



## PUBLIC INFORMATION POLICY AND PROCEDURE

---

### Determining the Relevance of a Charge or Conviction to an Occupational Therapist's Suitability to Practise

No. 4-10

---

**Established:** October 16, 2017  
**Approved by:** The Registrar  
**Revised Date:** November 28, 2017

---

Page 1 of 4

#### **Purpose:**

This policy outlines the process and criteria, to the extent possible, which guide the Registrar's exercise of discretion in determining:

- which charges and any resulting convictions for quasi-criminal or regulatory offences (collectively referred to as "non-criminal offences") are relevant to an occupational therapist's suitability to practise, and should therefore be published on the public register of the College of Occupational Therapists of Ontario (the "College"). The public register is known as [Find an Occupational Therapist](#) and accessed through the College website.

This policy applies to all occupational therapists (OTs) for all classes of registration with the College.

#### **Definitions:**

**Criminal offence:** Any offence found in Canada's *Criminal Code*. Examples of criminal offences include murder, manslaughter, theft, and assault.

**Quasi-criminal offence:** Any non-criminal offence that carries a penalty similar to that of a criminal offence such as a fine or imprisonment. Examples of quasi-criminal offences are those found in provincial statutes such as fishing or hunting without first obtaining the appropriate license under the *Fish and Wildlife Conservation Act, 1997*, or obstructing an inspector while an inspector is performing duties under the *Occupational Health and Safety Act, 1990*.

**Ticketable offence:** Any offence prosecuted pursuant to Parts I or II of the *Provincial Offences Act, 1990*. Ticketable offence is a type of quasi-criminal offence. Examples of ticketable offences include speeding and parking infractions, as well as failing to stop at a red light under the *Highway Traffic Act, 1991*, or consuming alcohol in a public place under the *Liquor Licence Act, 1990*. Ticketable offences provide the option to set a trial date or pay a fine (as opposed to requiring the charged person to come to court).

**Regulatory offence:** Any non-criminal offence that regulates conduct in the public interest. Examples include a regulated health professional failing to report the suspected sexual abuse of a client/patient or, an unauthorized person performing a controlled act, such as prescribing, contrary to the *Regulated Health Professions Act, 1991*. Regulatory offences are often dealt with at administrative tribunals and not in a court setting.

**Note:** For offences committed, or alleged to be committed, by OTs outside of Canada, the College will examine the elements of the offence and seek to find its equivalent in Canada to enable a determination as to whether to treat it as a criminal offence, a quasi-criminal offence, or a regulatory offence.

OTs are not required to report charges or convictions for ticketable offences to the College.

### **Principles:**

One of the ways the College ensures that it is accountable to the clients, families of clients, government and general public it serves to protect, is by being transparent. Transparency means being open about College processes and the reasons behind them, and providing as much information as possible about the OTs the College regulates. Transparency helps the people the College protects understand and be confident in the work the College does, and to use that understanding to make informed decisions about their health care providers.

At least five of the eight principles of transparency developed by the Advisory Group for Regulatory Excellence and adopted by the College apply to determining if information about non-criminal offence charges and convictions is relevant to an OT's suitability to practise, and should be published on the College website. Those principles are:

1. The mandate of regulators is public protection and safety. The public needs access to appropriate information in order to trust that this system of self-regulation works effectively.
2. Providing more information to the public has benefits, including improved patient choice and increased accountability for regulators.
3. Any information provided should enhance the public's ability to make decisions or hold the regulator accountable. The information needs to be relevant, credible and accurate.
6. Transparency discussions should balance the principles of public protection and accountability, with fairness and privacy.
7. The greater the potential risk to the public, the more important transparency becomes.

The full text of these [transparency principles](#) is accessible on the College's website.

