

Rules of Procedure

Fitness to Practise Committee

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Rules Of Procedure Of The College Of Physiotherapists Of Ontario Fitness to Practise Committee

Rule 1 Interpretation And Application

1.01 Definitions

1.01 In these rules, unless the context requires otherwise,

- “chair” means the chair of the full Fitness to Practise Committee or her or his designate;
- “Code” means the Health Professions Procedural Code which is Schedule 2 to the Regulated Health Professions Act;
- “College” means the College of Physiotherapists of Ontario;
- “defence counsel” means the lawyer or lawyers retained by or on behalf of a registrant;
- “deliver” means to serve on every other party or, in the case of a motion, motion participant and to file with the hearings office with proof of service, and “delivery” and “delivering” have corresponding meanings;
- “Fitness to Practise Committee” means the Fitness to Practise Committee of the College, and includes a panel of the Fitness to Practise Committee;
- “electronic” with respect to a proceeding means a proceeding held by telephone conference call or some other form of electronic technology allowing persons to simultaneously communicate with one another;
- “hearing office” means the employee or employees of a College who are specifically assigned the duty of providing administrative assistance to the Fitness to Practise Committee;
- “holiday” means,
 - (a) any Saturday or Sunday,
 - (b) New Year’s Day,
 - (c) Good Friday,
 - (d) Easter Monday,
 - (e) Victoria Day,
 - (f) Canada Day,
 - (g) Civic Holiday,
 - (h) Labour Day,
 - (i) Thanksgiving Day,

- (j) Christmas Day,
- (k) Boxing Day,
- (l) any special holiday proclaimed by the Governor General or the Lieutenant Governor, and
- (m) any other day designated by the College as a holiday,

and where New Year's Day, Canada Day, Christmas Day or Boxing Day falls on a Saturday or Sunday, the day designated by the College as a holiday;

- “independent legal counsel” means the lawyer or lawyers appointed by the Fitness to Practise Committee to provide advice in accordance with section 44 of the Code;
- “motion” is a request made to the Fitness to Practise Committee to make an order in a particular proceeding;
- “motion participant” is a party and any other person who would be affected by the order sought;
- “order” means any decision made by the Fitness to Practise Committee or the chair and includes a direction given by the Fitness to Practise Committee or the chair;
- “party” means a party under section 65 of the Code;
- “presiding officer,” in respect of a pre-hearing conference, means the person designated by the chair to preside over the pre-hearing conference;
- “proceeding” means any step in the Fitness to Practise hearing process and includes a motion, a pre-hearing conference and the hearing itself;
- “prosecutor” means the lawyer or lawyers appointed by the College to prosecute allegations against a registrant before the Fitness to Practise Committee;
- “vulnerable witness” means a witness who, in the opinion of the Fitness to Practise Committee, will have difficulty testifying or will have difficulty testifying in the presence of a party for appropriate reasons related to age, handicap, illness, trauma, emotional state or similar cause of vulnerability.

1.02 Interpretation of Rules

- 1.02(1) These rules shall be liberally construed to secure the just and, where justice for the registrant would not be compromised, the most expeditious determination of the allegations against the registrant.
- 1.02(2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.
- 1.02(3) Where a registrant is not represented by a lawyer, anything these rules require or permit a

lawyer to do shall be done by the registrant.

1.03 Application of Rules

1.03 These rules apply to all proceedings before the Fitness to Practise Committee of the College including, with all necessary modifications, applications for reinstatement made under sections 72 and 73 of the Code.

1.04 Computation, Extension or Abridgment of Time

- 1.04(1) In the computation of time under these rules or under an order, except where the contrary intention appears,
- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even where the words “at least” are used;
 - (b) where a period of less than seven days is required, holidays shall not be counted;
 - (c) where the time for doing an act under these rules expires on a holiday, the act may be done on the next day that is not a holiday; and
 - (d) service of a document made after 4:00 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.
- 1.04(2) Where a time of day is mentioned in these rules, in an order or in any document in a proceeding, the time referred to shall be taken as the time observed locally.
- 1.04(3) The Fitness to Practise Committee may extend or abridge any time required by these rules or an order on such terms or conditions as the Fitness to Practise Committee considers just either before or after the expiration of the time.

