

**PROPOSED AMENDMENTS TO THE RULES OF PROCEDURE OF THE DISCIPLINE
COMMITTEE OF THE COLLEGE OF REGISTERED PSYCHOTHERAPISTS AND
REGISTERED MENTAL HEALTH THERAPISTS OF ONTARIO**

Effective Date: April 3, 2023

1) The following rule shall be added to the Rules of Procedure:

RULE 17 – CASE MANAGEMENT

17.01 Definition

17.01(1) In this rule, “case management chair” means a member of the Discipline Committee assigned to conduct case management conferences and/or case management in writing.

17.02 Application of this Rule

17.02(1) This rule applies to any proceeding referred to the Discipline Committee in which the merits hearing had not yet started on March 29, 2023, unless the Discipline Committee orders otherwise.

17.02(2) Rules 17.04(1) and 17.05(1) do not apply to a proceeding referred to the Discipline Committee in which a pre-hearing conference was held prior to March 29, 2023.

17.02(3) Rules 3.01, 4.01, 5.05, 6.01, 6.02, 6.03, 6.04, 8.01(2) and 8.02 do not apply to cases to which this rule applies.

17.02(4) In the event of a conflict between Rule 17 and any other provision of the Rules of Procedure, Rule 17 prevails.

17.03 General Principles

17.03(1) Discipline Committee proceedings shall be transparent, fair, efficient, just and timely. The Discipline Committee will adapt processes to the needs of a matter before it and to allow all participants, including the self-represented, to participate fairly and effectively. Decisions shall be made in the public interest and take particular account of the need to be accessible to all, including disadvantaged and vulnerable individuals and groups.

17.03(2) All orders and directions made under these rules shall be proportionate to the importance and complexity of the issues in dispute.

17.03(3) The Discipline Committee may waive any rule, change any time limit or due date, or excuse the failure to follow a rule or time limit, unless this is not allowed by the Code or other legislation, or it is clear from the context that a specific rule must always be followed.

17.03(4) The Discipline Committee may decide the procedure for anything not covered by these rules.

17.03(5) The Discipline Committee case manages every proceeding so that, among other things:

- a) hearings progress in a fair and timely way, in the public interest;
- b) hearing time is used efficiently and effectively;
- c) procedural and legal issues are identified early; and
- d) adjournments are only necessary in exceptional circumstances.

17.04 Case Management Conferences (CMCs)

17.04(1) A CMC is held in every proceeding.

17.04(2) The Discipline Committee may, at a party's request or on its own initiative, hold additional CMCs at any time during a proceeding.

17.04(3) Unless the parties agree otherwise, a case management chair who has been involved in discussions of the strengths and weaknesses of the parties' evidence and arguments, or of possible resolutions, will not sit as a member of the panel for the merits hearing.

17.04(4) CMC memos, and discussions during the CMC of the strengths and weaknesses of the parties' evidence and arguments and of possible resolutions, are without prejudice and may not be disclosed by anyone unless all parties and the Discipline Committee agree, or disclosure is required by law.

17.05 CMC Memos

17.05(1) Each party shall prepare a CMC memo using Form 17.

17.05(2) The CMC memo must:

- a) briefly describe the party's theory of its case and the legal issues as understood at the time;
- b) estimate the number of hearing days needed for that party's case;
- c) identify whether the party expects to call expert witnesses and on what issues;
- d) where possible, identify the intended witnesses;
- e) identify any intended pre-hearing motions;
- f) provide the party's position on settlement;
- g) identify the party's position on penalty; and
- h) include any other information to assist the CMC process.

17.05(3) The College shall deliver and file its CMC memo no later than 20 days before the first CMC. The member shall deliver and file their CMC memo no later than 10 days before the first CMC.

17.06 Scope of Case Management

17.06(1) The case management chair may assist parties to:

- a) identify or simplify the issues;
- b) explore agreement on facts or evidence; and
- c) identify potential motions.

17.06(2) The case management chair may make orders and directions to assist in the fair and efficient management of the proceeding, including:

- a) scheduling or adjourning hearing or motion dates;
- b) making orders under s. 45 of the Code;
- c) directing disclosure;
- d) directing a party to provide further particulars;
- e) setting dates for either party to send the other party and/or file with the Discipline Committee a list of witnesses, witness statements and documents that may be used in evidence.
- f) directing the order of witnesses;
- g) permitting or requiring a witness to provide their evidence in chief by affidavit;
- h) permitting the examination of a witness before the hearing;
- i) setting the time for delivery of expert reports and any responding expert witness reports;
- j) resolving objections to a proposed expert;
- k) directing how expert evidence will be called;
- l) directing experts to confer prior to the hearing;
- m) hearing and deciding pre-hearing motions;
- n) setting times for steps in the proceeding and/or delivery of documents;
- o) setting time limits for oral submissions and page limits for written submissions;
- p) directing cross-examinations on affidavits take place with only a court reporter or before the case management chair;
- q) directing the order in which motions will be heard, that motions be heard together or that motions be heard together with the merits; and

- r) exploring and applying alternatives to traditional adjudicative or adversarial procedures.

