



College of Occupational Therapists of Ontario

DISCIPLINE HEARINGS

An Information Package
For
Witnesses and Occupational Therapists

Revised spring 2006

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Discipline Hearings
Information Package
for
Witnesses & Occupational Therapists

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Section One

Introduction

This booklet is designed to provide the reader with an overview of the discipline hearing process. It is formatted into three sections, the first one being an overview of the hearings process; the second addresses questions that a complainant / witness may have and the third addresses questions that an occupational therapist / registrant may have.

What is the College of Occupational Therapists of Ontario?

The College of Occupational Therapists of Ontario is the regulatory body which regulates the practice of Ontario's 4000+ occupational therapists. Its mandate is to protect the public interest by regulating occupational therapy practice and ensuring that occupational therapists are competent professionals. It achieves this by overseeing the registration of therapists, setting standards of practice, ensuring the continuing competence of registrants, and dealing with concerns raised in relation to an occupational therapist's practice. Concerns can be related to a therapist's conduct (including sexual abuse), competence or their health, if their health is affecting their ability to practice.

What is a Discipline Hearing?

A hearing is a formal process, much like that in a court of law where a panel listens to concerns about an occupational therapist's practice and makes a decision as to whether the occupational therapist has committed an act of professional misconduct or is incompetent. The College's Discipline Committee is a statutory committee which is charged with the responsibility of hearing cases of related to professional misconduct and incompetence. A detailed investigation will have taken place before the case is referred to the Discipline Committee. Some of the information gathered during the investigation will become evidence. Discipline hearings are the "last recourse" for the College to deal with cases of serious professional misconduct or incompetence.

OVERVIEW OF PROCESS

How Do Cases Come Before the Discipline Panel?

There are four ways in which concerns may result in a referral to the Discipline Committee for a hearing.

1. A member of the “public”.
Concerns raised by members of the public are reviewed by the Complaints Committee (a screening committee) which gathers information prior to making their decision. The Committee may ask parties for information directly, seek an expert opinion and/or appoint an investigator prior to completing their deliberations. In serious cases, they may determine that a referral to discipline is warranted.
2. Employers and health care colleagues have an obligation to file a mandatory report with the College
 - if they suspect that an occupational therapist has sexually abused a client, or
 - if the therapist has been terminated for reasons of professional misconduct, incompetence or incapacity. The report may also be filed if the therapist resigned after the employer intended to terminate but before it actually occurred. This may occur when the therapist is going through a performance management or progressive discipline process.

The resulting reports are reviewed by the Executive Committee which like the Complaints Committee acts as a screening committee. It can also refer cases to the Discipline Committee after having completed an “investigation”.

3. The College may receive information about an occupational therapist from other sources, (e.g., a voluntary report of professional misconduct or incompetence, through an existing investigation, the Quality Assurance Committee of the College, from the police or, in rare cases, where the source of the information may not wish to have their name revealed). If the concerns are very serious, the Registrar may choose to conduct a Registrar’s Investigation. The results are reported to the Executive Committee. The Executive Committee may choose to refer the concerns to the Discipline Committee for a hearing.
4. Lastly, the Health Professions Appeal and Review Board is the body external to the College that reviews appeals related to the complaints process. At the conclusion of its review, it may refer a case to the College’s Discipline Committee.

After a Referral has been made

Once a referral to discipline has been made, the allegations are drafted and the appropriate parties are notified. If the Complaints Committee is making the referral, both the occupational therapist and the person that initially filed the complaint are notified. If the Executive Committee is making the referral, the occupational therapist is notified. The person who filed the mandatory report with the College or otherwise brought the matter to the College's attention is not considered a "complainant".

The occupational therapist and the "complainant" will both receive a letter indicating that the case has been referred to the Discipline Committee for a hearing. The letter to the therapist will also include a copy of the allegations. The "complainant" will receive a summary of the allegations.

At this point in the process the "complainant" becomes a witness in the College's case. The discipline hearing is between the College and the occupational therapist. The College's lawyer will prosecute the case on behalf of the College. To prepare for the hearing, the College's lawyer may meet with witnesses. Likewise, the occupational therapist and their counsel (if they retain counsel) will prepare their case. The occupational therapist may choose to retain legal counsel or represent themselves. Many occupational therapists facing a discipline hearing do retain legal counsel and the College is supportive of members doing so (see Part Three later in this document for further discussion about retaining legal counsel).

The occupational therapist (or their legal counsel if they have retained counsel) is then invited to contact the College's legal counsel to discuss the particulars of the hearing.

Hearings are Open to the Public

Anyone can attend a discipline hearing, including representatives of the media. In some cases, there may be a part(s) of a hearing that are closed to the public and all observers will be asked to leave the hearing room while that portion of the hearing is being heard. Parts of the hearing or the entire hearing may be closed to the public if:

- issues involving public security may otherwise be disclosed,
- information may otherwise be disclosed where the interest of any person may outweigh the need for the hearing to be open to the public,
- the occupational therapist may be involved in a criminal or civil proceeding which may be prejudiced, or,
- if the safety of the person may be jeopardized.

In cases where client's names form a part of the evidence, the College's lawyer will likely ask for a publication ban so that the names of the clients are not publicized.

Who Hears the Case?

A group of members from the hearings pool forms the panel. The panel is usually made up of five members - three occupational therapists and two members of the public who have been appointed to the College Council by the Lieutenant Governor. Appendix C provides you with the legislative authority for disciplinary proceedings as defined in sections 36 thru 56 of the *Health Professions Procedural Code*.

The discipline panel reviews evidence which may consist of documents or oral testimony.

When a case is referred to discipline, all members of the hearings pool are canvassed to determine:

- if they have a conflict of interest, and
- if they are available to participate in the hearing.

The chair of the Discipline Committee selects the actual panel.

Those members with a conflict or prior knowledge of the case will not be eligible to sit on the panel hearing the case.

This panel acts with the full authority of an administrative tribunal.

How Does Someone Find Out About a Hearing?

Once a referral to discipline is made, the occupational therapist and the complainant are informed directly by the College in writing. As per the legislation, information about the referral is placed on the College's public register and anyone who calls the College and inquires as to the registration status of the occupational therapist or upcoming hearings will be told about the hearing including the name of the therapist and a summary of the allegations. The information available to the public does not identify the name/s of the person/s who raised the concerns.

