

**RULES OF PROCEDURE
in effect until December 31, 2022**

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RULE 1 - INTERPRETATION AND APPLICATION

1.01 Definitions

1.01 In these rules, unless the context requires otherwise,

“chair” means the chair of the Tribunal, the vice-chair acting in the chair’s absence or their designate; **(Revised 01/09/21)**

“Code” means the Health Professions Procedural Code which is Schedule 2 to the *Regulated Health Professions Act*;

“College” means the College of Physicians and Surgeons of Ontario;

“defence counsel” means the lawyer or lawyers retained by or on behalf of a member;

“deliver” means to serve on every other party or, in the case of a motion, motion participant and to file with the Tribunal Office with proof of service, and “delivery” and “delivering” have corresponding meanings; **(Revised 18/02/04;01/09/21)**

“Discipline Committee” **(Removed 01/09/21)**

“electronic” means a proceeding held by telephone conference call, video conference call, or some other form of electronic technology allowing persons to communicate with and hear one another; **(Revised 01/09/21)**

“file” means file with the Tribunal and a “filing” is anything that is filed; **(Added 01/09/21)**

“Hearings Office” **(Removed 01/09/21)**

“holiday” means any Saturday, Sunday, Ontario public holiday or other day on which the Tribunal Office is closed: **(Revised 01/09/21)**

“lawyer” means a person licensed by the Law Society of Ontario; **(Revised 01/09/21)**

“member” means a member of the College who is the subject of a hearing before the Tribunal and includes a former member; **(Revised 01/09/21)**

“motion” is a request made to the Tribunal to make an order in a particular proceeding; **(Revised 01/09/21)**

“motion participant” is a party and any other person who would be affected by the order sought;

“order” means any decision made by the Tribunal or the chair and includes a direction given by the Tribunal or the chair; **(Revised 01/09/21)**

“party” means a party under section 41 of the Code;

“pre-hearing chair”, means the person designated by the chair to preside over a pre-hearing conference or case management conference; **(Revised 01/09/21)**

“pre-hearing conference” includes a case management conference; **(Added 01/09/21)**

“proceeding” means any step in the discipline hearing process and includes a motion, a pre-hearing conference and the hearing;

“prosecutor” means the lawyer or lawyers appointed by the College to prosecute allegations against one or more members before the Tribunal; **(Revised 01/09/21)**

“remote hearing” means a hearing or part of a hearing that proceeds by telephone conference call, video conference, or other technology; **(Added 01/11/21)**

“Tribunal” means the Ontario Physicians and Surgeons Discipline Tribunal or the OPSDT. **(Added 01/09/21)**

“Tribunal Office” means the persons providing administrative assistance to the Tribunal; **(Revised 01/09/21)**

“vulnerable witness” **(Removed 01/12/21)**

1.02 Interpretation of Rules

1.02(1) These rules shall be liberally construed to secure the just and, where justice for the member would not be compromised, the most expeditious determination of the allegations against the member.

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 member is not represented by a lawyer, anything these rules require or permits a lawyer to do shall be done by the member.

1.03 Application of Rules

1.03 These rules apply to all proceedings before the Tribunal including, with all necessary modifications, applications for reinstatement made under sections 72 and 73 of the Code. **(Revised 01/09/21)**

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 Tribunal may extend or abridge any time required by these rules or an order on such terms or conditions as the Tribunal considers just either before or after the expiration of the time. **(Revised 01/09/21)**

RULE 2 - DOCUMENTS

2.01 Form of Documents

2.01(1) Every document prepared for the Tribunal shall, to the extent practical, comply with the standards and requirements for documents filed under the Rules of Civil Procedure. **(Revised 01/09/21)**

2.01(2) **(Removed 01/09/21)**

2.02 Notice to be in Writing

2.02 Where these rules require notice to be given, it shall be given in writing.

2.03 Filing of Documents

2.03(1) Documents shall be filed electronically in the Tribunal Office by email, secure file transfer service or another method the Tribunal directs. **(Revised 18/02/04; 01/09/21; 01/11/21)**

2.03 (2) **(Revised 22/10/19; Removed 01/09/21)**

2.03 (3) **(Removed 01/09/21)**

2.03(4) A document shall not be considered filed until it is actually received by the Tribunal Office. **(Revised 18/02/04; 01/09/21)**

2.03(5) A party can confirm whether a document has been filed by emailing the Tribunal Office. **(Revised 18/02/04; 01/09/21)**

2.03(6) (Removed 01/09/21)

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 Tribunal. **(Revised 01/09/21)**

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 Tribunal permitting the waiver. **(Revised 01/09/21)**

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 Tribunal 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. **(Revised 01/09/21)**

3.01(5) The Tribunal 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 in writing. **(Revised 01/09/21)**

3.02 Plea of No Contest

3.02(1) Where a member enters a plea of no contest to an allegation, the member consents to the following:

- (a) that the Tribunal can accept as correct the facts alleged against the member on that allegation for the purposes of College proceedings only;
- (b) that the Tribunal can accept that those facts constitute professional misconduct or incompetence or both for the purposes of College proceedings only; and
- (c) that the Tribunal can dispose of the issue of what finding ought to be made without hearing evidence. **(Revised 18/02/04; 01/06/15;01/09/21)**

3.02(2) Where the member enters a plea of no contest, the prosecutor shall state the facts alleged and the findings requested by the College and the member or his or her representative shall state that the member does not contest those facts and findings for the purposes of College proceedings only.

