College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

The Guide to Dental Technology Practice

College of Dental Technologists of Ontario
305 Milner Ave., Suite 904
Toronto, ON M1B 3V4
Tel: 416.438.5003
Fax: 416.438.5004
www.cdto.ca

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The Guide to Dental Technology Practice

Preface

The Guide to Dental Technology Practice (the "Guide") is compiled as a reference and manual for dental technologists practicing in Ontario. It contains all the current and proposed acts, regulations, policies, standards, guidelines and programs that govern the practice of dental technologists in Ontario. Dental technologists and dental laboratory owners are advised to refer to the information contained therein to determine if they are practicing within legislative and practice expectations.

Readers should note that the legislative framework for health care in Ontario has undergone drastic changes since proclamation of the *Regulated Health Professions Act, 1991* (*RHPA*) in December 1993 and is still undergoing changes. You must keep yourself up-to-date with all subsequent changes to the current legislation and be aware of any new legislation/policies that are being put in place to assure public safety.

The College publishes news of legislative and policy changes in its newsletter and on its website: www.cdto.ca.

If you have questions, please contact us at:

College of Dental Technologists of Ontario
305 Milner Ave., Suite 904
Toronto, Ontario
M1B 3V4

Tel: 416.438.5003 or Toll-Free: 1-877-391-2386 (Canada)
Fax: 416.438.5004

Email: info@cdto.ca

CDTO Jurisprudence and Ethics Examination

If you are using this Guide for the open-book CDTO Jurisprudence and Ethics Examination you **MUST** have a printed copy of the Guide available during the examination.

You are **NOT** permitted to bring/use any computers and/or electronic devices during the examination.

INSTRUCTIONS ON HOW TO ORGANIZE THE GUIDE

First, you will need …

- 3" Binder (preferable D-Ring)

- Index Tab Dividers (minimum of 7)

Print the Guide contents onto 3-Hole punched paper OR have a 3-Hold punch available. Once you have printed the Guide contents, organize the relevant material in each tab according to the Table of Contents.

<u>TIP</u>: TO SAVE PAPER PRINT DOUBLE SIDED COPIES

Table of Contents

SECTION 1

What is the College of Dental Technologists?

What is the College of Dental Technologists of Ontario?

The College of Dental Technologists of Ontario (CDTO) is a regulatory body that serves and protects the public interest by regulating the profession of dental technology. The College ensures the ongoing competency and accountability of dental technologists, also known as Registered Dental Technologists (RDTs), practising in the province of Ontario.

The College fulfills its role by:

- Setting the requirements for entry into the profession.
- Ensuring the continued competence and professional development of the profession by requiring all Members to participate in the Quality Assurance program.
- Establishing the Standards of Practice that must be met by members of the profession to ensure high quality patient care and safety.
- Holding members of the profession accountable for meeting practice and conduct standards through its complaints, disciplinary and fitness to practise procedures.
- Maintaining a public register that provides information to the public about all current and former CDTO members.

The work of the College is governed and directed by Council, whose job is to represent the interests of the public. The Council is made up of dental technologists (elected by their peers) and members of the public (appointed by the Lieutenant Governor of Ontario). It is the Regulated Health Professions Act, 1991, the Dental Technology Act, 1991 and the Regulations associated with this legislation that provides the College with its mandate to regulate the practice of dental technologists in Ontario. The College and the Council are accountable to the Minister of Health and Long-Term Care.

A Council, its nine (9) committees, and a small staff carry out the governance, regulatory and operational functions of the College.

Underpinning and guiding all that the College does are its:

- **Mission**
- **Vision**
- **Values**

Mission

To protect the public interest by providing leadership and by setting and enforcing the ethical and professional standards of its members, the Registered Dental Technologists of Ontario

Vision

The CDTO continues to be known as a regulatory leader and RDTs are viewed as integral members of the oral health care team, inspiring public trust and confidence.

Values

- **Integrity**—our mission is carried out with professionalism that promotes trust and confidence, and sets an example for the profession.
- **Respect and Consideration**—we conduct business thoughtfully, fairly and with compassion in all interactions.
- **Transparency and Openness**—we deliver programs and activities in an open and interactive manner within the boundaries of privacy legislation and regulations.
- **Communication**—we value open, honest and accessible communication.
- **Accountability**—our strategic goals are set and achieved through collective responsibilities and teamwork. CDTO assesses its operations and reinforces ongoing quality improvement.

Council

The Council is the governing body of the CDTO. The Council is made up of members of the public, who are appointed by the provincial government and members of the profession, who are elected from the membership.

The CDTO's council is composed of:

- 7 elected Registered Dental Technologists in Ontario, and
- 5-6 members of the public appointed by the Lieutenant Governor of Ontario. Public members are not dental technologists.

The Council meets several times a year to discuss regulatory policy and consider issues that affect dental technology in Ontario. The Council is chaired by the President who is elected from within the Council. The Registrar is the chief executive officer of the College who is appointed by Council and has specific duties outlined by provincial law.

Committees

Seven (7) statutory and two (2) standing committees carry out the regulatory functions of the College and support Council in meeting its mandate. These Committees are made up of members of Council and may include members of the profession who are not members of Council. The specific composition of each committee is set out in the College's By-laws and members are appointed at the first meeting of Council in each calendar year.

In addition, Council may establish and maintain non-statutory Committees necessary for the effective and efficient function of the College. Council may appoint persons who are neither Council Members nor members of the College to these Committees.