The information about the hearing is also made available on the College's website (www.coto.org) and when possible, in the College's newsletter.

Lastly, as per the College's Core Regulation, two weeks prior to the hearing, the College is required to place an official "Notice of Hearing" in a local newspaper where the therapist practices and a paper of general circulation, usually the Toronto Star. The occupational therapist (or their legal counsel if they have retained counsel) and the "complainant/s" will be notified prior to this publication taking place.

Why Does the College Publish the “Notice of Hearing” in the Newspaper?

In 1993, the Ministry of Health developed a template of proposed regulations for the self-regulating Colleges. Colleges were encouraged to adopt these templates and most Colleges adopted the template with some modifications. Our College adopted the template as presented by the Ministry.

It is in the public interest that the Ministry intended that the “notice of hearings” be made public. Some Colleges issue press releases in lieu of publications or advertise through different forums. Colleges without approved regulations may not advertise.

The regulation (general regulation) requires that:

- Not less than 14 days before the hearing, the notice must be placed in a newspaper of general circulation and in a newspaper in the area that the therapist practices
- The notice must include the date of the hearing, the purpose of the hearing, College contact information and the name of the therapist involved in the hearing

*** The specific clause is included in the College’s Core Regulation.

When is the Hearing Held?

The date(s) for the hearing are determined by:

- the amount of time that parties require to prepare for the case,
- the availability of panel members, legal counsels and witnesses
- the availability of a location

In rare circumstances, last minute scheduling changes may occur. All witnesses and the registrant (or their counsel if they have retained counsel) will be notified as soon as this information becomes available.

For witnesses:

If an emergency arises that makes it impossible for you to attend on the scheduled hearing day, please call the Manager of Investigations & Resolutions immediately. Telephone messages can be left at the College 24 hours a day, at (416) 214-1177 or 1-800-890-6570.

For occupational therapists:

If an emergency arises that makes it impossible for you to attend on the scheduled hearing day, please call your legal counsel (if you have retained counsel), the College’s counsel or the Manager of Investigations & Resolutions immediately. Telephone messages can be left at the College 24 hours a day, at (416) 214-1177 or 1-800-890-6570.

It has been this College's experience that hearings start, on average, approximately seven months from the date that parties are made aware of the pending proceedings.

Where are Hearings Held?

In most cases, discipline hearings are held at the College offices. In some special circumstances the proceedings may be held at another location.

How Do I Get to the College?

The College is located in downtown Toronto and is easily accessible by car, subway, bus and train. It takes about forty minutes to reach the College from Pearson International Airport. An Airport Express bus service operates between the Airport and the Westin Hotel located on the Queens Quay across the street from the College. The College is located five minutes away from the Toronto Island Airport or a five-minute walk south from Union Station. A map is included in appendix A. There are several public parking lots in the vicinity and there is underground parking in the College's office building.

For witnesses who testify on behalf of the College, there will be reimbursement for actual reasonable travel expenses, parking costs, meals and for those far from Toronto, hotel accommodations. Please see Part Two, later in this document for further information.

How long is a Hearing?

Hearings can vary in length. The shortest hearing that this College has held has been a half day and the longest has been six days. The occupational therapist may ask their legal counsel (if they have retained counsel) or the College's counsel as to the anticipated length of the hearing. It is important to keep in mind that this would be a rough estimate.

All other individuals should feel free to contact the Manager of Investigations and Resolutions to inquire as to the anticipated length of the hearing.

Prior to the Hearing: After the Referral has been made

What Happens Prior to the Hearing?

Legal counsel for the College and the occupational therapist (or their legal counsel if they have retained counsel) will discuss the case including any possibilities for settlement prior to the hearing date. A pre-hearing conference may be scheduled to facilitate these discussions.

Pre-hearing conferences are informal meetings that are attended by the College's legal counsel, the Manager of Investigations & Resolutions, the occupational therapist, (and their counsel if they have retained counsel) one member of the hearings pool or other person approved of by the hearings pool and independent legal counsel. The independent legal counsel is counsel for the hearings pool member who is chairing the proceedings. As a part of their role, the chair will often provide their opinion as to the strengths and weaknesses of each side's case and their thoughts as to how the case might be considered by a discipline panel. These meetings are held "off the record" which means that nothing that is said at the pre-hearing conference can be told to the discipline panel.

It is important to note that the hearings pool member who presides over the pre-hearing conference will not sit on the panel that eventually hears the evidence at the hearing. At the conclusion of the pre-hearing conference and/or other discussions, the parties may have come to an agreement about the facts of the case, the penalty (if any), certain other aspects of the case, the length of the hearing, the number of witnesses that may be called and potential hearing dates.

As a result of all discussions / negotiations, the hearing will either be contested or uncontested.

Contested Hearings

Contested hearings will occur when the occupational therapist states that he or she is "not guilty" or where there is partial agreement between the two sides. In this type of hearing, evidence will be presented to the discipline panel.

In some cases, the College (represented by prosecuting counsel) and the occupational therapist (and/or their legal counsel if they have retained counsel) may agree with some or all of the facts of the case. If agreement exists on all of the facts, both sides present the discipline panel with an **Agreed Statement of Facts**. If there is partial agreement or no agreement on the facts, the outstanding issues along with the supporting evidence will be presented by each side to the discipline panel.

If a hearing is contested, both parties will likely call on witnesses to testify. Prior to the hearing date, the Manager of Investigations & Resolutions and/or the College's legal

counsel will meet with all of the witnesses the College will be calling on to testify. This may include complainants, and/or clients and/or employers and/or other witnesses. The occupational therapist (and their legal counsel if they have retained counsel) may also have witnesses that they will call upon to testify.

In some cases, the College and the occupational therapist and/or their legal counsel if they have retained counsel will agree to a penalty in a case. From the College's perspective, this penalty must be approved by the Executive Committee of the College which takes into account the particulars of the case and the broader public interest. In cases where both sides agree to the penalty and the penalty has been approved by the College's Executive Committee, the discipline panel will be presented with a **Joint Submission on Penalty**, often called a **Joint Submission on Order**.

