 - (e) that the documents or things may relate to the credibility of a person;
 - (f) that the documents or things may relate to the reliability of the testimony of a person merely because he or she has received or is receiving psychiatric treatment, therapy or counselling;
 - (g) that the documents or things may reveal allegations of sexual abuse by a person other than the Member;
 - (h) that the documents or things relate to the sexual activity with any person, including the Member;
 - (i) that the documents or things relate to whether a person complained about sexual abuse shortly after the abuse was alleged to have occurred;
 - (j) that the documents or things relate to the sexual reputation of a person; or
 - (k) that the documents or things were made close in time to a complaint or

report or to the activity that is the subject matter of the Hearing.

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

RULE 7 – FORMAT OF PROCEEDINGS

7.01 Proceedings to be Held Electronically

- (1) Proceedings will be held electronically unless the Decision Maker orders otherwise.

7.02 Ability to Conduct a Proceeding in Writing or in Person

- (1) A Decision Maker may Order all or part of a Proceeding to be heard in writing or in person if:
 - (a) the Parties consent; or
 - (b) the Parties do not consent, but the Decision Maker makes an Order that the Proceeding should be heard in this way after hearing submissions from the Parties.
- (2) Before denying a request from consenting Parties to have a Proceeding heard in writing or in person, the Decision Maker must give an opportunity for the Parties to comment.
- (3) The Party requesting that all or part of the Proceeding be in writing or in person must make the request in writing to the Hearings Office setting out:
 - (a) the purpose of the Proceeding and the format in which the Proceeding will be held;
 - (b) why the Party is requesting that the Proceeding be conducted in writing or in person;
 - (c) why the Party believes that an Proceeding in writing or in person will not cause prejudice to the Committee's ability to hold a fair Hearing; and
 - (d) whether or not the other Party has consented to a Proceeding in writing or in person and, if not, the reason why the other Party has not consented.
- (4) In determining whether a Proceeding should be held in writing or in person, the Decision Maker must consider whether either Party would be prejudiced and whether the Committee's ability to hold a fair, efficient and timely Hearing would be compromised by a particular Proceeding format. The Decision Maker must consider the following factors:
 - (a) accommodations for protected grounds under the Human Rights Code;
 - (b) the type of Proceeding;
 - (c) the issues in the Proceeding;
 - (d) the expected duration of the Proceeding;
 - (e) the nature or form of the evidentiary record;

- (f) whether the Member is represented;
 - (g) the Parties' and witnesses' access to relevant technology;
 - (h) the Parties' and witnesses' level of ability in using relevant technology;
 - (i) geographical access, including Parties' and witnesses' ability to travel;
 - (j) the Member's and witnesses' financial circumstances;
 - (k) statutory or security related impediments; and
 - (l) any other factor the Decision Maker deems relevant.
- (5) For clarity, sub-Rules (1), (2) and (3) allow a Decision Maker to direct that a hybrid Proceeding be held using a combination of formats.

7.03 Electronic Proceedings

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

RULE 8 - PROCEDURE RELATED TO PROCEEDINGS

8.01 Location of In-Person Proceedings

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

8.02 Discipline Committee Hearings to be Open to the Public

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

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

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

8.04 Electronic Devices and Publication of Proceedings

- (1) No person or Party may:
 - (a) take or attempt to take a photograph, audio or video recording or other record by any means at a Proceeding; or
 - (b) publish, broadcast, reproduce or otherwise disseminate a photograph, audio or video recording or other record taken in contravention of this sub-Rule.
- (2) Sub-Rule 8.04(1) does not apply to:
 - (a) a person discreetly making handwritten or typed notes or sketches at a Proceeding;
 - (b) a Party or a Party's Representative who has received prior authorization from the Decision Maker to discreetly make an audio recording at a

Proceeding that is used only as a substitute for handwritten or typed notes for the purposes of the Proceeding;

- (c) a person or Party taking a photograph, audio or video recording or other record with the prior written authorization of the Decision Maker;
- (d) the court reporter;
- (e) the Hearings Office making a record of the Proceeding; or
- (f) a person or Party who has given notice to the Decision Maker using a device to accommodate a disability.

8.05 Notice of Hearing

- (1) At any time, a Panel may permit a Notice of Hearing of allegations against a Member to be amended to correct errors or omissions of a minor or clerical nature if it is of the opinion that it is just and equitable to do so. In addition, the Panel may make any Order it considers necessary to prevent prejudice to the Member.

8.06 Use of Evidence by Hearing Panel

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

8.07 Examination-in-Chief by Affidavit

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

8.08 Obtaining a Summons to Compel the Attendance of a Witness

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

8.09 Excluding Witnesses

- (1) A Decision Maker may order that one or more witnesses be excluded from the Proceeding until called to give evidence.
- (2) An Order under sub-Rule 8.09(1) may not be made in respect of a Party to the Proceeding or a witness whose presence is needed to instruct their Representative. However, the Decision Maker may require any such witness to give evidence before other witnesses are called to give evidence on behalf of that Party.
- (3) Where an Order is made excluding one or more witnesses from the Proceeding, no person shall communicate or permit the communication to an excluded witness of any evidence given during the witness's absence from the Proceeding until after the witness has been called and has given evidence.