Statutory Committees:

Executive Committee

The Executive Committee provides leadership to Council, promotes governance excellence and facilitates the effective functioning of the College. In certain circumstances, the Executive Committee may exercise the powers of Council on matters that require immediate attention between Council meetings, but cannot make, amend or revoke regulations or By-laws. It may also direct the Registrar to implement decisions of the Executive Committee.

Registration Committee

The Registration Committee is responsible for developing and implementing transparent, objective, impartial and fair registration policies and procedures. The Committee decides on the eligibility of applicants for registration referred by the Registrar. It also reviews candidate requests for additional examination attempts under the College's Examination Regulation.

Quality Assurance Committee

The Quality Assurance (QA) Committee promotes the continuing competence of dental technologists and assures the quality of professional practice. It is also responsible for implementing the QA program, determining participation requirements, monitoring participation trends and can take action to ensure members comply with the program. These assist members in meeting their responsibilities and obligations as practitioners of a regulated health profession.

Patient Relations Committee

The Patient Relations Committee is responsible for developing, establishing and maintaining a Patient Relations Program that includes measures for preventing and/or dealing with sexual abuse of patients by members of the College. This program includes Member education, staff training, guidelines for Members' conduct with patients and public information. The Committee is also responsible for administering funding for therapy and counselling for patients who have been sexually abused by dental technologists.

Inquiries, Complaints and Reports Committee

The Inquiries, Complaints and Reports Committee (ICRC) is responsible for investigating concerns and complaints, reports submitted by the Registrar and mandatory reports regarding a dental technologist's professional conduct or competence. After investigating a complaint or

considering a report, the ICRC decides what action, if any, is required and may make referrals to the Fitness to Practise and Discipline Committee.

Discipline Committee
Panels of the Discipline Committee are responsible for hearing and determining allegations of professional misconduct or incompetence referred by the ICRC. Based on the evidence submitted, the panel must arrive at a decision and, where required, make an order describing the penalty or action that must be taken against the member. The Discipline Committee also reviews applications for reinstatement following a discipline finding.

Fitness to Practise Committee
The Fitness to Practise Committee conducts fair hearings to determine whether a dental technologist is incapacitated, or suffering from a physical or mental condition or disorder. The panel may take an action if any is required, that may include revoking, suspending or subjecting a Member's certificate of registration to terms, conditions or limitations. The Fitness to Practise Committee also reviews applications for reinstatement following an incapacity finding.

Non-Statutory

Examinations Committee
The Examinations Committee is responsible for developing, approving and administrating fair and consistent Registration Examinations which provide a reliable and valid measure of the candidate's competency in knowledge, skills and ability for the practice of dental technology in Ontario. The Committee determines eligibility of examination applicants referred by the Registrar and reviews examination appeals by applying transparent, fair and consistent policies and procedures. The Committee also oversees the Examination Task Force and the Written Examination Task Force.

Recruitment Committee
The Recruitment Committee is responsible for selecting appropriate interview questions, conducting the interviews as applications are received, and recommending appointments and position(s) to the Council.

Publications

Annual Reports: All regulatory health colleges are required to report annually to the Minister on its activities and financial affairs.

Fair Registration Practices Reports: The Office of the Fairness Commissioner (OFC) was established to ensure that regulatory bodies have registration practices that are transparent, objective, impartial and fair.

E-Newsletter: 'Bridge', a bi-annual publication to provide updates to Members on the activities of the College and changes that may be of interest and/or impact.

Brochures: Face Behind the Smile

SECTION 2

Ontario Government Legislation

- Regulated Health Professions Act, 1991 (RHPA)
- Dental Technology Act, 1991
- Ontario Regulations:
  - O. Reg 874/93 Registration
  - O. Reg 798/93 Professional Misconduct
  - O. Reg 711/93 Examinations
  - O. Reg 604/98 General(Quality Assurance, Advertising & Notice of Meetings and Hearings
- Personal Health Information Protection Act, 2004 (PHIPA)
- Frequently Asked Questions: PHIPA
- Bill 87, Protecting Patients Act, 2017

Legislation & Regulations

Legislation
The College of Dental Technologists of Ontario (CDTO) was established under the Regulated Health Professions Act, 1991 (RHPA) which, together with the Dental Technology Act, 1991, gives the College its authority and mandate to regulate the dental technology profession in Ontario. Legislation is created by government.

- Regulated Health Professions Act
- Dental Technology Act

Regulations
The regulations under the Dental Technology Act, 1991 describe the specific rules and requirements that support the College in governing the profession. In particular, the College looks to its regulations when creating its registration and examination policies and procedures, implementing and administering its Quality Assurance program, and defining professional misconduct.

Regulations are created by Council. If Council determines a need to create or modify regulation, it will develop a draft and circulate it to stakeholders for comment. The comments are reviewed and incorporated into a final version. The Ministry of Health and Long-Term care must approve all regulations made by Ontario health professions regulators.

- General (Quality Assurance, Advertising and Notice of Meetings and Hearings)
- Registration
- Professional Misconduct
- Examinations

Personal Health Information Protection Act
Other legislation important to the profession is the Personal Health Information Protection Act (PHIPA) Ontario's health-specific privacy legislation which governs the manner in which personal health information may be collected, used and disclosed within the health sector. It regulates health information custodians (custodians), as well as individuals and organizations that receive personal health information from custodians.