3.02(3) A member shall not introduce any evidence on the issue of what finding ought to be made when the member pleads no contest.

3.02(4) A plea of no contest does not prevent the member from introducing evidence on the issue of what order the Tribunal ought to make so long as the evidence is consistent with the facts found and findings made by the Tribunal after the plea of no contest. **(Revised 01/09/21)**

3.02(5) A plea of no contest does not constitute an admission by the member as to the facts or findings for the purpose of non-College proceedings. **(Revised 18/02/04; 01/06/15)**

3.03 Permission to Resign

3.03(1) Where a member requests permission to resign, the member consents to the Tribunal disposing of the proceeding without hearing evidence. **(Revised 18/02/04;01/09/21)**

3.03(2) Where a member requests permission to resign, the Tribunal may dispose of the proceeding in accordance with subrule (1) after hearing any submissions from the parties. **(Revised 01/09/21)**

3.03(3) This rule does not apply where subsection 51(5) of the Health Professions Procedural Code applies.

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 email their submissions to the Tribunal Office, copying the other parties. **(Revised 01/09/21)**

4.01(3) The other parties or motion participants may email their responding submissions to the Tribunal Office, copying the other parties. **(Revised 01/09/21)**

4.01(4) The chair shall not give a direction or make an order where the submissions have been delivered under subrule (2) unless at least 3 days have passed since the first submission was delivered unless it is urgent that the chair do so.

4.01(5) 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 moving party shall deliver the notice of motion and materials in support of the motion, and any factum, written submissions or book(s) of authority intended to be relied upon, at least fifteen days in advance of the date that the motion is to be heard. **(Revised 18/02/04; 08/03/05; 01/06/15)**

5.01(4) The other motion participants shall deliver their materials, and any factum, written submissions or book(s) of authority intended to be relied upon, at least nine days in advance of the date that the motion is to be heard. **(Revised 18/02/04; 08/03/05; 01/06/15)**

5.01(4).1 deleted – see 5.01(3) & (4) **(Deleted 01/06/15)**

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.

5.01.1 Motions for Adjournment (Added 08/03/05)

5.01.1 (a) If the hearing has not commenced,

- (i) The party seeking the adjournment shall make the request by letter to the chair of the Tribunal emailed to the Tribunal Office and copied to the responding party, setting out the request, the reasons for the request, the nature of the allegations against the member, available dates for the hearing to be rescheduled as confirmed with the Tribunal Office, and the position of the responding party; and
- (ii) The chair or Tribunal member designated by the chair may dispose of a request in writing that is on consent or unopposed, or may hear and dispose of a request for adjournment that is opposed after hearing the parties in writing or electronically or may direct a hearing of the request before the hearing panel;

(b) If the hearing has commenced,

- (i) where the adjournment is on consent or unopposed, the party seeking the adjournment may make the request by letter to the chair of the panel (if the panel is not sitting), emailed to the Tribunal Office and copied to the responding party, setting out the request, the reasons for the request, the nature of the allegations against the member, available dates for the hearing to be rescheduled as confirmed with the Tribunal Office, and the position of the responding party. The panel chair, or another panel member assigned by the Tribunal chair may dispose of the request in writing or electronically or direct a hearing of the request before the hearing panel;
- (ii) where the adjournment is opposed, it shall proceed by way of notice of motion with supporting material pursuant to Rule 5.01 before the panel chair or another panel member assigned by the Tribunal chair, who may dispose of the request following oral submissions, or direct a hearing of the request before the full hearing panel. **(revised 01/09/21)**

5.02 Scheduling a Motion

5.02(1) A person bringing a motion to be heard other than at a scheduled pre-hearing conference or at a hearing shall obtain available dates and times for the hearing of the motion from the Tribunal Office and shall attempt to obtain agreement from the other motion participants as to a date and time for the hearing of the motion. **(Revised 18/02/04;01/09/21)**

5.02(2) deleted – see 5.09 **(Deleted 18/02/04)**

5.02(3) If the person bringing the motion cannot, after reasonable efforts, obtain agreement for a date and time under subrule (1), the person shall seek directions from the chair in accordance with Rule 4 or, where there is insufficient time to do so, shall choose an available date and time under subrule (1).

5.03 Evidence on Motions

5.03(1) Evidence on a motion shall be given by affidavit unless the Tribunal 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) **(Removed 01/09/21)**

5.03(4) **(Removed 01/09/21)**

5.03(5) Cross-examination on affidavits will be before the panel hearing the motion unless the parties agree or the Tribunal directs otherwise. **(Revised 01/09/21)**

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) Despite subrules (2) and (3), 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 members of the Tribunal to hear each motion. **(Revised 08/03/05; revised 01/09/21)**

5.05(2) The chair may direct that a larger or differently constituted panel hear a motion if the chair receives submissions in accordance with Rule 4.