8.10 Vulnerable Witnesses

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

8.11 Expert Witnesses and Reports

- (1) When a Party intends to call an expert witness at a Proceeding, at least 15 Business Days before the Proceeding, they must deliver an expert report to the other Party.
- (2) An expert report must:
 - (a) be signed by the expert;

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

8.12 Non-Party Participation in a Proceeding

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

8.13 Public Access to Hearing Record

- (1) This sub-Rule applies only to Hearings held in public under Rules 8.02 or 8.03.
- (2) Subject to any order prohibiting publication, a member of the public has a right to access the following Hearing documents without having to bring a Motion:
- (a) Notice of Hearing;
 - (b) a written transcript of evidence;
 - (c) any Agreed Statement of Facts; and
 - (d) any Joint Submission on Penalty.
- (3) If a member of the public wants to access any other part of the Hearing Record, they must bring a Motion before the Committee or Panel and must give notice to the Parties and any other interested person. The Notice of Motion must set out the following information:

- (a) the purpose for which access to the Hearing Record is sought;
 - (b) whether all or only a part of the Hearing Record is requested; and
 - (c) if the person is requesting permission to duplicate an exhibit, sufficient details that would allow the Decision Maker to consider whether or not duplication would damage the integrity of the exhibit.
- (4) Before making a decision on a Motion to access all or part of the Hearing Record, the Decision Maker will consider the submissions of the member of the public requesting access to the Hearing Record, the Parties, and any other person having an interest in the Motion. The Decision Maker may consider the following factors:
- (a) the general principle that Hearings be open to the public;
 - (b) the intended use of the exhibit;
 - (c) the integrity of the exhibit;
 - (d) proprietary or privacy interests in the exhibit;
 - (e) the timing of the request and, specifically, whether it was made during or after the Hearing;
 - (f) interference with the proper and orderly conduct of the Hearing;
 - (g) interference with the Member's right to a fair hearing into allegations of professional misconduct, incompetence or incapacity; and
 - (h) any other factor that may be relevant to the Decision Maker's decision.
- (5) If the Decision Maker decides to grant access to all or part of the Hearing Record, it may decide to limit who may access the Hearing Record and how it may be used. The Decision Maker must be satisfied that the security of any exhibit will be protected and may designate a person to provide for supervision and control of any exhibit.
- (6) Before granting a member of the public access to any part of the Hearing Record, the Hearings Office must redact any portion of the material that is the subject of an Order prohibiting publication and may redact the material to prevent disclosure of the names and any other identifying personal information of any complainants, patients, or witnesses, and the names of any institutions.

RULE 9 - RESCHEDULING A PROCEEDING

9.01 Timing

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

9.02 Requirement to Ask for Consent to Reschedule

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

9.03 If the Other Party Consents

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

9.04 If the Other Party Does Not Consent

- (1) If a Party makes a request for rescheduling before the date of the Proceeding and the other Party has not consented, the Party requesting to reschedule must deliver to the other Party and file with the Hearings Office a written request to reschedule. The written request must include:
 - (a) the reason for requesting to reschedule, with supporting documents if applicable;
 - (b) confirmation that the other Party was consulted about rescheduling;
 - (c) an explanation of the other Party's reason for refusing consent; and
 - (d) dates that the requesting Party is available to reschedule the Proceeding.

- (2) The other Party may respond to the request. That Party and must deliver any such response to the requesting Party and file with the Hearings Office within 5 Business Days of receiving the rescheduling request.
- (3) The Decision Maker will consider the request and determine whether the Proceeding should be rescheduled and, if so, on what terms.
- (4) If a Hearing or Motion has already started and the other Party does not consent to rescheduling, the Party requesting to reschedule will make this request to the Panel. The Panel will determine whether the Hearing or Motion should be rescheduled and, if so, on what terms.

9.05 Factors to Be Considered

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

9.06 Conditions May Be Imposed

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

RULE 10 - AWARDS OF COSTS

10.01 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 Party's failure to comply with these Rules. It may also whether the conduct of the Party has been unreasonable, frivolous or vexatious or the Party has acted in bad faith; this can include but is not limited to late requests to reschedule a Proceeding.

10.02 Procedure for Requesting Costs

- (1) A Party requesting an Order for costs must provide an explanation and, where practical, 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 or Motion, no evidence of the cost or expense 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 or Motions before the Discipline Committee.

RULE 11 - REINSTATEMENT APPLICATIONS

- (1) This Rule applies to applications for reinstatement made under section 36 of the ECE Act.
- (2) A Member making an application for reinstatement must file with the Hearing Office a Notice of Application specifying:
 - (a) the Order sought;
 - (b) the grounds of the application;
 - (c) the evidence that the Member intends to rely on; and
 - (d) the anticipated length of the Hearing.
- (3) A Member making an application for reinstatement must comply with the policies and practices of the College, including those related to credentialing requirements and re-entering practice.
- (4) The Member making an application for reinstatement file with the Hearings Office and deliver to the College:
 - (a) the Record of the original Hearing;
 - (b) the Record of any previous applications for reinstatement (including the transcript of any pervious reinstatement Hearing);
 - (c) any transcripts from the original Hearing; and
 - (d) any document upon which the Member intends to rely.

- (5) The Committee will not schedule a reinstatement application for a Hearing until the Member complies with sub-Rules (2), (3) and (4).
- (6) Once a Hearing has been scheduled for a reinstatement application, the Hearings Office shall deliver a Notice of Reinstatement Hearing to the Parties.



FORM 1: 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 Pre-Hearing Conference Chair 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 Pre-Hearing Conference Chair 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 Pre-Hearing Conference Chair?

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 number and email address of the moving party or their representative]

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



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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