- Personal Health Information Protection Act (PHIPA)
- Frequently Asked Questions: PHIPA

Bill 87, Protecting Patients Act

New measures aim to eradicate sexual abuse in Regulated Health Professions, Bill 87, the *Protecting Patients Act*, 2016 was passed in the Ontario legislature on May 30, 2017. One major change to the RHPA made by the *Protecting Patients Act* is a unified approach for all Health Regulatory College's enacted under the RHPA when dealing with cases of sexual abuse.

CDTO's Council recognizes the seriousness and extent of injury that sexual abuse and other forms of abuse cause clients and their loved ones. Council believes that one instance of sexual abuse is too many, and therefore uphold the College's longstanding Zero Tolerance policy for any form of abuse: verbal, physical, emotional, financial or sexual, by a Dental Technologist. We acknowledge our Members who have been actively working in support of the College's Zero Tolerance policy and ask that you continue to remain vigilant in setting appropriate professional boundaries, in reporting any abuse and by providing respectful care to every client who enters your practice.

The Ontario's Minister of Health and Long-Term Care, the Honourable Dr. Eric Hoskins, formed a Task Force on the Prevention of Sexual Abuse of Patients and the RHPA. After completing a thorough review of complaints and investigative processes across all of Ontario's 26 health regulatory colleges, the Sexual Abuse Task Force ("SATF") asserted that bold reform was needed in the area of sexual abuse prevention. The Minister has taken action. On May 30, 2017, Bill 87, which embodies many of the SATF recommendations, was passed with the goal of strengthening and unifying Colleges' approach to dealing with cases of sexual abuse. While not all provisions in Bill 87 came into affect on May 30th the additions/ amendments to the RHPA will impact how all health professional members practice.

Some changes that are important to highlight are:

- The purposes for which the Minister may require a College to collect information from members under section 36.1 of the Act are expanded to include health human resources research.
- The penalties for failing to report sexual abuse of patients are increased.
- The Minister is given the power to make regulations respecting College committees and panels.
- The Inquiries, Complaints and Reports Committee and its panels may make an order for the interim suspension of a member's certificate of registration at any time following the receipt of a complaint or after the appointment of an investigator, instead of only when a matter is referred for discipline or incapacity proceedings.

- Members are required to report to the Registrar if they belong to professional bodies outside Ontario, and if there has been a finding of professional misconduct or incompetence against them by such a body.
- The mandatory program for Colleges to provide funding for therapy and counselling for patients who were sexually abused by members is expanded to apply to persons who are alleged to have been sexually abused while a patient, and to provide funding for other purposes provided for in regulations.

The College is required to note additional information under section 23(2) of the Code on the public register. These changes to the RHPA affect RDT's, the public, and the way we operate as a College.

Members and the public should be aware that the:

- The matters that a College is required to note in its register are expanded.
- For the purposes of the sexual abuse provisions of the Code, the definition of "patient", without restricting the ordinary meaning of the term, is expanded to include an individual who was a member's patient within the last year or within such longer period of time as may be prescribed from the date on which they ceased to be a patient, and an individual who is determined to be a patient in accordance with the criteria set out in regulations.
- The imposition of gender-based terms, conditions or limitations on a member's certificate of registration is prohibited.
- Members are required to report to the Registrar if they are charged with an offence, and are required to provide information about bail conditions.
- The Minister now has expanded power to make regulations with respect to College committees and panels;
- The grounds for mandatory revocation of the certificate of registration of a member who has sexually abused a patient are expanded, and suspension is made mandatory in sexual abuse cases that do not involve conduct requiring mandatory revocation.

We encourage all RDTs to continue being vigilant and alert to any boundary violations that may be occurring in their workplace, as well as review CDTO's current Mandatory Reporting Guidelines which lay out obligations to the College in reporting professional misconduct, incompetence, professional negligence, sexual abuse or concerns regarding incapacity.

Overall, we ask that all RDTs demonstrate leadership in upholding the College's Zero Tolerance policy by maintaining professional conduct and following CDTO's Patient Relations Policy. This is how we will continue to ensure that all Dental Technologists' clients always feel safe and respected.

- Bill 87, Protecting Patients Act, 2017

Français

Regulated Health Professions Act, 1991

S.O. 1991, CHAPTER 18

Consolidation Period: From January 1, 2020 to the e-Laws currency date.

Last amendment: 2017, c. 25, Sched. 9, s. 115.

Legislative History: 1993, c. 37; 1996, c. 1, Sched. G, s. 27; 1998, c. 18, Sched. G, s. 1-23; 2000, c. 26, Sched. H, s. 3; 2000, c. 42, Sched., s. 29-40; 2001, c. 8, s. 217-225; 2002, c. 24, Sched. B, s. 25; 2004, c. 3, Sched. B, s. 11; 2005, c. 28, Sched. B, s. 2; 2006, c. 19, Sched. C, s. 1 (1); 2006, c. 19, Sched. L, s. 10, 11 (2); 2006, c. 27, s. 18; 2006, c. 31, s. 35; 2006, c. 35, Sched. C, s. 116; 2007, c. 10, Sched. B, s. 21; 2007, c. 10, Sched. L, s. 32; 2007, c. 10, Sched. M; 2007, c. 10, Sched. O, s. 14; 2007, c. 10, Sched. P, s. 20; 2007, c. 10, Sched. Q, s. 14; 2007, c. 10, Sched. R, s. 19; 2008, c. 18; 2009, c. 6; 2009, c. 24, s. 33; 2009, c. 26, s. 24 (But see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*); 2009, c. 33, Sched. 6, s. 84; 2009, c. 33, Sched. 18, s. 17 (2), 29; 2010, c. 15, s. 241; Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006*; 2013, c. 9; 2014, c. 14, Sched. 2, s. 9-12; 2015, c. 8, s. 38; 2015, c. 18, s. 2, 3; 2015, c. 30, s. 28; 2016, c. 6, Sched. 1, s. 4; 2017, c. 2, Sched. 9, s. 10-12; 2017, c. 11, Sched. 5; 2017, c. 25, Sched. 6, s. 17; 2017, c. 25, Sched. 9, s. 115.