5.05(3) A motion participant who believes that the motion ought to be heard by members of the Tribunal who will not sit on the hearing panel shall request direction from the chair in the notice of motion or notice of cross-motion. **(revised 01/09/21)**

5.06 Hearing Motions Electronically

5.06(1) All motions shall proceed remotely by videoconference unless made at an in-person hearing or the Tribunal directs otherwise. **(revised 01/09/21; 01/11/21)**

5.06(2) Consent motions shall proceed in writing unless the Tribunal directs otherwise. **(Added 01/11/21)**

5.07 Written Order

5.07(1) Immediately after a motion has been determined, the motion participant initiating the motion shall, and any other motion participant affected by an order may, prepare a draft of the formal order, seek approval by other affected parties as to its form and content and deliver it to the Tribunal Office. **(Revised 18/02/04; 01/09/21)**

5.07(2) The order shall be in accordance with Form 5B.

5.07(3) An order delivered in accordance with subrule (1) shall be treated as a submission under Rule 4 and may be reviewed, amended if necessary and signed by the chair.

5.07(4) This rule does not apply to orders made on the record during the hearing.

5.08 Renewing or Rearguing a Motion

5.08(1) A motion participant shall not renew or reargue a matter that has previously been determined on a motion unless permission has been obtained from the chair in accordance with Rule 4.

5.08(2) Despite subrule (1), where circumstances make it impractical for a motion participant to have obtained permission from the chair, permission to renew or reargue a matter that has previously been determined on a motion may be obtained from the hearing panel during the hearing by means of written submissions.

5.08(3) Despite subrule (1), a motion participant may renew or reargue a motion if that is provided for in the order of the panel hearing the motion.

5.08(4) Despite subrule (1), a motion participant may renew a motion at the hearing solely for the purpose of putting on the record, for the purpose of any appeal, that the motion participant does not agree with the previous ruling.

5.09 Time Limits on Oral Submissions

5.09 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 Tribunal. **(revised 01/09/21)**

RULE 6 - PRE-HEARING CONFERENCES

6.01 Initiating Pre-hearing Conferences

6.01(1) A pre-hearing conference is mandatory unless exempted by the chair of the Tribunal. **(Revised 18/02/04; 01/09/21)**

6.01(2) The chair shall designate a person to act as the pre-hearing chair. **(revised 01/09/21)**

6.01(3) The Tribunal Office will schedule a date for the pre-hearing conference and shall notify the parties of the date. **(Revised 18/02/04; 01/09/21)**

6.01(4) The senior prosecutor and the member or, where the member is represented by counsel, the senior defence counsel shall attend at the pre-hearing conference.

6.01(5) A pre-hearing conference shall proceed remotely by videoconference unless the Tribunal directs otherwise. **(Revised 01/11/21)**

6.01(6) Dates of the hearing are scheduled at the pre-hearing conference. Counsel for the parties shall each canvas the availability of their expert and other witnesses in advance of the pre-hearing conference so that the pre-hearing chair may fix the hearing dates at the pre-hearing conference. **(Added 01/06/15)**

6.01(7) Counsel for the parties shall, following delivery of their pre-hearing conference memorandum and no less than two business days before the pre-hearing conference, speak to one another to discuss the case, including: (i) the anticipated length of the hearing; (ii) the availability of counsel and their witnesses; (iii) the prospects of resolution; and (iv) the range of potential penalties and the legal authorities supporting the respective positions of the parties on penalty. **(Added 22/10/19)**

6.02 Pre-hearing Conference Memorandum

6.02(1) Where a pre-hearing conference is directed, the parties shall complete a pre-hearing conference memorandum in accordance with Form 6A to the satisfaction of the presiding officer.

6.02(2) The prosecutor shall deliver its pre-hearing conference memorandum twenty days before the date of the conference and defence counsel shall deliver its pre-hearing conference memorandum ten days before the date of the conference.

6.02(3) Where the pre-hearing chair concludes that a pre-hearing conference memorandum is inadequate for the most effective use of the pre-hearing conference, he or she 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.

6.02(4) Despite anything in these rules, a member is not required to disclose evidence that would prejudice the member's defence of the allegations and which also is not otherwise disclosable by law.

6.03 Procedure at Pre-hearing Conference

6.03(1) At the pre-hearing conference, the pre-hearing chair shall first discuss the following with the parties:

- (a) whether any or all of the issues can be settled;
- (b) whether the issues can be simplified;
- (c) whether there are any agreed facts; and
- (d) the advisability of attempting other forms of resolution of the matter.