Rule 2 Documents

2.01 Notice to be in Writing

2.01 Where these rules require notice to be given, it shall be given in writing, which shall include fax or email transmission, unless otherwise provided in the Rules.

2.02 Filing of Documents

- 2.02(1) All documents to be filed in a proceeding shall be filed in the hearing office, except where they are filed in the course of a proceeding.
- 2.02(2) Any document may be filed in the hearing office by leaving it with the receptionist at the College or by sending it by courier to the College of Physiotherapists, 375 University Avenue, Suite 901. Toronto, Ontario, M5G 2J5 or, if it is less than 20 pages, by fax (416) 591-7758, or sending it by email to the College at investigations@collegept.org.
- 2.02(3) A document to be filed in the hearing office shall be clearly marked “Attention: Hearing Office.”

- 2.02(4) The person filing a document, unless it is sent by fax or email, shall file seven copies of the document.

Rule 3 Waiver of a Rule

3.01 Methods of Waiving a Rule

- 3.01(1) Any provision of these rules may be waived on the consent of the parties and, where relevant, motion participants or upon an order of the Fitness to Practise Committee.
- 3.01(2) A party or motion participant requesting that a provision of these rules be waived who does not have the consent of the parties and, where relevant, motion participants, shall bring a motion to the Fitness to Practise Committee requesting the waiver.
- 3.01(3) A motion under this rule may be made after a failure to comply with these rules has occurred.
- 3.01(4) The Fitness to Practise Committee may refuse to grant a motion for a waiver from a provision of these rules where a party or motion participant does not act on a timely basis.
- 3.01(5) The Fitness to Practise Committee may waive a provision of these rules on its own initiative if it first gives notice to the parties or motion participants and provides an opportunity for submissions to be made.

Rule 4 Submissions to the Chair

4.01 Procedure for Making Submissions to the Chair

- 4.01(1) Where the chair can direct or order anything, a party or, in the case of a motion, a motion participant, may make submissions in writing to the chair.
- 4.01(2) A party or motion participant may make submissions to the chair by addressing a letter to the chair and delivering a copy of the letter.
- 4.01(3) The other parties or motion participants may respond to the submissions described in subrule (2) by addressing a letter to the chair and delivering a copy of the letter.
- 4.01(4) Where the chair has given a direction or made an order before receiving submissions under this rule, the chair may reconsider the direction or order and may confirm, vary, suspend or cancel the direction or order.

Rule 5 Motions

5.01 Initiating Motions

- 5.01(1) A motion shall be made by a notice of motion in accordance with Form 5A unless the nature of the motion or the circumstances make a notice of motion impractical.

- 5.01(2) All procedural or interlocutory issues shall be raised in a motion as soon as possible and shall be heard on a day that is at least two weeks before the day upon which the hearing is scheduled to commence unless the nature of the motion requires that it be heard during the hearing itself.
- 5.01(3) A person bringing a motion shall deliver the notice of motion and materials in support of the motion at least 10 days before the motion is to be heard.
- 5.01(4) The other motion participants shall deliver their materials at least three days before the motion is to be heard.
- 5.01(5) Where it appears to the chair that the number and nature of the motions brought in a proceeding are not leading to the most just and expeditious disposition of the matter, the chair may direct that no further motions be brought before the commencement of the hearing unless the prior permission of the chair is obtained in accordance with the procedure in Rule 4.

5.02 Scheduling a Motion

- 5.02(1) A person bringing a motion shall obtain available dates and times for the hearing of the motion from the hearing office and shall attempt to obtain agreement from the other motion participants as to a date and time for the hearing of the motion. In the absence of agreement, the chair may fix a date for the hearing of the motion.