CONTENTS

Interpretation

1 (1) In this Act,

"Advisory Council" means the Health Professions Regulatory Advisory Council; ("Conseil consultatif")

"Board" means the Health Professions Appeal and Review Board under the *Ministry of Health and Long-Term Care Appeal and Review Boards Act, 1998*; ("Commission")

"certificate of authorization" means a certificate of authorization issued under this Act or the Code; ("certificat d'autorisation")

"Code" means the Health Professions Procedural Code in Schedule 2; ("Code")

"College" means the College of a health profession or group of health professions established or continued under a health profession Act; ("ordre")

"Council" means the Council of a College; ("conseil")

"health profession" means a health profession set out in Schedule 1; ("profession de la santé")

"health profession Act" means an Act named in Schedule 1; ("loi sur une profession de la santé")

"health profession corporation" means a corporation incorporated under the *Business Corporations Act* that holds a valid certificate of authorization issued under this Act or the Code; ("société professionnelle de la santé")

"member" means a member of a College; ("membre")

"Minister" means the Minister of Health and Long-Term Care; ("ministre")

"personal health information" has the same meaning as in section 4 of the *Personal Health Information Protection Act, 2004*; ("renseignements personnels sur la santé")

"personal information" means personal information within the meaning of the *Freedom of Information and Protection of Privacy Act*. ("renseignements personnels") 1991, c. 18, s. 1 (1); 1998, c. 18, Sched. G, s. 1; 2000, c. 42, Sched., s. 29; 2006, c. 19, Sched. L, s. 11 (2); 2007, c. 10, Sched. M, s. 1; 2009, c. 33, Sched. 18, s. 17 (2); 2017, c. 11, Sched. 5, s. 1.

Hearing not required unless referred to

(2) Nothing in this Act shall be construed to require a hearing to be held within the meaning of the *Statutory Powers Procedure Act* unless the holding of a hearing is specifically referred to. 1991, c. 18, s. 1 (2).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 1 - 01/02/1999

2000, c. 42, Sched., s. 29 - 01/11/2001

2006, c. 19, Sched. L, s. 11 (2) - 22/06/2006

2007, c. 10, Sched. M, s. 1 - 04/06/2007

2009, c. 33, Sched. 18, s. 17 (2) - 15/12/2009

2017, c. 11, Sched. 5, s. 1 - 30/05/2017

Administration of Act

2 The Minister is responsible for the administration of this Act. 1991, c. 18, s. 2.

Duty of Minister

3 It is the duty of the Minister to ensure that the health professions are regulated and co-ordinated in the public interest, that appropriate standards of practice are developed and maintained and that individuals have access to services provided by the health professions of their choice and that they are treated with sensitivity and respect in their dealings with health professionals, the Colleges and the Board. 1991, c. 18, s. 3.

Code

4 The Code shall be deemed to be part of each health profession Act. 1991, c. 18, s. 4.

Powers of Minister

5 (1) The Minister may,

(a) inquire into or require a Council to inquire into the state of practice of a health profession in a locality or institution;

(b) review a Council's activities and require the Council to provide reports and information;

(c) require a Council to make, amend or revoke a regulation under a health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*;

(d) require a Council to do anything that, in the opinion of the Minister, is necessary or advisable to carry out the intent of this Act, the health profession Acts, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*. 1991, c. 18, s. 5 (1); 2009, c. 26, s. 24 (1).

Council to comply with Minister's request

(2) If the Minister requires a Council to do anything under subsection (1), the Council shall, within the time and in the manner specified by the Minister, comply with the requirement and submit a report. 1991, c. 18, s. 5 (2).

Regulations

(3) If the Minister requires a Council to make, amend or revoke a regulation under clause (1) (c) and the Council does not do so within sixty days, the Lieutenant Governor in Council may make, amend or revoke the regulation. 1991, c. 18, s. 5 (3).

Idem

(4) Subsection (3) does not give the Lieutenant Governor in Council authority to do anything that the Council does not have authority to do. 1991, c. 18, s. 5 (4).

Expenses of Colleges

(5) The Minister may pay a College for expenses incurred in complying with a requirement under subsection (1). 1991, c. 18, s. 5 (5).

Section Amendments with date in force (d/m/y)

2009, c. 26, s. 24 (1) - 15/12/2009

College supervisor

5.0.1 (1) The Lieutenant Governor in Council may appoint a person as a College supervisor, on the recommendation of the Minister, where the Minister considers it appropriate or necessary. 2014, c. 14, Sched. 2, s. 9.