6.03(2) After the discussion referred to in subrule (1), the pre-hearing chair shall discuss with the parties and then may give directions or, if the pre-hearing chair is a member of the Tribunal, make orders about the following:

- (a) scheduling of any motions that can be heard before the hearing;
- (b) content and timing of any additional disclosure;
- (c) delivery and form of any documents to be used at the hearing and whether the documents can appropriately be reviewed by the panel before the commencement of the hearing;
- (d) delivery of written arguments and books of authorities and whether these can appropriately be reviewed by the panel before the commencement of the hearing;
- (e) scheduling of the hearing;
- (f) scheduling of any motions that can be heard before the commencement of the hearing;
- (g) when the witnesses to be called at the hearing must be available to testify;
- (h) 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. **(Revised 01/09/21)**

6.03(3) The pre-hearing chair shall prepare a report summarizing the results of the pre-hearing conference. **(Revised 01/09/21)**

6.03(4) If a party disagrees with a direction given at a pre-hearing conference, the party shall, within three days after the conference, deliver written notice of the proposed change to the direction and the chair may direct a further pre-hearing conference be held before the same or another pre-hearing chair. **(Revised 01/09/21)**

6.03(5) 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 shall immediately, subject to subrule 6.02(4), deliver a written notice of the circumstances and the Tribunal Office may schedule a supplementary pre-hearing conference. **(Revised 01/09/21)**

6.03(6) 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 pre-hearing chair is a member of the Tribunal, a party may bring a motion to be heard at the pre-hearing conference in accordance with Rule 5. **(Revised 01/09/21)**

RULE 7 - DISCLOSURE AND PRODUCTION

7.01 (Removed 01/09/21)

7.02 Reciprocal Disclosure

7.02(1) Each party to a hearing shall disclose to the other party the existence of every document and thing that the party, or a witness called by or on behalf of the party, may seek to adduce in evidence or put to any witness at a hearing.

7.02(2) Disclosure by the member shall be made in advance of the pre-hearing conference, not later than sixty (60) days following disclosure by the College or such other time as a case management chair or the pre-hearing chair orders, and in any case, for materials other than expert reports, at least thirty (30) days before the commencement of the hearing.

7.02(3) Where a party, after making disclosure, comes into possession or control of or obtains power over another document or thing that the party may seek to adduce in evidence or put to any witness at a hearing, the party shall forthwith disclose to the party opposite the existence of the document or thing, and shall produce a copy of it, if requested, under rule 7.03 below.

7.02(4) If a party fails to comply with the provisions of Rule 7.02(1), (2) or (3), the party may not seek to adduce the document or thing in evidence, or put the document or thing to any witness, without the consent of the other party or leave of the Tribunal, which may be given on such terms and conditions as the Tribunal considers just. **(Revised 01/09/21)**

7.03 Inspection and Delivery of Documents

7.03 Each party to a hearing, after making disclosure, shall, if requested:

- (a) make available for inspection by the other party all documents and things the party, or a witness called by or on behalf of a party, may seek to adduce in evidence or put to any witness, within ten (10) days of such request or ten(10) days before the hearing, whichever is earlier; and
- (b) provide the inspecting party at the inspecting party's expense copies of all documents and things that the party, or a witness called by or on behalf of a party, may seek to adduce in evidence or put to any witness, within ten (10) days of such request or ten (10) days before the hearing, whichever is earlier.

7.04 Witness Lists and Summaries

7.04(1) Each party to a hearing shall include in the Pre-Hearing Conference memorandum of that party a list of persons whom the party intends to call as witnesses at the hearing, and the anticipated length of the testimony of the witnesses.

7.04(2) Each party to a hearing shall, at least 30 days before the commencement of the hearing, provide to the other party for any witness to be called, including the party, a summary of the material matters to which the witness or party will testify at the hearing, including the substance of the evidence of the witness, to the extent that the matters to which the witness will testify have not otherwise been disclosed.

7.04(3) A party who does not include a witness, including the party, in the witness list, or who does not provide a summary of the evidence that the witness is expected to give, may not call that person as a witness without the consent of the other party, or leave of the Tribunal, which may be given on such terms and conditions as the Tribunal considers just. **(Revised 01/09/21)**

7.05 Motions for Disclosure

7.05(1) All motions for disclosure shall be brought in accordance with subrule 5.01(2) unless special circumstances require that the motion be brought later.

7.05(2) On a motion for disclosure, the Tribunal may order that a party or a person who will lead evidence at a hearing shall make disclosure in accordance with the requirements of law. **(Revised 01/09/21)**

7.05(3) When the Tribunal orders disclosure it may, to protect the privacy of any person, impose terms or conditions upon the extent and method of disclosure or the use of the information disclosed. **(Revised 01/09/21)**

7.06 Production of Documents

7.06(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.