Uncontested Hearings

Uncontested hearings occur when the discipline panel is presented with both an Agreed Statement of Facts and a Joint Submission on Penalty. In this case, witnesses may not be required to testify.

Can I Visit the College Before the hearing?

If you wish, you can arrange to visit the College prior to the hearing date by contacting the Manager of Investigations & Resolutions. In some instances it may be possible to time your visit to coincide with another hearing so you can observe a hearing in progress prior to testifying.

While it may be helpful for witnesses to tour the College prior to testifying, the College regrets that it cannot cover any additional expenses associated with the visit.

What if I Have Special Needs?

For witnesses:

If you have any particular needs, (i.e. transportation, the need for an interpreter, health-related concerns) that might affect your ability to testify at the hearing, please notify the Manager of Investigations & Resolutions as soon as possible.

For occupational therapists:

If you have any particular needs, that might affect your ability to participate at the hearing, please notify your legal counsel (if you have retained counsel) or the Manager of Investigations & Resolutions as soon as possible.

On the Hearing Day

On the day of the hearing, all observers (not including the witnesses or the occupational therapist) are asked to sign in at the reception desk. Observers will be shown to the public gallery so that they may observe the hearing.

Witnesses are often asked to wait in another area of the facility until after they provide their testimony so that they will not be influenced, even unconsciously by what has been said prior to their testifying. The witness will be notified of this in advance. The occupational therapist (and their legal counsel if they have retained counsel) will be provided with a room at the College offices so that they can tend to any last minute preparations. The College will supply tea, coffee, pop, juice and snacks for witnesses and the occupational therapist (and their counsel if they have retained counsel).

Witnesses should plan to spend the entire day at the College. It is difficult to know in advance when you will be called to testify and how long your testimony will take. You might find it helpful to bring something to occupy your time while you are waiting.

A copy of the room set up can be found in Appendix B. The discipline panel sits at the head of the board room table and their lawyer (independent legal counsel) sits nearby. The College's lawyer and the Manager of Investigations and Resolutions will sit at the opposite end of the table across from the occupational therapist (and their counsel, if counsel has been retained). Directly across from the panel will be the seat for the witness, if witnesses are to be called.

The witness will be affirmed prior to testifying and then they will be subject to questioning by both the College's lawyer and the occupational therapist (or their lawyer if they have retained legal counsel) (examination and cross examination) Exhibits will be presented and the entire proceedings will be transcribed by a court reporter.

Process

1. All participants except for members of the discipline panel and the witnesses must be in the hearing room several minutes prior to the start of the hearing (usually 10 a.m.)
2. The panel members will enter the room and all participants will rise to acknowledge the panel. This is a process similar to that practiced in a court of law.
3. The Chairperson of the panel will ask everyone to be seated. S/he will introduce the proceedings and the participants including the discipline panel members

The hearing will then start.

The Chairperson will ask the College's lawyer to introduce the case. At this point, the Notice of Hearing (exhibit one) will be shared with the panel members. This is the first time that the panel members will be made aware of some of the details involved in the case.

The Testifying Process (if individuals are required to testify)

a) Start of Testimony

When witnesses are called to testify, they will be escorted into the hearing room and shown where to sit. They will be seated at the table facing the panel. The Chairperson will introduce the panel members and the other participants. In most cases, the occupational therapist who is the subject of the hearing may also be at the table.

When it is time for the occupational therapist to testify, the therapist will move to the seat directly facing the panel.

Appendix B shows the seating arrangements for the hearing.

The Chairperson will ask you to speak loudly, clearly, and slowly when you answer questions, so everyone can hear you. A court reporter records your testimony so that if there is an appeal you will not have to testify again before the courts. Rather a transcript of your testimony will be used.

b) Swearing In

The Chairperson will ask you make a non-religious promise that your testimony will be truthful (affirmation). If you have questions about this process please speak to the Manager of Investigations and Resolutions.

c) Examination-in-chief

When witnesses for the College are called to testify...

The College's lawyer will ask you a series of questions. S/he will review these questions with you prior to your giving testimony at the hearing. The purpose of the questions is to enable you to give the information that you have which will be of assistance to the panel. The first series of questions will identify you and establish your connection to the case. The questioning will proceed to the specific information you know related to the incident/s and allegations in question. Unless you are an expert witness (e.g., like another occupational therapist testifying about professional standards) your testimony will be confined to your personal observations of the events. You will not normally be able to testify about what other persons, other than the occupational therapist who is facing the hearing, have told you.

When the registrant is called to testify...

If you are representing yourself, you will take the stand and present your information to the panel. The purpose of your presentation is to share the information that you have related to the situation/s in question.

d) Cross-examination

For witnesses

Once the College's lawyer is finished asking you questions, the occupational therapist (or their lawyer, if they have retained counsel), will ask you a series of questions. The questions asked during the cross-examination may be more leading and wide ranging than those asked by the College's lawyer. This is because it is the role of the occupational therapist or their lawyer to clarify information, test your memory, and see if there are any contradictions or implausibility in your testimony.

For occupational therapists

Once your lawyer is finished asking you questions, or you have concluded your presentation, the College's counsel will ask you a series of questions. The questions asked during the cross-examination may also be more leading and wide ranging than those asked by your own lawyer, if you have one.

e) Follow-up questions

For witnesses

After the cross-examination is completed, the College's lawyer might have some further questions for you to help clarify matters that arose during the cross-examination. The panel members may also have some questions for you.

For occupational therapists

After the cross-examination is completed, your lawyer might have some further questions for you to help clarify matters that arose during the cross-examination or you (if you are representing yourself) may have additional comments to make. The panel may also have some questions for you.

What will happen when I testify?

During the course of the hearing, there will be scheduled breaks in the morning, afternoon and at lunchtime. If you need a break during your testimony, let the Chairperson know, and s/he will arrange for a short break.

If your testimony is interrupted by a break, or you are unable to finish your testimony by the end of the day, the Chairperson will caution you to not discuss your testimony with others. In fact, the College's lawyer will often not be able to speak with you at all during

your testimony to ensure that there is not even an appearance to trying to influence your testimony. The College's lawyer is not trying to be distant from you, but is simply following established hearing procedures.