5.03 Evidence on Motions

- 5.03(1) Evidence on a motion shall be given by affidavit unless the Fitness to Practise Committee directs that it be given in some other form or unless otherwise provided by law.
- 5.03(2) All affidavits used on a motion shall,
(a) be confined to the statement of facts within the personal knowledge of the deponent, except that the affidavit may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit; and
(b) be signed by the deponent and sworn or affirmed before a person authorized to administer oaths or affirmations, which person shall also mark all exhibits as such to the affidavit.
- 5.03(3) A motion participant may not cross-examine the deponent of an affidavit filed by another motion participant unless the Fitness to Practise Committee directs otherwise.
- 5.03(4) The Fitness to Practise Committee shall not direct that the deponent of an affidavit be cross-examined unless the interests of the case require otherwise.

5.04 Materials on Motions

- 5.04(1) The person bringing a motion shall deliver the notice of motion and other materials in

support of the motion in the form of a motion record.

- 5.04(2) The motion record shall contain the notice of motion, all affidavits to be relied upon and any other material to be relied upon.
- 5.04(3) If another motion participant intends to rely upon materials, the motion participant shall deliver those materials in the form of a responding motion record.
- 5.04(4) A motion record and responding motion record shall have consecutively numbered pages and a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter.
- 5.04(5) A motion participant may deliver separately from the motion record or responding motion record a book of authorities and a factum consisting of a concise statement, without argument, of the facts and law relied on by the motion participant.

5.05 Assigning a Motion Panel

- 5.05(1) The chair shall, in accordance with section 4.2 of the Statutory Powers Procedure Act, assign a panel of one or more registrants of the Fitness to Practise Committee to hear each motion.
- 5.05(2) A motion participant who believes that the motion ought to be heard by members of the Fitness to Practise Committee who will not sit on the hearing panel shall request a direction from the chair on the matter in the notice of motion or a notice of cross-motion.

5.06 Hearing Motions Electronically

- 5.06 Motions may be heard electronically in accordance with these rules unless the chair or a panel of the Fitness to Practise Committee directs otherwise.

5.07 Written Order

- 5.07 The order of the Fitness to Practise Committee disposing of a motion shall be in Form B.

5.08 Time Limits on Oral Submissions

- 5.08 No motion participant shall take more than one hour, including a reply, to make oral submissions on a motion without the prior permission of the Fitness to Practise Committee.

Rule 6 Pre-Hearing Conferences

6.01 Initiating Pre-hearing Conferences

- 6.01(1) The Fitness to Practise Committee may direct the parties to participate in a pre-hearing conference.

- 6.01(2) The chair shall designate a person to act as the presiding officer.
- 6.01(3) The presiding officer shall, after consultation with the hearing office, defence counsel and the prosecutor, schedule a date for the pre-hearing conference to be held and shall notify the parties of the date.
- 6.01(4) The senior prosecutor and the registrant or, where the registrant is represented by counsel, the senior defence counsel shall attend at the pre-hearing conference.
- 6.01(5) The presiding officer may direct a pre-hearing conference to be held electronically.

6.02 Pre-hearing Conference Memorandum

- 6.02(1) Where a pre-hearing conference is directed, each of the parties shall complete a pre-hearing conference memorandum to the satisfaction of the presiding officer.
- 6.02(2) The prosecutor shall deliver its pre-hearing conference memorandum 20 days before the date of the conference and defence counsel shall deliver its pre-hearing conference memorandum 10 days before the date of the conference.
- 6.02(3) Where the presiding officer concludes that a pre-hearing conference memorandum is inadequate for the most effective use of the pre-hearing conference, she or he may, subject to subrule (4), require the party to deliver a more adequate memorandum by a specified date and may adjourn the date of the conference.