7.06(2) A motion relating to the production of documents in the possession of a third party that may require the examination of the documents by the Tribunal, including motions to which the provisions of the *Mental Health Act* may apply, shall be heard by the panel hearing the allegations against the member. Such motions shall be scheduled at least 45 days in advance of hearing evidence, unless otherwise ordered by the Tribunal. **(Revised 08/03/05; 01/09/21)**

7.06(3) A notice of 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. A summons requiring the person in possession of the documents to attend upon the motion with the documents shall be obtained from the Tribunal Office and served a reasonable time in advance of the date for the hearing of the motion, and an affidavit of service shall be filed on the return of the motion. **(Revised 02/11/06; 01/09/21)**

RULE 8 - ELECTRONIC HEARINGS AND PROCEEDINGS

8.01 Initiating an Electronic Hearing

8.01(1) A hearing or any part of a Tribunal hearing may be held in person, remotely or in writing as the Tribunal directs, in the format that best ensures a proportionate, fair and efficient proceeding. **(Revised 08/03/05; 30/03/09; 01/09/21; 01/11/21)**

8.01(2) A remote hearing shall be held by videoconference unless the Tribunal directs otherwise. **(Revised 01/09/21; 01/11/21)**

8.01(3) Factors relevant to determining hearing format include:

1. The Tribunal's public interest mandate;
2. Any consent of the parties;
3. The nature, significance and complexity of the issues, including whether credibility is in question;
4. Accessibility of the hearing to participants and the public;
5. Facilitation of participation by persons who have been historically disadvantaged within the legal and/or medical system, in particular Indigenous peoples and communities and vulnerable witnesses. **(Revised 18/02/04; 30/03/09; 01/09/21; 01/11/21)**

8.01(4) **(Removed 01/09/21)**

8.02 (Removed 01/09/21)

RULE 9 - TAKING EVIDENCE BEFORE THE HEARING

9.01 Initiating the Taking of Evidence Before the Hearing (Revised 01/09/21)

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 Tribunal examine the witness on oath or affirmation before the hearing for the purpose of having the witness's testimony available to be tendered as evidence at the hearing.

9.01(2) The Tribunal 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 Tribunal 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 Tribunal 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 Tribunal 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 Tribunal.

9.01(6) The Tribunal 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 member (where the member 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 Tribunal before the evidence is used at a hearing. **(Revised 01/09/21)**

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 Tribunal. **(Revised 01/09/21)**

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 Tribunal orders otherwise. **(Revised 01/09/21)**

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 Tribunal. **(Revised 01/09/21)**

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 Tribunal requires the reading of a transcript or the playing of a videotape. **(Revised 01/09/21)**

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 Tribunal orders otherwise. **(Revised 01/09/21)**

RULE 10 - EARLY HEARING

10.01(1) A party may bring a motion for an order directing an expedited hearing.

10.01(2) The Tribunal may order that a hearing be expedited, where it believes appropriate, and may also direct that any pre-hearing conference be expedited accordingly. **(Revised 01/09/21)**

RULE 11 - NON-PARTY PARTICIPATION

11.01 General Non-Party Participation (Revised 01/09/21)

11.01(1) A person who is not a party who wishes to participate in the hearing shall bring a motion in accordance with these rules. The hearing panel as assigned by the chair will hear the motion.

11.01(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.

11.01(3) If the Tribunal allows the person to participate in the hearing, the person shall comply with the rules as much as is practical unless to do so would be inconsistent with the Tribunal's determination of the extent of the person's participation in the hearing.

11.01(4) If the Tribunal allows the person to participate in the hearing, the other parties shall apply the rules to the person as much as is practical unless to do so would be inconsistent with the Tribunal's determination of the extent of the person's participation in the hearing.

11.02 Notice of Constitutional Questions

11.02(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.

11.02(2) Where either the Attorney General of Canada or Ontario responds to the notice, they may participate in the hearing and may adduce evidence and make submissions regarding the constitutional question. **(Revised 01/09/21)**

RULE 12 - PROCEDURE DURING THE HEARING

12.01 Accommodation for Witnesses (Revised 01/12/21)

12.01(1) Where it would facilitate a full and candid account of a witness's evidence or would otherwise be in the interests of justice, the Tribunal may:

- a) permit a support person to sit near a witness while the witness testifies. The Tribunal 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 Tribunal, 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.

12.01 (2) In deciding whether to make a Rule 12.01 (1) order, the Tribunal 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 that the Tribunal considers relevant.

12.01(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 12.01 (1) unless the witness declines any of these accommodations

12.02 Oral and Written Argument (Revised 01/09/21)

12.02(1) The Tribunal may place reasonable limits on the length of oral submissions.

12.02(2) The Tribunal 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.

12.03 Access to Hearing Record by the Public (Revised 01/09/21)

12.03 If a member of the public wishes to have access to all or part of the record of the Tribunal other than the notice of hearing or the transcript of the evidence, he or she shall bring a motion before the Tribunal upon notice to the parties, and such motion shall be made, considered and decided in writing by the chair or by a panel appointed by the chair, without an oral hearing.

12.04 Filing of Draft Order (Added 02/11/06; Revised 01/09/21)

12.04(1) Where a party seeks an order from the Tribunal before or at a hearing, that party shall file, at the time of its submissions orally or in writing, a draft order with terms as are appropriate, in the form that the party is requesting the Tribunal to adopt and sign. Where the order sought is on consent, the approval of the other party to a draft order shall be expressed in writing at the time of filing of the draft order.