Factors to be considered

(2) In deciding whether to make a recommendation under subsection (1), the Minister may consider any matter he or she considers relevant, including, without limiting the generality of the foregoing,

(a) the quality of the administration and management, including financial management, of the College;

(b) the administration of this Act or the health profession Act as they relate to the health profession; and

(c) the performance of other duties and powers imposed on the College, the Council, the committees of the College, or persons employed, retained or appointed to administer this Act, the health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*. 2009, c. 26, s. 24 (2).

Notice

(3) At least 30 days before recommending to the Lieutenant Governor in Council that a College supervisor be appointed, the Minister shall give the College a notice of his or her intention to make the recommendation and in the notice advise the College that it may make written submissions to the Minister. 2009, c. 26, s. 24 (2).

Review of submissions

(4) The Minister shall review any submissions made by the College and if the Minister makes a recommendation to the Lieutenant Governor in Council to appoint a College supervisor, the Minister shall provide the College's submissions, if any, to the Lieutenant Governor in Council. 2009, c. 26, s. 24 (2).

Term of office

(5) The appointment of a College supervisor is valid until terminated by order of the Lieutenant Governor in Council. 2009, c. 26, s. 24 (2).

Powers of College supervisor

(6) Unless the appointment provides otherwise, a College supervisor has the exclusive right to exercise all the powers of a Council and every person employed, retained or appointed for the purposes of the administration of this Act, a health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*. 2009, c. 26, s. 24 (2).

Same

(7) The Lieutenant Governor in Council may specify the powers and duties of a College supervisor appointed under this section and the terms and conditions governing those powers and duties. 2009, c. 26, s. 24 (2).

Additional powers of College supervisor

(8) If, under the order of the Lieutenant Governor in Council, the Council continues to have the right to act respecting any matters, any such act of Council is valid only if approved in writing by the College supervisor. 2009, c. 26, s. 24 (2).

Right of access

(9) A College supervisor has the same rights as a Council and the Registrar in respect of the documents, records and information of the College. 2009, c. 26, s. 24 (2).

Report to Minister

(10) A College supervisor shall report to the Minister as required by the Minister. 2009, c. 26, s. 24 (2).

Minister's directions

(11) The Minister may issue one or more directions to a College supervisor regarding any matter within the jurisdiction of the supervisor, or amend a direction. 2009, c. 26, s. 24 (2).

Directions to be followed

(12) A College supervisor shall carry out every direction of the Minister. 2009, c. 26, s. 24 (2).

Section Amendments with date in force (d/m/y)

2009, c. 26, s. 24 (2) - 15/12/2009

2014, c. 14, Sched. 2, s. 9 - 01/08/2016

***Fair Access to Regulated Professions and Compulsory Trades Act, 2006* not applicable**

5.1 The *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* does not apply to any College. 2006, c. 31, s. 35 (1); 2017, c. 2, Sched. 9, s. 10.

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (1) - 01/03/2007

2017, c. 2, Sched. 9, s. 10 - 22/03/2017

***Ontario Labour Mobility Act, 2009* not applicable**

5.2 The *Ontario Labour Mobility Act, 2009*, except sections 21 to 24, does not apply to any College. 2009, c. 24, s. 33 (1).

Section Amendments with date in force (d/m/y)

2009, c. 24, s. 33 (1) - 15/12/2009

Reports

Annual report

6 (1) Each College and the Advisory Council shall report annually to the Minister on its activities and financial affairs. 1998, c. 18, Sched. G, s. 2 (1).

(2) REPEALED: 2007, c. 10, Sched. M, s. 2 (1).

Audited financial statement

(3) Each College's annual report shall include an audited financial statement. 1998, c. 18, Sched. G, s. 2 (2).

Content and form

(4) The Minister may specify the content and form of the annual reports submitted by the College and the Advisory Council and, where the Minister has done so, the annual reports shall contain that content and be in that form. 2007, c. 10, Sched. M, s. 2 (2).

Minister may publish information

(5) The Minister may, in every year, publish information from the annual reports of the Colleges. 2007, c. 10, Sched. M, s. 2 (2).

No personal information

(6) Information from the annual reports published by the Minister shall not include any personal information. 2007, c. 10, Sched. M, s. 2 (2).

Additional audits

(7) The College and the Advisory Council shall be subject, at any time, to any other audits relating to any aspect of its affairs as the Minister may determine to be appropriate, conducted by an auditor appointed by or acceptable to the Minister. 2009, c. 26, s. 24 (3).

Auditor to submit results

(8) The auditor shall submit the results of any audit performed under subsection (7) to the Minister and the College. 2009, c. 26, s. 24 (3).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 2 (1, 2) - 01/02/1999

2007, c. 10, Sched. M, s. 2 (1, 2) - 04/06/2009

2009, c. 26, s. 24 (3) - 15/12/2009

ADVISORY COUNCIL

Advisory Council

7 (1) The Advisory Council is established under the name Health Professions Regulatory Advisory Council in English and Conseil consultatif de réglementation des professions de la santé in French.

Composition

(2) The Advisory Council shall be composed of at least five and no more than seven persons who shall be appointed by the Lieutenant Governor in Council on the Minister's recommendation.

Chair and vice-chair

(3) The Lieutenant Governor in Council shall designate one member of the Advisory Council to be the chair and one to be the vice-chair. 1991, c. 18, s. 7.