6.03 Procedure at Pre-hearing Conference

- 6.03(1) At the pre-hearing conference, the presiding officer shall discuss the following with the parties:
- (a) whether any or all of the issues can be settled;
 - (b) whether the issues can be simplified; and
 - (c) whether there are any agreed facts
- 6.03(1.1) At the Pre-Hearing conference, the presiding officer may discuss the advisability of attempting other forms of resolution of the matter.
- 6.03(2) After the discussion referred to in subrule (1), the presiding officer shall discuss with the parties and then may give directions or, if the presiding officer is a member of the Fitness to Practise Committee, make orders about the following:
- (a) the scheduling of any motions that can be heard before the hearing;
 - (b) the content and timing of any additional disclosure;
 - (c) the delivery and form of any documents to be used at the hearing and whether the documents can appropriately be reviewed by the Fitness to Practise Committee before the commencement of the hearing;
 - (d) the delivery of written arguments and books of authorities and whether these can appropriately be reviewed by the Fitness to Practise Committee before the commencement of the hearing;
 - (e) the scheduling of the hearing;

- (f) the scheduling of any motions that cannot be heard before the commencement of the hearing;
- (g) when the witnesses to be called at the hearing must be available to testify;
- (h) the use and scheduling of panels of expert witnesses; and
- (i) any other matter that may assist in the just and most expeditious disposition of the proceeding.

6.03(3) The presiding officer or independent counsel on the instruction of the presiding officer shall prepare a letter report after the pre-hearing conference listing every agreement reached, every direction given or order made and every undertaking given by the parties and shall send a copy of the letter report to the parties.

6.03(4) If a party becomes aware of additional circumstances that would materially affect the conduct of the hearing before the commencement of the hearing, the party may request the presiding officer to schedule a supplementary pre-hearing conference.

6.03(5) The provisions of Rule 6 apply to further or supplementary pre-hearing conferences with necessary modifications.

6.04 Motions at the Pre-hearing Conference

6.04 Where the presiding officer is a member of the Fitness to Practise Committee, a party may bring a motion to be heard at the pre-hearing conference in accordance with Rule 5.

Rule 7 Disclosure and Production

7.01 Disclosure

7.01(1) The parties shall make such disclosure as is required by law and may make such additional disclosure as will assist to make the pre-hearing conference and the hearing effective and fair.

7.02 Production of Documents

7.02(1) A summons for the production of documents that are not in the possession of a party shall not require the production of any documents before the commencement of the hearing.

7.02(2) Notice of a motion relating to the production of documents shall be served on the person possessing the documents and on any other person with a significant interest, including a privacy interest, in the documents.

Rule 8 Electronic Hearings and Proceedings

8.01 Initiating an Electronic Hearing

8.01(1) The Fitness to Practise Committee may order an electronic hearing except where oral evidence is to be heard and a party objects, and provided that the obligation to hold the hearing in public can be met.

8.01(2) Before ordering an electronic hearing, the Fitness to Practise Committee shall provide

notice and an opportunity to the parties to make submissions on the issue.

- 8.01(3) Where the Fitness to Practise Committee orders an electronic hearing and a notice of an electronic hearing has not previously been given, the hearing office shall give notice of the electronic hearing in accordance with section 6 of the Statutory Powers Procedure Act unless the parties waive the requirement.
- 8.01(4) The Fitness to Practise Committee may order that part of a hearing be held electronically where the parties consent.

8.02 Procedure on Electronic Proceedings

- 8.02(1) This rule applies to any proceeding held electronically including motions, pre-hearing conferences and hearings.
- 8.02(2) At least 48 hours before an electronic proceeding is scheduled to commence, every person participating in the proceeding shall give notice to the hearing office of the telephone number where he or she can be reached for the proceeding.
- 8.02(3) Every person participating in the proceeding shall ensure that he or she can be reached at the telephone number provided to the hearing office beginning at five minutes before the proceeding is scheduled to commence.

Rule 9 Taking Evidence Before the Hearing

9.01 Initiating the Taking of Evidence Before the Hearing

- 9.01(1) A party who intends to introduce the evidence of a person at the hearing and who has made all required disclosure in respect of the evidence of that witness may, with the consent of the parties or by order of the Fitness to Practise Committee, examine the witness on oath or affirmation before the hearing for the purpose of having the witness' testimony available to be tendered as evidence at the hearing.
- 9.01(2) The Fitness to Practise Committee may make an order under subrule (1) if it is satisfied that the order would not cause significant prejudice to a party and would not prevent the Fitness to Practise Committee from fully and fairly understanding the evidence.
- 9.01(3) The party who intends to introduce the evidence of the witness shall ensure that the examination is recorded, at the party's cost, by a certified court reporter or a person with similar qualifications acceptable to the Fitness to Practise Committee and shall deliver a copy of the transcript of the evidence at least three days before the hearing is scheduled to commence.
- 9.01(4) The party who intends to introduce the evidence of the witness shall also ensure that the examination is videotaped, at the party's cost, unless the parties consent or the Fitness to Practise Committee orders otherwise and shall file a copy of the videotape at least three days before the hearing is scheduled to commence.