12.04(2) An order is effective from the time it is made on the record, even if a written version has not yet been prepared or signed. **(added 001/09/21)**

12.05 Expert Witnesses

12.05(1) Service of Expert Reports

12.05(1)(a) A party who intends to call an expert witness at a hearing shall serve on the opposing party a report, signed by the expert, containing the information listed in Rule 12.05(4). **(Revised 04/04/13)**

12.05(1)(b) The College shall serve on the member any expert report it has in its possession when College disclosure is made and shall serve on the member any other expert report it obtains within fifteen (15) days of receipt by the College of such other report. **(Added 04/04/13)**

12.05(1)(c) A member who intends to rely upon an expert witness at a hearing, shall, not later than sixty (60) days following receipt of the College Disclosure and delivery by the College of an expert report, or such other time as the pre-hearing chair orders, serve on the College the report of the expert to be called by the member. **(Added 04/04/13; Revised 01/09/21)**

12.05(1)(d) The last day for delivery of a responding expert report by a party shall be forty-five (45) days before the commencement of a hearing. **(Added 04/04/13)**

12.05(1)(e) The Tribunal, on motion, may extend or abridge the time provided for service of an expert report before or after the expiration of the time, and may make directions it considers just to ensure that a party is not prejudiced by any extension or abridgment of time ordered. **(Added 04/04/13; Revised 01/09/21)**

12.05(2) Admissibility of Expert Report

12.05(2) Where the panel hears testimony from an expert witness who has delivered an expert report in advance of the hearing, it may admit as an exhibit at the hearing the report of the expert witness. **(Added 30/03/09; Revised 04/04/13)**

12.05(3) Duty of Expert

12.05(3) Each party shall inform an expert witness that it is the duty of an expert to assist the Tribunal on matters within his or her expertise and that this duty overrides any obligation to the person from whom he or she has received instructions or payment. The expert shall be required to certify that he or she is aware of and understands this duty, by signing Form 7, which shall be included in the expert report. **(Added 30/03/09; Revised 04/04/13; 01/09/21)**

12.05(4) Contents of Expert Reports

12.05(4) An expert report shall contain the following information:

1. The expert's name, address and area of expertise.
2. The expert's qualifications, educational and practice experiences in his or her area of expertise.
3. The instructions provided to the expert in relation to the proceeding.
4. The nature of the opinion being sought and each issue in the proceeding to which the opinion relates.
5. The expert's opinion respecting each issue and, the expert's reasons for his or her opinion, including,
 - i. a description of the factual assumptions on which the opinion is based,
 - ii. a description of any research conducted by the expert that led him or her to form the opinion, and
 - iii. a list of every document, if any, reviewed by the expert in forming the opinion.

6. An acknowledgement of the duty of an expert signed by the expert in Form 7. **(Added 17/04/12; Revised 04/04/13)**

12.05(5) Opposing Qualifications of a Proposed Expert Witness

12.05(5)(a) An objection to the qualifications of a proposed expert witness, that could disqualify the witness from testifying, shall be made as early as the objection is known. **(Added 04/04/13)**

12.05(5)(b) An objection may be raised by serving on the adverse party a document containing the particulars of and basis for the objection and filing the objection with the Tribunal Office. **(Added 04/04/13; revised 01/09/21)**

12.05(5)(c) An objection to the qualifications of an expert witness shall be included if known in a party's pre-hearing conference memorandum, and resolved, if possible, at the pre-hearing conference, and if the parties consent, by a binding determination of a pre-hearing chair. **(Added 04/04/13; revised 01/09/21)**

12.05(6) Pre-Hearing Conference

12.05(6) Participants at a pre-hearing conference must be prepared to address any issues arising from any affidavits or reports of expert witnesses, including:

- (i) any objection to an opposing party's proposed expert witness that could disqualify the witness from testifying and the basis for the objection,
- (ii) any benefit to the hearing process in ordering the experts to confer with one another in advance of the hearing in order to narrow the issues and identify the points on which their views differ, which may be ordered on consent of the parties,
- (iii) the intention of either party to deliver any additional or rebuttal expert witness reports and the timing of this. **(Added 04/04/13)**

12.05(7) Evidence in Chief of Expert Witnesses

12.05(7) Evidence in chief of an expert witness may be tendered at the hearing by

- (i) an affidavit with the report of the expert witness, that may be taken as having been read into evidence; and
- (ii) the witness explaining as briefly as possible in oral evidence any of the content of an affidavit or report that has been taken as read into evidence. **(Added 04/04/13)**

12.05(7)(b) Unless the adverse party agrees otherwise, an expert witness whose affidavit and report is tendered at the hearing shall be made available for cross-examination at the hearing. **(Added 04/04/13)**

12.05(7)(c) Reply evidence, including that of an expert witness, may be provided orally at the hearing. **(Added 04/04/13)**

12.05(8) Failure to Address Issues in Report

12.05(8) An expert witness may not testify with respect to an issue, except with leave of the panel, unless the substance of the opinion with respect to that issue is set out in the report of the expert, served under this rule. **(Added 04/04/13)**

12.05(9) Concurrent Evidence

12.05(9) If a party to a discipline proceeding intends to call more than one expert to give opinion evidence about the same issue in dispute, either party may apply to the Tribunal for one or more of the following orders:

- (i) that the experts of the party calling that evidence testify as a panel and give evidence one after another;
- (ii) that each expert be sworn at the same time and that the cross-examination and re-examination be conducted by putting to each expert in turn each question until the cross-examination or re-examination is completed;
- (iii) that the experts of the party calling that evidence be cross-examined and re-examined in any sequence as directed by the panel. **(Added 04/04/13; revised 01/09/21)**

12.06 Treating Physicians (Revised 01/09/21)

12.06(a) A treating physician who is called to testify exclusively about treatment provided is not required to prepare an expert report.