Qualification of members

8 A person may not be appointed as a member of the Advisory Council if the person,

(a) is employed under Part III of the *Public Service of Ontario Act, 2006* or by a Crown agency as defined in the *Crown Agency Act*; or

(b) is or has been a member of a Council or College. 1991, c. 18, s. 8; 2006, c. 35, Sched. C, s. 116 (1).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 116 (1) - 20/08/2007

Terms of members

9 (1) Members of the Advisory Council shall be appointed for terms of two years. 1991, c. 18, s. 9 (1).

Replacement members

(2) A person appointed to replace a member of the Advisory Council before the member's term expires shall hold office for the remainder of the term. 1991, c. 18, s. 9 (2).

Reappointments

(3) Members of the Advisory Council are eligible for reappointment. 1991, c. 18, s. 9 (3).

(4) REPEALED: 2007, c. 10, Sched. M, s. 3.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 3 - 04/06/2009

Remuneration and expenses

10 The members of the Advisory Council shall be paid the remuneration and expenses the Lieutenant Governor in Council determines. 1991, c. 18, s. 10.

Duties of the Advisory Council

11 (1) The Advisory Council's duties are to advise the Minister and no other person on any issue from the matters described in clauses (2) (a) to (f), but only if the Minister decides to refer the issue to the Advisory Council in writing, seeking its advice, and in no other circumstances. 2009, c. 26, s. 24 (4).

Matters that may be referred

(2) The matters that the Minister may refer to the Advisory Council are,

(a) whether unregulated professions should be regulated;

(b) whether regulated professions should no longer be regulated;

(c) suggested amendments to this Act, a health profession Act or a regulation under any of those Acts and suggested regulations under any of those Acts;

(d) matters concerning the quality assurance programs undertaken by Colleges;

(e) each College's patient relations program and its effectiveness; and

(f) any matter the Minister considers desirable to refer to the Advisory Council relating to the regulation of the health professions. 2009, c. 26, s. 24 (4).

Section Amendments with date in force (d/m/y)

2009, c. 26, s. 24 (4) - 15/12/2009

Referrals to the Advisory Council

12 (1) The Minister may refer any issue within the matters described in clauses 11 (2) (a) to (e) to the Advisory Council that a Council or person asks the Minister to refer, and the Minister may refer any other issue to the Advisory Council that the Minister determines is appropriate. 2009, c. 26, s. 24 (5).

Advice for Minister only

(2) Unless the Minister or this Act provides otherwise, the Advisory Council shall provide its advice to the Minister and no other person, and shall not provide advice on any issue other than the issue referred to it by the Minister. 2009, c. 26, s. 24 (5).

Form and manner

(3) If the Minister refers an issue to the Advisory Council for advice, the Advisory Council shall provide its advice to the Minister only in the form and manner specified by the Minister. 2009, c. 26, s. 24 (5).

Section Amendments with date in force (d/m/y)

2009, c. 26, s. 24 (5) - 15/12/2009

Notice of amendments to Councils

13 (1) If the Minister refers a suggested amendment to this Act, a health profession Act or a regulation under any of those Acts or a suggested regulation under any of those Acts to the Advisory Council, the Minister shall give notice of the suggestion to the Council of every College within ten days after referring it.

Submissions to Advisory Council

(2) A Council may make written submissions to the Advisory Council with respect to a suggestion within forty-five days after receiving the Minister's notice of the suggestion or within any longer period the Advisory Council may specify. 1991, c. 18, s. 13.

Function is advisory only

14 The function of the Advisory Council is advisory only and no failure to refer a matter or to comply with any other requirement relating to a referral renders anything invalid. 1991, c. 18, s. 14.

Procedure

15 (1) The Advisory Council shall sit in Ontario where and when the chair designates.

Idem

(2) The Advisory Council shall conduct its proceedings in the manner it considers appropriate. 1991, c. 18, s. 15.

Employees

16 (1) Such employees as are considered necessary for the proper conduct of the affairs of the Advisory Council may be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 35, Sched. C, s. 116 (2).

Experts

(2) The Advisory Council may engage experts or professional advisors to assist it. 1991, c. 18, s. 16 (2).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 116 (2) - 20/08/2007

Secretary

17 (1) The Advisory Council shall appoint one of its employees as the Secretary.

Duties

(2) The Secretary's duties are,

(a) to keep a record of matters that the Minister has referred to the Advisory Council;

(b) to have the custody and care of the records and documents of the Advisory Council;

(c) to give written notice of suggested amendments to this Act, a health profession Act or a regulation under any of those Acts and suggested regulations under any of those Acts that have been referred to the Advisory Council to persons who have filed, with the Secretary, a request to be notified; and

(d) to carry out the functions and duties assigned by the Minister or the Advisory Council. 1991, c. 18, s. 17.

HEALTH PROFESSIONS BOARD

18-22 REPEALED: 1998, c. 18, Sched. G, s. 3.

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 3 - 01/02/1999

23 REPEALED: 1998, c. 18, Sched. G, s. 3.

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 3 - 01/02/1999

2007, c. 10, Sched. B, s. 21 - 04/06/2007

Investigations and expert advice

24 (1) REPEALED: 1998, c. 18, Sched. G, s. 4.

Investigators

(2) The Board may engage persons who are not public servants employed under Part III of the *Public Service of Ontario Act, 2006* to carry out investigations under paragraph 3 of subsection 28 (5) of the Code. 2006, c. 35, Sched. C, s. 116 (3); 2007, c. 10, Sched. M, s. 4 (1).