9.01(5) The examination shall take place at the date, time and place consented to or ordered by the Fitness to Practise Committee.

9.01(6) The Fitness to Practise Committee may impose terms or conditions in the order for an examination including a term or condition that the party intending to call the witness pay for the reasonable travel expenses of the lawyers for the other parties and the registrant (where the registrant is not the party intending to call the witness).

9.02 Procedure at the Examination

9.02(1) A witness examined under subrule 9.01(1) may, after being sworn or affirmed by a person authorized to do so, be examined, cross-examined and re-examined in the same manner as a witness at a hearing.

9.02(2) Where a question is objected to, the objector shall state briefly the reason for the objection, and the question and the brief statement shall be recorded.

9.02(3) The party objecting to a question may, after the objection, permit the question to be answered subject to a ruling being obtained from the Fitness to Practise Committee before the evidence is used at a hearing.

9.02(4) A ruling on the propriety of a question that is objected to and not answered may be obtained on motion to the Fitness to Practise Committee.

9.02(5) Where the question is not answered under subrule (3) and the objection is found not to be valid, the person who objected shall ensure that the witness is produced at the expense of the person who objected for another examination before the hearing or at the hearing to answer the question.

9.02(6) Any document used during the examination that is intended to be filed as an exhibit at the hearing shall be marked at the examination by the person introducing it so it can be identified later and the person introducing it shall deliver a copy of it.

9.03 Use of Examination at the Hearing

9.03(1) At the hearing, any party may use the transcript and videotape of an examination made under this rule as the evidence of the witness unless the Fitness to Practise Committee orders otherwise.

9.03(2) A witness who has been examined under this rule shall not be called to give evidence at the hearing except on the order of or at the request of the Fitness to Practise Committee.

9.03(3) Where a witness is ordered or requested to give evidence at the hearing under subrule (2), the party who tendered the evidence under subrule (1) shall arrange for the witness to attend at the party's expense.

9.03(4) The transcript and any videotape need not be read or played during the hearing with the

parties present unless a party or the Fitness to Practise Committee requires the reading of a transcript or the playing of a videotape.

- 9.03(5) Where the reading of a transcript or the playing of a videotape is required under subrule (4), the party who initiated the examination under subrule 9.01(1) shall conduct the reading or playing during the presentation of that party's case unless the Fitness to Practise Committee orders otherwise.

Rule 10 Non-Party Participation

10.01 Motions by Non-Parties

- 10.01(1) A person who is not a party who wishes to participate in the hearing shall bring a motion in accordance with these rules and the chair shall assign the panel that will be conducting the hearing to hear the motion.
- 10.01(2) The notice of motion shall set out the extent of participation the person proposes to have in the hearing and shall be accompanied by the evidence upon which the person intends to rely in support of the motion and written submissions in support of the motion.

10.02 Notice of Constitutional Questions

- 10.02(1) Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a party claims a remedy under subsection 24(1) of the Canadian Charter of Rights and Freedoms, notice of a constitutional question shall be delivered and shall also be served on the Attorneys General of Canada and Ontario as soon as the circumstances requiring notice become known and, in any event, at least 15 days before the question is to be argued.
- 10.02(2) Where the Attorney General of Canada and Ontario are entitled to notice, he or she or both of them are entitled to adduce evidence and to make submissions to the Fitness to Practise Committee regarding the constitutional question.