12.06(b) A party who intends to call a treating physician or a physician who has performed an assessment on a person as a witness shall, at the earliest possible date, but not fewer than forty (40) days before the commencement of a hearing, provide the treating records and notes to the opposing party. Where the treating records and notes are illegible, the receiving party may request a transcription which shall be provided at the earliest possible date, but not fewer than twenty (20) days before the commencement of the hearing, or such other date as the chair or pre-hearing chair may order.

RULE 13 - GIVING NOTICE OF FINAL DECISION

13.01(1) In addition to the methods described in section 18 of the *Statutory Powers Procedure Act*, the Tribunal 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,
- (c) by facsimile, or
- (d) by electronic mail. **(Revised 18/02/04;01/09/21)**

13.01(2) If a copy is sent by courier, it shall be sent to the most recent address known to the College and shall be deemed to be received by the party on the day the copy is signed for by a person at that address. If a copy is sent by facsimile or by electronic mail, it shall be sent to the most recent facsimile number or e-mail address known to the College and shall be deemed to be received by the party at the end of the day the facsimile or e-mail was sent. **(Revised 18/02/04)**

RULE 14 - COSTS

14.01 Costs for Non-compliance with Rules

14.01 Where the Tribunal is entitled to order the payment of costs or expenses by a party, the Tribunal may consider the failure of a party to comply with these rules. **(Revised 01/09/21)**

14.01.1 Costs for a Late Request for Adjournment (Added 30/03/09)

14.01.1(1) In this rule, a late request for adjournment means an adjournment that is requested within 10 business days of the date scheduled for the commencement of the hearing.

14.01.1(2) A late request for an adjournment may result in costs or costs and expenses being awarded, as a term of granting the adjournment, against the party who is responsible for the late request for the adjournment, if the conduct of the party has been unreasonable, frivolous or vexatious or if the party has acted in bad faith.

14.01.1(3) In determining the amount of costs or costs and expenses to award against the party responsible for a late request for an adjournment, the Tribunal shall take into account the following factors, among other relevant considerations:

- (a) whether the lateness of the adjournment request could have been avoided;
- (b) the number of days on which the hearing has been scheduled to proceed;
- (c) the amount of the costs or costs and expenses, as the case may be, borne by the party seeking costs or costs and expenses as a result of the late request for adjournment; and
- (d) the conduct or course of conduct by the party and whether this has been unreasonable, frivolous or vexatious or the party has acted in bad faith. **(Revised 01/09/21)**

14.02 Costs Against the College

14.02 Where the member seeks costs against the College pursuant to section 53 of the *Code*, the Tribunal may direct that the issue be dealt with by a motion conducted separately from the hearing under Rule 5 with any necessary modifications. **(Revised 01/09/21)**

14.03 Costs Against the Member

14.03 Where the College seeks costs against the member pursuant to section 53.1 of the *Code*, the Tribunal may direct that the issue be dealt with by a motion conducted separately from the hearing under Rule 5 with any necessary modifications. **(Revised 01/09/21)**

14.04 Procedure for Requesting Costs

14.04(1) A party requesting an order for costs or expenses shall, where practicable, deliver a detailed written explanation of the basis upon which the costs or expenses requested are calculated.

14.04(2) Where the request for costs or expenses includes disbursements or out-of-pocket expenses, these may be proved by an affidavit attaching a copy of any invoice or receipt.

14.04(3) Where the request for costs or expenses includes the cost or expense to the College of conducting a day of hearing, no evidence of the cost or expense of a day of hearing is needed if the request is equal to or less than the amount set out in Tariff A.

14.04(4) The Tribunal may direct that the amount of costs and expenses be calculated at a motion conducted separately from the hearing under Rule 5 with any necessary modifications. **(Revised 01/09/21)**

RULE 15 - APPLICATIONS TO THE TRIBUNAL (Revised 01/12/2021)

15.01 Application for removal of information from the public register under s.23(11)(c) of the Code

15.01 The member must deliver and file an application for removal of information from the public register using Form 15A and an application record containing the documents on which the member intends to rely, including a copy of the Tribunal's decision and reasons. The application must:

- a) explain why the member believes the information to be removed is no longer relevant to their suitability to practise;
- b) explain why the member believes removal of the information outweighs the desirability of public access to the information and the public interest; and
- c) confirm the information to be removed does not relate to disciplinary proceedings concerning sexual abuse as defined in ss. 1(3) of the Code.

15.02 Application for reinstatement under s. 72 of the Code

15.02(1) The member or former member must complete an application form (Form 15B), deliver it to the College Legal Office and file it with the Tribunal Office.