There might be times during your testimony when the lawyers will need to argue a legal point before the panel. You might be excused from the hearing (i.e., asked to step out of the hearing room) should this occur.

For witnesses:

Once you have completed your testimony, you may be able to observe the rest of the hearing. It is advised that you let the College's lawyer or the Manager of Investigations & Resolutions know if you wish to do so. In some circumstances, you may be asked to wait outside the hearing room, as you may need to testify further.

Once the evidence has all been heard, both sides will have a chance to make closing argument (sometimes called closing submissions or argument) as to what the evidence has proved and what finding should be made by the discipline panel.

*** It is important to note that the panel may take a break at any time during the process.

What Happens After the Hearing?

Following the hearing, the discipline panel will deliberate in private and make a decision based on the evidence they heard. They must decide whether or not the occupational therapist has committed an act of professional misconduct or is incompetent. The deliberation process can be quite lengthy as the panel must carefully review all of the evidence. The panel may be able to render their decision on the day that the hearing concludes or may choose to reserve the right to send out their decision at a later date. If the panel finds that the occupational therapist has committed an act of professional misconduct or is incompetent, the panel has to hear any additional evidence and submissions about the penalty. If time permits, the panel may choose to hear evidence and submissions as to penalty on the same date or schedule additional dates for the penalty hearing.

At the end of the hearing, the panel has to write their decision and their reasons for the decision. This does not occur on the same day. Once the decision has been released (approximately two to four months post hearing), a copy will be sent to the occupational therapist (their legal counsel if they have retained counsel) and the "complainant". Copies of the decision and reasons are also made available to anyone who makes such a request.

What are the Possible Outcomes of a Hearing?

If there is a finding of misconduct or incompetence, the panel can order one or more of a number of penalties the most common of which are the following:

- ❖ Require the occupational therapist to appear before the panel to be reprimanded; and/or
(A reprimand is a process where the therapist and the panel members meet privately and the panel members have the opportunity to tell the therapist how they feel about his / her conduct)
- ❖ Impose terms, limits or conditions on the occupational therapist's certificate of registration; and/or
(This may include things like: the therapist has to take a course, participate in a mentoring program, practice under supervision etc...)
- ❖ Suspension of the occupational therapist's certificate of registration; and/or
(If a therapist is suspended, they will not be allowed to practice occupational therapy for a certain period of time. During this period, they will not be able to use the title occupational therapist or OT)
- ❖ Require a fine payable to the Government of Ontario; and / or
(This fine is payable directly to the Minister of Finance)
- ❖ Revocation of the occupational therapist's certificate of registration
(If a therapist has their certificate of registration revoked, they are not able to practice occupational therapy or use the title occupational therapist or OT. The therapist may be able to apply for reinstatement after a period of time)

In a separate component of the proceedings, the panel can also order costs in favour of the College or the occupational therapist. The College may apply for costs to cover the expenses associated with investigating and prosecuting the case. The therapist may apply for costs to cover their defence.

The panel may also choose to accept a joint submission as to penalty which may contain sanctions that are more tailored to the specific situation than the above (e.g., an apology). These agreements would be negotiated between the occupational therapist (or their counsel if they have retained counsel) and the College. These agreements would have to be approved by the College's Executive Committee prior to the date of the hearing.

After the Hearing

Can I Obtain a Copy of the Evidence?

Evidence presented at the hearing is available upon request (subject to the permission of the Discipline Panel). All client identifiers will be removed prior to its release and there is a cost of .25 (twenty five cents) per page charged for this service in addition to a file access fee. The access fee is determined by the amount of evidence presented.

As per the *Regulated Health Professions Act*, a copy of the transcript is available. The request should be made directly of the court reporter and there is a charge for this service. Should you require a copy of the transcript, please feel free to ask the Manager, Investigations & Resolutions for the contact information of the court reporter. It is advisable to ask the court reporter as to the number of pages to be transcribed and the cost per page prior to ordering the transcript.

Can the Decision be Appealed?

Yes, the decision can be appealed to the Divisional Court by either the College or the occupational therapist. A witness or complainant cannot appeal the decision.

Who Knows About the Decision and How?

As per the legislation, a summary of the hearing will be placed in the College's annual report and on the public register.

In addition, the same summary will be placed on the College website (www.coto.org), in the College newsletter and will be available to others upon request.

In cases where the occupational therapist was found "not guilty" or received only a reprimand or fine and the discipline panel feels that publication of the name is not warranted, the summary will not include the occupational therapist's name.

If you would like to receive a copy of the Newsletter and / or Annual Report which contains the summary, please let the Manager of Investigations & Resolutions know and s/he will arrange to have a copy sent to you.

Both the occupational therapist and the complainant will also receive a copy of the panel's decision and reasons.

How Long do Findings of Professional Misconduct stay on the Public Register?

Most findings of professional misconduct, except for cases of sexual abuse remain on the public register for a period of 6 years. Findings related to sexual abuse remain on the public register indefinitely.

What Happens if the Occupational Therapist Moves to Another Province or Country?

If the occupational therapist moves to another jurisdiction and intends on practicing occupational therapy in that jurisdiction, the licensing body of that jurisdiction will likely contact the College for information about the occupational therapist. The College can inform the licensing body about the finding of professional misconduct and the penalty that was issued by the discipline panel. The College can also supply the licensing body with any additional information that they require about the case.

Section 2

Information for Witnesses

Is the Complainant a Party of the Process?

The Complainant is not a party of the process but may be called as a witness during the proceedings. The discipline process is between the College and the occupational therapist. Having said that section 41.1 of the Health *Professions Procedural Code* states that:

Related to non-party participation in hearings

41.1 (1) A panel may allow a person who is not a party to participate in a hearing if,

(a) the good character, propriety of conduct or competence of the person is an issue at the hearing; or

(b) the participation of the person, would, in the opinion of the panel, be of assistance to the panel.

Related to the extent of participation, the *R.H.P.A.* states that,

(2) The panel shall determine the extent to which a person who is allowed to participate may do so and, without limiting the generality of this, the panel may allow the person to make oral or written submissions, to lead evidence and to cross examine witnesses. 1993, c. 37, s. 10. (Code)

If you wish to seek party status, please inform the Manager of Investigations & Resolutions of your intent at least two weeks prior to the hearing. S/he will be able to advise you as to how to proceed.