### **Criteria**

The Registrar will determine relevance to suitability to practise by considering the following factors or criteria:

- i. The nature of the offence;
- ii. The seriousness of the offence;
- iii. Whether the offence occurred while practising the profession;
- iv. Whether the conduct could reasonably be seen to tarnish the reputation of the profession or bring disgrace and dishonour to it;
- v. Whether the offence put one or more individuals, whether or not they are clients of the OT, at risk of physical, mental, financial or other harm;
- vi. Whether the offence caused harm to an individual;
- vii. Whether the offence involves disregard for the safety of the public;
- viii. Whether the conduct appears to have been intentional or unintentional;
- ix. Whether the offence is part of a pattern of behaviour or an isolated event;

- x. Whether the offence can be seen to present a risk to people in the practice setting of the OT; and/or
- xi. Whether the offence suggests discrimination, disregard or disrespect for people based on a ground protected by the Human Rights Code (race, colour, ancestry, creed (religion), place of origin, ethnic origin, citizenship, sex (including pregnancy, gender identity), sexual orientation, age, marital status, family status, disability, receipt of public assistance).

There may be other factors not listed here that may be considered by the Registrar in individual circumstances.

The circumstances of each case, and the criteria considered by the Registrar to be relevant in each case, will be considered to determine relevance of the offence to suitability to practise.

When determining whether the charge or conviction for a non-criminal offence is relevant to an OT's suitability to practise, if the information raises no apparent concerns, the Registrar may determine that the information will not be published on Find an Occupational Therapist. In circumstances where it is not clear whether or not the information should be posted on Find an Occupational Therapist, the Registrar will seek advice as appropriate by, for example, consulting with legal counsel and/or other health profession Colleges.

#### **Procedure:**

If the Registrar determines that information about a charge or conviction for a non-criminal offence is relevant to an OT's suitability to practise, a summary of that information will be posted on the OT's profile on Find an Occupational Therapist. Recognizing that an important premise of our legal system is that individuals are innocent until proven guilty, the College will include a notation to the effect that in all cases a charge may be withdrawn by the police or an individual may be found not guilty in a court proceeding.

It is unlikely that information published by the College regarding charges or convictions would or could identify victims or alleged victims or other individuals. However, in appropriate cases, information may not be published if it would or could identify a third party, or a victim, particularly a victim of abuse, including sexual abuse. In such cases, as much information as possible will be published in order to maintain transparency but without infringing on the privacy of others.

#### **Applicable Legislation:**

This policy applies to part 17 of the College bylaws and specifically, subsections 17.01.1(q) and (w) which provide that the following information will be made publicly available on Find an Occupational Therapist:

17.01.1(q) details of any finding of guilt made by a court or other lawful authority (unless it has been reversed on appeal or judicial review) made on or after January 1, 2016, in respect of:

- i. a criminal offence;
- ii. any offence relating to the prescribing, compounding, dispensing, selling, or administering of drugs; or
- iii. any offence **relevant to the [occupational therapist's] suitability to practise** occupational therapy.

17.01.1(w) A summary of any currently existing charges against [an occupational therapist], commenced on or after November 1, 2017, of which the College is aware, in respect of any

criminal offence or any offence **relevant to the [occupational therapist's] suitability to practise occupational therapy**, in any jurisdiction, except if the publication of such information would violate any publication ban known to the College.

Any such summary shall be removed upon the written request of the [occupational therapist], if the [occupational therapist] is acquitted, the charge is withdrawn or, the charge has been superseded by a finding.

This policy may also be referenced when determining relevance to "suitability to practise" in the context of certain provisions of the *Regulated Health Professions Act, 1991* (such as subsections 23(7) and (11)(c) of the *Health Professions Procedural Code* which is schedule 2 to this Act) as appropriate.

When approving these bylaws, the College Council delegated to the Registrar the authority to determine if a charge or conviction for non-criminal offences is relevant to an OT's suitability to practise occupational therapy and should be published on Find an Occupational Therapist.

Note: This policy is based on the College of Dietitians of Ontario document "*Determining Member's Suitability to Practise*"