15.02(2) The Tribunal will not process the application for reinstatement and send it to the Registrar for referral unless:

- a) the application is made within the time set out in s.72 (2) or (3) of the Code;
- b) the member or former member has paid the member or former member has paid the application fee required by s. 1(c) of By-Law 2: Fees and Remuneration

15.02(3) Within 60 days of filing the completed application form the member or former member must deliver and file a notice of application (Form 15C). The notice of application must:

- a) set out the order sought including any proposed terms, conditions or limitations; and
- b) explain the reasons for the application describing, where applicable, any relevant changes in circumstances since the time of revocation or suspension and setting out the member's or former member's success at rehabilitation, including their degree of insight into past inappropriate conduct; current mental health and future prognosis; attempts at restitution, if any; current knowledge, skill and judgement; and present character.

15.02(4) Within 90 days of filing the notice of application the member or former member must deliver and file an application record. The application record must contain:

- a) the application for reinstatement and the notice of application;
- b) a CPIC criminal record and judicial matters check - Level 2;
- c) an undertaking to obtain Professional Liability Protection;
- d) a certificate of good standing from every jurisdiction outside Ontario in which they practised since suspension or revocation;
- e) the record, including the transcript, of the hearing where the member's or former member's certificate of registration was ordered suspended or revoked;
- f) any previous application for reinstatement including the record, transcripts and the Tribunal's decision; and
- g) any other documents on which the member or former member intends to rely.

15.02(5) Where the notice of application is not filed within 120 days of filing the application form or the application record is not filed within 180 days of filing the notice of application, the application will be deemed withdrawn and the Tribunal will close its file. The member or former member will be notified 30 days before the file is closed.

15.03 Application to vary, suspend or cancel a Tribunal Order

15.03(1) The Tribunal may vary, suspend or cancel a Tribunal order where:

- a) there are new facts arising or discovered after the order was made; or
- b) a material change in circumstances has occurred after the order was made; and

c) the change to the order would be in the public interest.

15.03(2) To apply to vary, suspend or cancel a Tribunal order, the member must deliver and file a notice of application in Form 15D and an application record containing the documents on which the member intends to rely, including a copy of the Tribunal's reasons for the order. The notice of application must set out how the application meets the criteria set out in Rule 15.03(1).

15.03(3) An application to vary, suspend or cancel a Tribunal order does not stay that order.

15.04 Pre-hearing Conference

15.04 Once an application record is filed, the Tribunal will schedule a pre-hearing conference to determine the next steps in the application including delivery of responding materials and scheduling hearing dates.

RULES 16 AND 17

Rules 16 and 17 were revoked and replaced by Rule 15 effective 01/12/2021.

TARIFF A

COSTS AND EXPENSES FOR THE COLLEGE TO CONDUCT A DAY OF HEARING

Costs and expenses of a day of hearing \$10,370

Revised 30/05/13; 01/01/16; 01/01/17; 23/02/18; 01/03/19

FORM 5A – NOTICE OF MOTION

[General Heading]

NOTICE OF MOTION

The [identify moving party] will make a motion to the Ontario Physicians and Surgeons Discipline Tribunal on [day], [date], at [time], or as soon after that time as the motion can be heard.

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]

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

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

FORM 5B - ORDER

Tribunal File No.

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL*

[names of tribunal members])
) [day and date(s) heard]
)

BETWEEN:

College of Physicians and Surgeons 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 in person, in writing or by videoconference].

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)],

The Tribunal Orders that

[signature of chair]

*The Ontario Physicians and Surgeons Discipline Tribunal is the Discipline Committee established under the Health Professions Procedural Code.

FORM 6A - PRE-HEARING CONFERENCE MEMORANDUM

[General Heading]

**Pre-Hearing Conference Memorandum of the College
[Or of the Member, as the case may be]**

Date of Pre-Hearing Conference:

Prosecutor:

Defence Counsel:

Self-represented Member:

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 Member'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 member?
 - 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 hearing panel be able to review the brief before the hearing?
15. On the subject of written arguments:
 - Are there any issues that should be the subject of written argument? If so, identify them.
 - When should the written arguments be delivered by?
 - Should the hearing panel 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 hearing panel?
 - If so, who should prepare the authorities brief and when should it be delivered?

- Should the hearing panel 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 panel:
- 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 panel:

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

19. Do you believe the panel 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]

FORM 7 - ACKNOWLEDGEMENT OF DUTY

ONTARIO PHYSICIANS AND SURGEONS DISCIPLINE TRIBUNAL

ACKNOWLEDGEMENT OF DUTY

By Witness Retained as an Expert Witness in an OPSDT Proceeding

1. My name is(name), I live in.....
city), in the(province/state) of (name of province/state).
2. I have been engaged by or on behalf of(name of party/parties) to provide evidence in relation to a hearing before the OPSDT.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the panel may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date..... _____

Signature

NOTE: This form must be attached to any report signed by the expert and provided for the purpose of Rule 12.05(3) of the Rules of Procedure of the Ontario Physicians and Surgeons Discipline Tribunal.