Why Would I be Called to Testify?

The purpose of the discipline hearing is to provide the panel with all of the information that would help them make a decision about the allegations made about an occupational therapist's practice. The College asks witnesses to testify because they have information that the College believes will assist the panel. The College has to "prove" the allegations before any disciplinary action can be taken. The defence may also call their own witnesses.

How Can I Prepare for the Hearing?

If the College has obtained information from you during an investigation, such as during an interview or receives information that directly pertains to you, it is enclosed with this package. Please review the material carefully.

Who Will Pay for my Expenses?

Accommodation

Hotel accommodations will be arranged for those witnesses who require an overnight stay. Please contact the Manager of Investigations & Resolutions to discuss your needs. S/he will be able to assist you with your arrangements. The hotel should be able to bill the College directly for your room and parking.

Travel

The College will reimburse you for travel expenses including economy air or economy train or bus fare or car mileage (35 cents per kilometre).

Attendance Allowance

You will be paid \$50.00 per day to cover your attendance at the College which includes meals and incidental expenses. This is the same amount of money a person is entitled to when they participate in a proceeding before the Ontario Court (General Division).

Support Person

You are welcome to bring a friend, relative or other support person with you to the hearing. The College regrets, however, that it cannot cover the expenses of people traveling with witnesses.

What Should I Wear?

Discipline hearings are quite formal. The discipline panel and other participants will be wearing business attire.

Can I be Summoned to Attend the Hearing?

A summons is a legal document that requires a person to attend a hearing. If requested, the College's lawyer can provide you with a summons. You can use the summons to explain why you must be absent from work or other responsibilities. The College or the defence may also issue, on its own, a summons for key witnesses.

Section Three

Information for the Occupational Therapist (Involved in the proceedings)

How Will I Know That My Case Has Been Referred to Discipline?

Shortly after a case is referred to discipline, you will receive a letter in the mail advising you of the referral and the allegations which the College will be presenting to the discipline panel. You will also be provided with the contact information for the College's lawyer and you (or your lawyer if you have retained legal counsel) will be asked to contact this individual to discuss the hearing and potential dates.

Should I Retain Legal Counsel?

The College is not in a position to advise registrants as to whether they should / should not seek legal counsel. However, many occupational therapists facing a discipline hearing do retain legal counsel and the College is supportive of members doing so. Should this be an option that you are considering, you may wish to contact the law line, operated through the Ontario Society of Occupational Therapists or the Canadian Association of Occupational Therapists. Many professional malpractice insurance policies pay for at least part of the cost of legal counsel.

Do I Have to Attend the Hearing?

No, but you should be advised that the discipline panel will hear the case without you. The College strongly encourages occupational therapists to attend the hearing because of the serious consequences that can follow from the hearing.

How Will I Know About the Information that the College Has for This Case?

Shortly after either you or your legal counsel contacts the College's lawyer, you or your lawyer will be provided with a disclosure package. This package will contain all of the information that the College has related to the case file with very rare exceptions (e.g., legal advice from its own lawyer). The College has a legal obligation to disclose all of this material to you.

What Information do I Have to Share with the College?

You do not have to initially disclose any information to the College. The only disclosure obligation that you have, with rare exceptions, is that you must present the College with the names of, and reports / evidence from any expert witness that you (or your counsel) will be calling on to testify. This disclosure must be made 10 days prior to the hearing. Your legal counsel, if you have retained counsel, will do this on your behalf.

How do Initial Discussions Take Place?

Prior to the hearing you (or your counsel) will likely communicate with College counsel on several different occasions. These communications will deal with the setting of hearing date(s), the possibility of a pre-hearing conference, the facts of the case and discussions as to the possible penalty (if any) in the case. At the conclusion of these discussions, both sides should have an idea as to if the hearing will be a contested or uncontested.

When do I Receive a Notice of Hearing?

Once the date(s) and other particulars of the hearing have been determined, you (or your legal counsel on your behalf) will officially be served with the Notice of Hearing. This is a formal document which contains details of the hearing including the allegations. It is the first exhibit that is introduced to the discipline panel at the hearing.

Am I Allowed to be in the Hearing Room at All Times?

Yes, unless there is a specific and exceptional reason why you should not be.

GLOSSARY

Admissible

evidence which the panel is bound to receive and consider

Adjournment

a putting off or postponing of a hearing until another time or place

Appeal

review of a Discipline panel decision by an appeal court

Bias

a pre-conceived opinion or pre-disposition to decide an issue in a certain way

Competent Witness

one who is legally qualified to be heard to testify in a cause; the presence of those characteristics, or the absence of those disabilities, which render a witness legally fit and qualified to give testimony in a court of justice.

Cross-examination

the examination of witness by the party opposed to the witness to test the truth of the evidence, to further develop it for other purposes

Deliberations

the act of weighing and examining the facts and law in contemplation of reaching a decision between two competing choices

Due Process

law in its regular course of administration through Courts of Justice; a course of legal proceedings according to those rules and principles which have been established in our systems of law for the enforcement and protection of private rights

Evidence

the means by which an alleged matter or fact is established or disproved

Examination in Chief

the first examination of a witness by the party who produces him or her

Incompetence

condition or legal status of a witness who is unable to give evidence by reason of some incapacity

Incriminating

facts tending to establish guilt

Motion

the formal request for relief

Natural Justice

see Due Process of Law

Non-suit

when the prosecution is unable to prove its case after hearing the evidence for the prosecution

Objection

the act of a party who objects to some matter or proceeding in the course of the hearing

Onus of Proof

the burden of proof or standard of proof

Pending

begun, but not yet completed

Prejudicial

harmful or damaging, detrimental to a party's rights

Quasi-Judicial

a term applied to the action, discretion of public administrative officers who are required to investigate facts and draw conclusions from them as a basis for their official action

Quorum

a number of members fixed by law or agreement

Relevant

that which is material to the facts in dispute and advances the issues in dispute

Reply

argument made in response to an opponent express position - answers opponent's position

APPENDIX A

Directions to the College

From Western Ontario by Car:

Take the QEW east to Toronto

Once on the Gardiner Expressway, take the Yonge, Bay, York street exit (this exit is right beside the Skydome)

You will be heading towards Bay Street

Once at Bay Street you will have the option of turning right towards the Air Canada Centre where you will be able to find parking immediately in a lot to your right or left.