Rule 11 Procedure During the Hearing

11.01 Vulnerable Witnesses

- 11.01(1) The Fitness to Practise Committee 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.
- 11.01(2) The Fitness to Practise Committee may order that a vulnerable witness testify outside the hearing room or behind a screen or other device that would allow the vulnerable witness not to see the registrant if the Fitness to Practise Committee is of the opinion that the exclusion is necessary to obtain a full and candid account of the matter.

- 11.01(3) The Fitness to Practise Committee shall not make an order under subrule (2) unless arrangements are made for the registrant, the Fitness to Practise Committee and counsel for the parties to watch the testimony of the vulnerable witness by means of closed-circuit television or otherwise and the registrant is permitted to communicate with counsel while watching the testimony.
- 11.01(4) The Fitness to Practise Committee may order that a registrant not personally conduct the cross-examination of a vulnerable witness if the Fitness to Practise Committee is of the opinion that the order is necessary to obtain a full and candid account of the vulnerable witness' testimony.
- 11.01(5) Where the Fitness to Practise Committee makes an order under subrule (4), it may appoint counsel for the purpose of conducting the cross-examination without cost to the registrant.

11.02 Oral and Written Argument

- 11.02(1) The Fitness to Practise Committee may place reasonable limits on the length of oral submissions.
- 11.02(2) The Fitness to Practise Committee may, after hearing submissions, order the parties to submit written arguments on some or all of the issues at the hearing and may give directions as to the form and timing of such written arguments.

Rule 12 Giving Notice of Final Decision

- 12.01(1) In addition to the methods described in section 18 of the Statutory Powers Procedure Act, the Fitness to Practise Committee may send each party a copy of its final decision or order, including the reasons if any have been given,
- (a) by courier, or
 - (b) by personal service.
- 12.01(2) If a copy is sent by courier, it shall be sent to the most recent address known to the Fitness to Practise Committee and shall be deemed to be received by the party on the day the copy is received by a person at that address.

Rule 13 Costs

13.01 Costs for Non-compliance with Rules

- 13.01 Where the Fitness to Practise Committee is entitled to order the payment of costs or expenses by a party, the Fitness to Practise Committee may consider the failure of a party to comply with these rules in addition to any other factors which would be relevant to an order entitling a party to the payment of costs or expenses.

Rule 14 Reinstatement Applications

14.01 Initiating Reinstatement Applications

- 14.01(1) This rule applies to applications for reinstatement made to the Fitness to Practise Committee under sections 72 and 73 of the Code.
- 14.01(2) A registrant making an application for reinstatement shall deliver a notice of the application specifying the order sought, the grounds of the application, the documentary and oral evidence that the registrant will introduce and the anticipated length of the hearing.
- 14.01(3) The hearing office shall schedule a reinstatement application for a hearing within a reasonable period of time after receiving a notice of application which complies with subrule(2) and after consulting the applicant with regard's to the applicant's availability.
- 14.01(4) Once a reinstatement application has been scheduled for hearing, the College shall prepare and serve on the applicant a notice of hearing.

Form 5A

Notice of Motion

[General heading]

Notice of Motion

The [identify moving party] will make a motion to the Fitness to Practise Committee of the College of Physiotherapists of Ontario on [day], [date], at [time], or as soon after that time as the motion can be heard, at 375 University Avenue, Suite 901, Toronto, Ontario M5G 2J5.

The motion is for [state here the precise relief sought].

The grounds for the motion are [specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on].

The following documentary evidence will be used at the hearing of the motion: [list the affidavits or other documentary evidence to be relied on].

[Date]

TO: [Name, address, telephone and fax number of responding motion participant's lawyer or responding motion participant]

[Name, address, telephone and fax number of moving motion participant's lawyer or moving motion participant]

Form 5B Order

File no.

Fitness to Practice committee of the College of Physiotherapists of Ontario

[Names of tribunal members])
)
) [Day and date of order]

Between :

College of Physiotherapists of Ontario

- And -

[Name of member]

Order

THIS MOTION, made by [identify moving motion participant] for [state the relief sought in the notice of motion, except to the extent that it appears in the operative part of the order], was heard this day [or heard on (date)], at the College of Physiotherapists of Ontario, 375 University Avenue, Suite 901, Toronto, Ontario, M5G 2J5 [or by conference call].