Experts

(3) The Board may engage persons who are not public servants employed under Part III of the *Public Service of Ontario Act, 2006* to provide expert or professional advice in connection with a registration hearing, complaint review or registration review. 2006, c. 35, Sched. C, s. 116 (3).

Independence of experts

(4) A person engaged under subsection (3) shall be independent of the parties, and, in the case of a complaint review, of the Inquiries, Complaints and Reports Committee. 2007, c. 10, Sched. M, s. 4 (2).

Advice disclosed

(5) The nature of any advice, including legal advice, given by a person engaged under subsection (3) shall be made known to the parties and they may make submissions with respect to the advice. 1991, c. 18, s. 24 (5).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 4 - 01/02/1999

2006, c. 35, Sched. C, s. 116 (3) - 20/08/2007

2007, c. 10, Sched. M, s. 4 (1, 2) - 04/06/2009

25 REPEALED: 1998, c. 18, Sched. G, s. 5.

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 5 - 01/02/1999

26 REPEALED: 2007, c. 10, Sched. M, s. 5.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 5 - 04/06/2009

PROHIBITIONS

Controlled acts restricted

27 (1) No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,

(a) the person is a member authorized by a health profession Act to perform the controlled act; or

(b) the performance of the controlled act has been delegated to the person by a member described in clause (a). 1991, c. 18, s. 27 (1); 1998, c. 18, Sched. G, s. 6.

Controlled acts

(2) A "controlled act" is any one of the following done with respect to an individual:

1. Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis.
2. Performing a procedure on tissue below the dermis, below the surface of a mucous membrane, in or below the surface of the cornea, or in or below the surfaces of the teeth, including the scaling of teeth.
3. Setting or casting a fracture of a bone or a dislocation of a joint.
4. Moving the joints of the spine beyond the individual's usual physiological range of motion using a fast, low amplitude thrust.
5. Administering a substance by injection or inhalation.
6. Putting an instrument, hand or finger,
    i. beyond the external ear canal,

ii. beyond the point in the nasal passages where they normally narrow,

iii. beyond the larynx,

iv. beyond the opening of the urethra,

v. beyond the labia majora,

vi. beyond the anal verge, or

vii. into an artificial opening into the body.

7. Applying or ordering the application of a form of energy prescribed by the regulations under this Act.

8. Prescribing, dispensing, selling or compounding a drug as defined in the *Drug and Pharmacies Regulation Act*, or supervising the part of a pharmacy where such drugs are kept.

9. Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers.

10. Prescribing a hearing aid for a hearing impaired person.

11. Fitting or dispensing a dental prosthesis, orthodontic or periodontal appliance or a device used inside the mouth to protect teeth from abnormal functioning.

12. Managing labour or conducting the delivery of a baby.

13. Allergy challenge testing of a kind in which a positive result of the test is a significant allergic response.

14. Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning. 1991, c. 18, s. 27 (2); 2007, c. 10, Sched. L, s. 32; 2007, c. 10, Sched. R, s. 19 (1).

Exemptions

(3) An act by a person is not a contravention of subsection (1) if the person is exempted by the regulations under this Act or if the act is done in the course of an activity exempted by the regulations under this Act. 1991, c. 18, s. 27 (3).

Same

(4) Despite subsection (1), a member of the Ontario College of Social Workers and Social Service Workers is authorized to perform the controlled act set out in paragraph 14 of subsection (2), in compliance with the *Social Work and Social Service Work Act, 1998*, its regulations and by-laws. 2007, c. 10, Sched. R, s. 19 (2).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 6 - 01/02/1999

2007, c. 10, Sched. L, s. 32 - 04/06/2007; 2007, c. 10, Sched. R, s. 19 (1, 2) - 30/12/2017

Delegation of controlled act

28 (1) The delegation of a controlled act by a member must be in accordance with any applicable regulations under the health profession Act governing the member's profession.

Idem

(2) The delegation of a controlled act to a member must be in accordance with any applicable regulations under the health profession Act governing the member's profession. 1991, c. 18, s. 28.

Exceptions

29 (1) An act by a person is not a contravention of subsection 27 (1) if it is done in the course of,

(a) rendering first aid or temporary assistance in an emergency;

(b) fulfilling the requirements to become a member of a health profession and the act is within the scope of practice of the profession and is done under the supervision or direction of a member of the profession;

(c) treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment;

(d) treating a member of the person's household and the act is a controlled act set out in paragraph 1, 5 or 6 of subsection 27 (2); or

(e) assisting a person with his or her routine activities of living and the act is a controlled act set out in paragraph 5 or 6 of subsection 27 (2).

Counselling

(2) Subsection 27 (1) does not apply with respect to a communication made in the course of counselling about emotional, social, educational or spiritual matters as long as it is not a communication that a health profession Act authorizes members to make. 1991, c. 18, s. 29.

Sexual orientation and gender identity treatments

29.1 (1) No person shall, in the course of providing health care services, provide any treatment that seeks to change the sexual orientation or gender identity of a person under 18 years of age. 2015, c. 18, s. 2.

Exception

(2) The treatments mentioned in subsection (1) do not include,

(a) services that provide acceptance, support or understanding of a person or the facilitation of a person's coping, social support or identity exploration or development; and

(b) sex-reassignment surgery or any services related to sex-reassignment surgery. 2015, c. 18, s. 2.