OR

You may turn right on to Bay and right on to the Lakeshore where you will find parking in a lot to your left.

The College is located in the building on the corner of Bay and Lakeshore and across from the Westin Hotel. The name of the building is WaterPark Place

From Eastern Ontario by Car:

Take the 401 west to the Don Valley Parkway / South Don Valley Parkway Sud. Exit. The exit number is 375. You will be heading towards downtown. Merge onto the Don Valley Parkway South. The Parkway becomes the Gardiner. Take the Yonge Street exit. Take a slight left to take the ramp towards the Bay Street / York Street / Toronto Island / Harbourfront exit. Stay straight and go onto Lakeshore Boulevard East. There will be parking on your left hand side as you approach Bay street and parking on your right as soon as you pass Bay Street.

By Plane:

Travel into the Pearson International Airport and take a cab to the College. If you are staying at an area hotel, there may be a hotel shuttle available.

OR

Travel to the Toronto Island Airport and take the island ferry across. You can then cross the street and you will be at the College.

By Train:

Take the train to Union Station. You may choose to walk 5 minutes south on Bay Street or take a taxi to the College.

By Greyhound Bus:

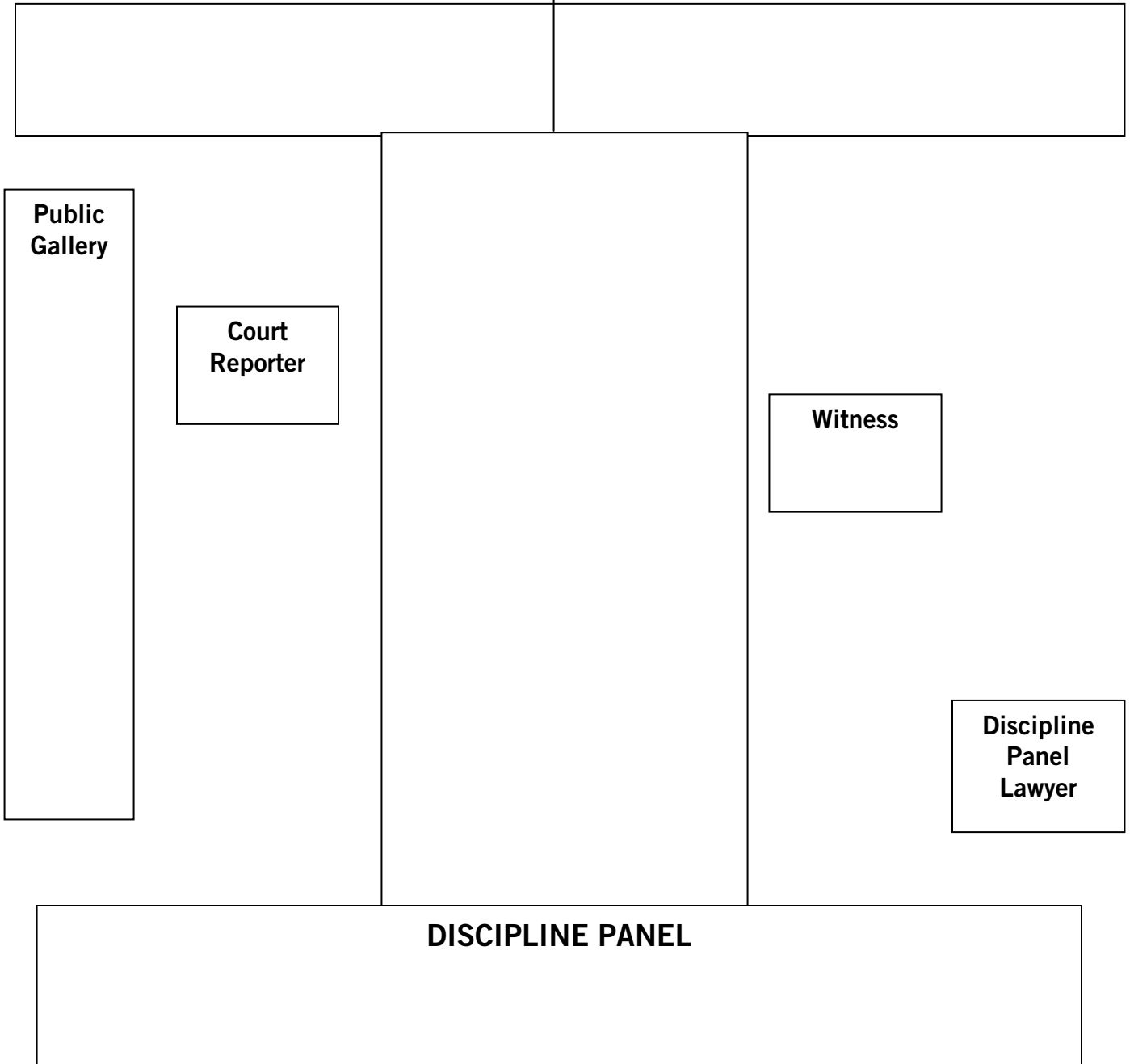
Contact the Greyhound offices directly. You will be able to take a subway or taxi from the station.

Appendix B

Seating Chart – Hearings Room

Manager I&R / College Counsel

Member's Counsel / Member



Regulated Health Professions Act (sections 36-56)

Discipline

Executive Committee referral

36. (1) The Executive Committee may refer a specified allegation of a member's professional misconduct or incompetence to the Discipline Committee. 1991, c. 18, Sched. 2, s. 36.

Allegations of sexual abuse

(2) In deciding whether or not to refer an allegation of the sexual abuse of a patient to the Discipline Committee, the Executive Committee shall take into account any opinion, required under subsection 85.3 (5), as to whether or not the member who is the subject of the report is likely to sexually abuse patients in the future. 1993, c. 37, s. 9.

Interim suspension

37. (1) The Executive Committee may, subject to subsection (5), make an interim order directing the Registrar to suspend or impose terms, conditions or limitations on a member's certificate of registration if,

(a) an allegation is referred to the Discipline Committee; and

(b) it is of the opinion that the conduct of the member exposes or is likely to expose his or her patients to harm or injury.