On reading the [give particulars of the material filed on the motion] and on hearing the submissions of counsel for [identify motion participants], [where applicable, add “(identify motion participant) appearing in person” or “no one appearing for (identify motion participant), although properly served as appears from (indicate proof of service)],

1. The Fitness to Practise committee orders that ...

2. The Fitness to Practise committee orders that ...

[Signature of chair]

Form 6A

Pre-Hearing Conference Memorandum

[General heading]

Pre-Hearing Conference Memorandum of the College
[or of the registrant, as the case may be]

Date of Pre-Hearing Conference:

Prosecutor:

Defence Counsel:

Background Information

1. Please attach a copy of the notice of hearing to this memorandum.
2. Set out a brief statement of the theory of the College's case as you understand it, including factual contentions.
3. Set out a brief statement of the theory of the Registrant's case as you understand it, including factual contentions.
4. Provide a description of the legal issues to be determined at the hearing.
5. For every witness you may call at the hearing, set out or attach a statement of the substance of the evidence of the witness.
6. Attach a copy of any document that would assist the pre-hearing conference to be more effective.

Settlement and Agreements

7. What are the prospects for settlement?
8. Have counsel discussed the matter and sought instructions?
9. Would this be a suitable case to attempt informal resolution?
10. Set out the facts in numbered paragraphs that you believe should be agreed to.
11. Set out a numbered list of documents that you believe should be admitted on agreement.

Additional Steps Before the Hearing

12. On the subject of motions:
 - Will you be bringing any motions before or during the hearing?
 - If so, what order will you seek and on what grounds?
 - When do you intend to bring each motion?

13. On the subject of disclosure:
 - Are there any issues with respect to disclosure?
 - Has the College made full disclosure to the registrant?
 - Have you produced all of the expert reports upon which you intend to rely?
 - If you have not yet made all required disclosure, why not and by what date will it be done?

14. On the subject of a documents brief:
 - Who will prepare and deliver a brief containing the notice of hearing, the documents admitted by agreement, and the presiding officer's report?
 - By what date will the brief be delivered?
 - Should the Fitness to Practise Committee be able to review the brief before the hearing?

15. On the subject of written arguments:
 - Are there any issues which should be the subject of written argument? If so, identify them.
 - When should the written arguments be delivered by?
 - Should the Fitness to Practise Committee be able to review the written arguments before the hearing?

16. On the subject of a book of authorities:
 - Will you be referring to any authorities other than the Regulated Health Professions Act, the Health Professions Procedural Code and the regulations defining professional misconduct? If so, list them.
 - Should those authorities be copied for the Fitness to Practise Committee or for independent legal counsel?
 - If so, who should prepare the authorities brief and when should it be delivered?
 - Should the Fitness to Practise Committee or independent legal counsel be able to review the authorities brief before the hearing?

Planning the Hearing

17. On the subject of scheduling the hearing:
 - Are you ready for the hearing?
 - Are there any special considerations affecting the setting of a date arising from the availability of witnesses or otherwise?
 - How long will the hearing last?
 - Other than the motions listed above, the witnesses listed above and the normal submissions, is there anything else that will have to be dealt with during the hearing?

itself?

Estimate the length of time it will take to dispose of any motions you will bring during the hearing including adequate time for deliberation by the Fitness to Practise Committee: In numbered paragraphs, list your witnesses in the order that you will call them and estimated length of time it will take to hear their entire evidence, including cross-examination and questions from the Fitness to Practise Committee:

<u>Number</u>	<u>Witness' Name</u>	<u>Estimated Time</u>
1.		

How long will it take you to make your opening and closing submissions on the issue of finding?

18. List the witnesses you intend to have available to testify for each day of your case:

<u>Day</u>	<u>Witnesses Available Beginning That Day</u>
1.	

19. Do you believe the Fitness to Practise Committee would be assisted by hearing expert evidence by a panel of experts on any particular issue?

[Date]

[Signature of most responsible counsel who will be attending at the hearing]

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