17.06(3) Parties shall request a CMC as soon as they are aware of anything that may affect the timely and efficient conduct of a scheduled motion or hearing.

17.06(4) The case management chair shall prepare a case management direction after every CMC.

17.06(5) A case management chair may make a case management direction at any time on their own initiative or following written communications or submissions from parties.

Rule 17.07 Hearing Management

17.07(1) The hearing panel or its chair may:

- a) schedule or adjourn an appearance;
- b) set timelines or deadlines for steps in the hearing;
- c) direct parties to make written submissions;
- d) set time limits for oral submissions and page limits for written submissions; and
- e) give any other procedural directions necessary to ensure the hearing proceeds fairly and effectively.

17.07(2) Hearing management may take place at a hearing management conference (HMC) with the panel or its chair.

17.07(3) The panel or its chair may make a case management direction at any time on their own initiative or following written communications or submissions from participants.

17.07(4) The Discipline Committee shall not permit cross-examination that is abusive, repetitive or otherwise inappropriate. The Discipline Committee may limit further examination or cross-examination where satisfied that the examination or cross-examination is sufficient to disclose fully and fairly all matters relevant to the issues in dispute.

Rule 17.08 Adjournments

17.08(1) Once hearing or motion dates are scheduled, parties are expected to be ready to proceed on those dates. Adjournments are only granted where it is necessary for a fair hearing, even when the parties consent.

17.08(2) A request to adjourn must be made in writing as soon as the need for it arises, unless a written request is impossible. The requestor must explain why the adjournment

is necessary, identify the exceptional circumstances supporting the request, and include the other party's position and availability for alternate hearing dates or explain why it was impossible to obtain that information from the other party.

17.08(3) The Discipline Committee may include terms and conditions when granting an adjournment.

2) Rule 11.07 is revoked and replaced with the following:

11.07 Vulnerable Witnesses and Evidence of Sexual History

11.07(1) Where it would facilitate a full and candid account of a witness's evidence or otherwise be in the interests of justice, the Discipline Committee may do one or more of the following:

- a) permit a support person to sit near a witness while the witness testifies. The Discipline Committee may direct the conduct of the support person during the witness's testimony,
- b) allow a witness to testify by videoconference or from behind a screen or other device that would allow the witness not to see the member (when the hearing is conducted in person) or direct the member to turn off their video feed or to remain off screen during the witness's testimony (when the hearing is conducted remotely). At all times the Discipline Committee, member and counsel must be able to see the witness,
- c) order that a member not personally cross-examine a witness and in such a case, shall appoint counsel to conduct the cross-examination.

11.07 (2) In deciding whether to make an order under rule 11.07(1), the Discipline Committee shall consider:

- a) the age of the witness;
- b) the witness's mental or physical disabilities, if any;
- c) the nature of the allegations;
- d) the nature of any relationship between the witness and the member;
- e) whether the order would assist the witness's security or protect them from intimidation or retaliation;
- f) the public interest in encouraging the reporting of professional misconduct and the participation of patients and other witnesses in the disciplinary process; and
- g) any other factors the Discipline Committee considers relevant.

11.07(3) Where a witness is 18 or under or has difficulty communicating their evidence due to a disability, they shall be accommodated as set out in rule 11.07 unless the witness declines.

11.07(4) In proceedings relating to allegations of sexual abuse or other sexual misconduct, evidence that the complainant has engaged in sexual activity, whether with the member or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant is:

- a) more likely to have consented to the sexual activity that forms the subject matter of the allegations; or
- b) less worthy of belief.

11.07(5) In proceedings relating to allegations of sexual abuse or other sexual misconduct, evidence shall not be adduced by or on behalf of the member that the complainant has engaged in sexual activity other than the sexual activity that forms the subject matter of the allegations, either with the member or with any other person, unless the Discipline Committee determines that the evidence:

- a) is not being called for the purpose of supporting an inference described in rule 11.07(4);
- b) is relevant to an issue at the hearing;
- c) is of specific instances of sexual activity; and
- d) has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.

11.07(6) In determining whether evidence is admissible under rule 11.07(4), the Discipline Committee shall consider:

- a) the interests of justice, including the right of the member to make full answer and defence;
- b) society's interest in encouraging the reporting of sexual misconduct by health professionals;
- c) whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case;
- d) the need to remove from the fact-finding process any discriminatory belief or bias;
- e) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility;
- f) the potential prejudice to the complainant's personal dignity and right of privacy;
- g) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and
- h) any other factor that the Discipline Committee considers relevant.

11.07(7) The Discipline Committee may direct that a motion under this rule be decided before the merits hearing begins.

3) Form 17, as set out in Appendix A, is added to the Rules of Procedure.