Procedure following interim suspension

(2) If an order is made under subsection (1) by the Executive Committee in relation to a matter referred to the Discipline Committee,

(a) the College shall prosecute the matter expeditiously; and

(b) the Discipline Committee shall give precedence to the matter.

Duration of order

(3) An order under subsection (1) continues in force until the matter is disposed of by a panel of the Discipline Committee.

Panel's order

(4) In a matter in which an order under subsection (1) was made, an order of a panel of the Discipline Committee directing the Registrar to revoke, suspend or impose conditions on a member's certificate takes effect immediately despite any appeal.

Restrictions on orders

(5) No order shall be made under subsection (1) with respect to a member by the Executive Committee unless the member has been given,

(a) notice of the Committee's intention to make the order; and

(b) at least fourteen days to make written submissions to the Committee. 1991, c. 18, Sched. 2, s. 37.

Panel for discipline hearing

38. (1) The chair of the Discipline Committee shall select a panel from among the members of the Committee to hold a hearing of allegations of a member's professional misconduct or incompetence referred to the Committee by the Executive or Complaints Committee.

Composition

(2) A panel shall be composed of at least three and no more than five persons, at least two of whom shall be persons appointed to the Council by the Lieutenant Governor in Council.

Idem

(3) At least one of the members of a panel shall be both a member of the College and a member of the Council.

Exclusion from panel

(4) No person shall be selected for a panel who has taken part in the investigation of what is to be the subject-matter of the panel's hearing.

Quorum

(5) Three members of a panel, at least one of whom must be a member who was appointed to the Council by the Lieutenant Governor in Council, constitute a quorum. 1991, c. 18, Sched. 2, s. 38.

Panel members deemed to continue

39. A member of a panel who ceases to be a member of the Discipline Committee after a hearing of a matter has commenced before the panel shall be deemed, for the purposes of dealing with that matter, to remain a member of the panel until the final disposition of the matter. 1991, c. 18, Sched. 2, s. 39.

Amendment of notice of hearing

40. A panel may at any time 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. 1991, c. 18, Sched. 2, s. 40.

Parties

41. The College and the member against whom allegations have been made are parties to a hearing. 1991, c. 18, Sched. 2, s. 41.

Non-party participation in hearings

41.1 (1) A panel may allow a person who is not a party to participate in a hearing if,

(a) the good character, propriety of conduct or competence of the person is an issue at the hearing; or

(b) the participation of the person, would, in the opinion of the panel, be of assistance to the panel.

Extent of participation

(2) The panel shall determine the extent to which a person who is allowed to participate may do so and, without limiting the generality of this, the panel may allow the person to make oral or written submissions, to lead evidence and to cross examine witnesses. 1993, c. 37, s. 10.

Disclosure of evidence

42. (1) Evidence against a member is not admissible at a hearing of allegations against the member unless the member is given, at least ten days before the hearing,

(a) in the case of written or documentary evidence, an opportunity to examine the evidence;

(b) in the case of evidence of an expert, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence; or

(c) in the case of evidence of a witness, the identity of the witness. 1991, c. 18, Sched. 2, s. 42 (1); 1993, c. 37, s. 11.

Exception

(2) A panel may, in its discretion, allow the introduction of evidence that is inadmissible under subsection (1) and may make directions it considers necessary to ensure that the member is not prejudiced. 1991, c. 18, Sched. 2, s. 42 (2).

Disclosure of evidence

42.1 (1) Evidence of an expert led by a person other than the College is not admissible unless the person gives the College, at least ten days before the hearing, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence. 1993, c. 37, s. 12.

Exception

(2) A panel may, in its discretion, allow the introduction of evidence that is inadmissible under this section and may make directions it considers necessary to ensure that the College is not prejudiced. 1998, c. 18, Sched. G, s. 17.

No communication by panel members

43. No member of a panel holding a hearing shall communicate outside the hearing, in relation to the subject-matter of the hearing, with a party or the party's representative unless the other party has been given notice of the subject-matter of the communication and an opportunity to be present during the communication. 1991, c. 18, Sched. 2, s. 43.

Legal advice

44. If a panel obtains legal advice with respect to a hearing, it shall make the nature of the advice known to the parties and they may make submissions with respect to the advice. 1991, c. 18, Sched. 2, s. 44.

Hearings public

45. (1) A hearing shall, subject to subsection (2), be open to the public.

Exclusion of public

(2) The panel may make an order that the public be excluded from a hearing or any part of it if the panel is satisfied that,

(a) matters involving public security may be disclosed;

(b) financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public disclosure of those matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public;

(c) a person involved in a criminal proceeding or in a civil suit or proceeding may be prejudiced; or

(d) the safety of a person may be jeopardized.

Orders preventing public disclosure

(3) In situations in which the panel may make an order that the public be excluded from a hearing, it may make orders it considers necessary to prevent the public disclosure of matters disclosed at the hearing, including orders banning the publication or broadcasting of those matters.

Public information may be disclosed

(4) No order shall be made under subsection (3) that prevents the publication of anything that is contained in the register and available to the public.

Exclusion of public

(5) The panel may make an order that the public be excluded from the part of a hearing dealing with a motion for an order under subsection (2).

Orders with respect to matters in submissions

(6) The panel may make any order necessary to prevent the public disclosure of matters disclosed in the submissions relating to any motion described in subsection (5), including prohibiting the publication or broadcasting of those matters.

Reasons for order, etc.

(7) The panel shall ensure that any order it makes under this section and its reasons are available to the public in writing.

Reconsidering of order

(8) The panel may reconsider an order made under subsection (2) or (3) at the request of any person or on its own motion. 1991, c. 18, Sched. 2, s. 45.

Exception to closed hearings

46. If a panel makes an order under subsection 45 (2) wholly or partly because of the desirability of avoiding disclosure of matters in the interest of a person affected, the panel may allow the person and his or her personal representative to attend the hearing. 1991, c. 18, Sched. 2, s. 46.

Sexual misconduct witnesses

47. (1) A panel shall, on the request of a witness whose testimony is in relation to allegations of a member's misconduct of a sexual nature involving the witness, make an order that no person shall publish the identity of the witness or any information that could disclose the identity of the witness. 1991, c. 18, Sched. 2, s. 47.

Interpretation

(2) In subsection (1),

"allegations of a member's misconduct of a sexual nature" include, but are not limited to, allegations that the member sexually abused the witness when the witness was a patient of the member. 1993, c. 37, s. 13.

Transcript of hearings

48. (1) The panel holding a hearing shall ensure that,

(a) the oral evidence is recorded;

(b) copies of the transcript of the hearing are available to a party on the party's request at the party's expense; and

(c) copies of the transcript of any part of the hearing that is not the subject of an order prohibiting publication are available to any person at that person's expense.

Transcripts filed with court

(2) If a transcript of a part of a hearing that is the subject of an order prohibiting publication is filed with a court in respect of proceedings, only the court and the parties to the proceedings may examine it unless the court orders otherwise. 1991, c. 18, Sched. 2, s. 48.

Admissibility of evidence

49. Despite the *Statutory Powers Procedure Act*, nothing is admissible at a hearing that would be inadmissible in a court in a civil action and the findings of a panel shall be based exclusively on evidence admitted before it. 1991, c. 18, Sched. 2, s. 49.

Members of panel who participate

50. Only the members of a panel who were present throughout a hearing shall participate in the panel's decision. 1991, c. 18, Sched. 2, s. 50.

Professional misconduct

51. (1) A panel shall find that a member has committed an act of professional misconduct if,

(a) the member has been found guilty of an offence that is relevant to the member's suitability to practise;

(b) the governing body of a health profession in a jurisdiction other than Ontario has found that the member committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct as defined in the regulations;

(b.1) the member has sexually abused a patient; or

(c) the member has committed an act of professional misconduct as defined in the regulations. 1991, c. 18, Sched. 2, s. 51 (1); 1993, c. 37, s. 14 (1).

Orders

(2) If a panel finds a member has committed an act of professional misconduct, it may make an order doing any one or more of the following:

1. Directing the Registrar to revoke the member's certificate of registration.

2. Directing the Registrar to suspend the member's certificate of registration for a specified period of time.

3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified or indefinite period of time.

4. Requiring the member to appear before the panel to be reprimanded.

5. Requiring the member to pay a fine of not more than \$35,000 to the Minister of Finance.

5.1 If the act of professional misconduct was the sexual abuse of a patient, requiring the member to reimburse the College for funding provided for that patient under the program required under section 85.7.

5.2 If the panel makes an order under paragraph 5.1, requiring the member to post security acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse under the order under paragraph 5.1. 1991, c. 18, Sched. 2, s. 51 (2); 1993, c. 37, s. 14 (2).

Idem

(3) In making an order under paragraph 2 or 3 of subsection (2), a panel may specify criteria to be satisfied for the removal of a suspension or the removal of terms, conditions and limitations imposed on a member's certificate of registration.

Suspension of order

(4) A panel may suspend the effect of an order made under subsection (2) for a specified period and on specified conditions. 1991, c. 18, Sched. 2, s. 51 (3, 4).

Orders relating to sexual abuse

(5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

1. Reprimand the member.
2. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following,
 - i. sexual intercourse,
 - ii. genital to genital, genital to anal, oral to genital, or oral to anal contact,
 - iii. masturbation of the member by, or in the presence of, the patient,
 - iv. masturbation of the patient by the member,
 - v. encouragement of the patient by the member to masturbate in the presence of the member.

Statement re impact of sexual abuse

(6) Before making an order under subsection (5), the panel shall consider any written statement that has been filed, and any oral statement that has been made to the panel, describing the impact of the sexual abuse on the patient.

Same

(7) The statement may be made by the patient or by his or her representative.

Same

(8) The panel shall not consider the statement unless a finding of professional misconduct has been made.

Notice to member

(9) When a written statement is filed, the panel shall, as soon as possible, have copies of it provided to the member, to his or her counsel and to the College. 1993, c. 37, s. 14 (3).

Incompetence

52. (1) A panel shall find a member to be incompetent if the member's professional care of a patient displayed a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates that the member is unfit to continue to practise or that the member's practice should be restricted.

Order

(2) If a panel finds a member is incompetent, it may make an order doing any one or more of the following:

1. Directing the Registrar to revoke the member's certificate of registration.
2. Directing the Registrar to suspend the member's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified or indefinite period of time.

Idem

(3) In making an order under subsection (2), a panel may specify criteria to be satisfied for the removal of a suspension or the removal of terms, conditions and limitations imposed on a member's certificate of registration. 1991, c. 18, Sched. 2, s. 52.

Costs if proceedings unwarranted

53. If a panel is of the opinion that the commencement of proceedings was unwarranted, it may make an order requiring the College to pay all or part of the member's legal costs. 1991, c. 18, Sched. 2, s. 53.

College's costs

53.1 In an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct or finds to be incompetent to pay all or part of the following costs and expenses:

1. The College's legal costs and expenses.
2. The College's costs and expenses incurred in investigating the matter.
3. The College's costs and expenses incurred in conducting the hearing. 1993, c. 37, s. 15.

Decision to complainant

54. A panel shall give its decision and reasons in writing to the parties and, if the matter had been referred to the Discipline Committee by the Complaints Committee, to the complainant in the matter. 1991, c. 18, Sched. 2, s. 54.

Release of evidence

55. The Discipline Committee shall release documents and things put into evidence at a hearing to the person who produced them, on request, within a reasonable time after the matter in issue has been finally determined. 1991, c. 18, Sched. 2, s. 55.

Publication of decisions

56. (1) The College shall publish a panel's decision and its reasons, or a summary of its reasons, in its annual report and may publish the decision and reasons or summary in any other publication of the College.

Publication of member's name

(2) In publishing a decision and reasons or summary under subsection (1), the College shall publish the name of the member who was the subject of the proceeding if,

- (a) the results of the proceeding may be obtained by a person from the register; or
- (b) the member requests the publication of his or her name.

Withholding of member's name

(3) The College shall not publish the member's name unless it is required to do so under subsection (2). 1991, c. 18, Sched. 2, s. 56.