Person may consent

(3) Subsection (1) does not apply if the person is capable with respect to the treatment and consents to the provision of the treatment. 2015, c. 18, s. 2.

Substitute decision-maker cannot consent

(4) Despite the *Health Care Consent Act, 1996*, a substitute decision-maker may not give consent on a person's behalf to the provision of any treatment described in subsection (1). 2015, c. 18, s. 2.

Regulations

(5) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations,

(a) clarifying the meaning of "sexual orientation", "gender identity" or "seek to change" for the purposes of subsection (1);

(b) exempting any person or treatment from the application of subsection (1). 2015, c. 18, s. 2.

Section Amendments with date in force (d/m/y)

2015, c. 18, s. 2 - 04/06/2015

Treatment, etc., where risk of harm

30 (1) No person, other than a member treating or advising within the scope of practice of his or her profession, shall treat or advise a person with respect to his or her health in circumstances in which it is reasonably foreseeable that serious bodily harm may result from the treatment or advice or from an omission from them. 1991, c. 18, s. 30 (1); 2007, c. 10, Sched. M, s. 6.

Exception

(2) Subsection (1) does not apply with respect to treatment by a person who is acting under the direction of or in collaboration with a member if the treatment is within the scope of practice of the member's profession. 1991, c. 18, s. 30 (2).

Delegation

(3) Subsection (1) does not apply with respect to an act by a person if the act is a controlled act that was delegated under section 28 to the person by a member authorized by a health profession Act to do the controlled act. 1991, c. 18, s. 30 (3).

Counselling

(4) Subsection (1) does not apply with respect to counselling about emotional, social, educational or spiritual matters. 1991, c. 18, s. 30 (4).

Exceptions

(5) Subsection (1) does not apply with respect to anything done by a person in the course of,

(a) rendering first aid or temporary assistance in an emergency;

(b) fulfilling the requirements to become a member of a health profession if the person is acting within the scope of practice of the profession under the supervision or direction of a member of the profession;

(c) treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment;

(d) treating a member of the person's household; or

(e) assisting a person with his or her routine activities of living. 1991, c. 18, s. 30 (5).

Exemption

(6) Subsection (1) does not apply with respect to an activity or person that is exempted by the regulations. 1991, c. 18, s. 30 (6).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 6 - 04/06/2009

Dispensing hearing aids

31 No person shall dispense a hearing aid for a hearing impaired person except under a prescription by a member authorized by a health profession Act to prescribe a hearing aid for a hearing impaired person. 1991, c. 18, s. 31.

Dental devices, etc.

32 (1) No person shall design, construct, repair or alter a dental prosthetic, restorative or orthodontic device unless,

(a) the technical aspects of the design, construction, repair or alteration are supervised by a member of the College of Dental Technologists of Ontario or the Royal College of Dental Surgeons of Ontario; or

(b) the person is a member of a College mentioned in clause (a).

Employers

(2) A person who employs a person to design, construct, repair or alter a dental prosthetic, restorative or orthodontic device shall ensure that subsection (1) is complied with.

Supervisors

(3) No person shall supervise the technical aspects of the design, construction, repair or alteration of a dental prosthetic, restorative or orthodontic device unless he or she is a member of the College of Dental Technologists of Ontario or the Royal College of Dental Surgeons of Ontario.

Denturists

(4) This section does not apply with respect to the design, construction, repair or alteration of removable dentures for the patients of a member of the College of Denturists of Ontario if the member does the designing, construction, repair or alteration or supervises their technical aspects.

Exceptions

(5) This section does not apply with respect to anything done in a hospital as defined in the *Public Hospitals Act* or in a clinic associated with a university's faculty of dentistry or the denturism program of a college of applied arts and technology. 1991, c. 18, s. 32.

Restriction of title "doctor"

33 (1) Except as allowed in the regulations under this Act, no person shall use the title "doctor", a variation or abbreviation or an equivalent in another language in the course of providing or offering to provide, in Ontario, health care to individuals. 1991, c. 18, s. 33 (1).

Same

(1.1) Subsection (1) does not apply to a person who is a member of the College of Naturopaths of Ontario. 2007, c. 10, Sched. P, s. 20 (1).

Naturopathic doctor

(1.2) A member referred to in subsection (1.1) shall not use the title "doctor" in written format without using the phrase, "naturopathic doctor", immediately following his or her name. 2007, c. 10, Sched. P, s. 20 (1).

Idem

(2) Subsection (1) does not apply to a person who is a member of,

(a) the College of Chiropractors of Ontario;

(b) the College of Optometrists of Ontario;

(c) the College of Physicians and Surgeons of Ontario;

(d) the College of Psychologists of Ontario; or

(e) the Royal College of Dental Surgeons of Ontario. 1991, c. 18, s. 33 (2).

Same

(2.1) Subsection (1) does not apply to a person who is a member of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario and who holds a certificate of registration that entitles the member to use the title "doctor". 2006, c. 27, s. 18 (1).

Definition

(3) In this section,

"abbreviation" includes an abbreviation of a variation. 1991, c. 18, s. 33 (3).

Section Amendments with date in force (d/m/y)

2006, c. 27, s. 18 (1) - 30/12/2016

2007, c. 10, Sched. P, s. 20 (1) - 01/07/2015

Psychotherapist title

33.1 (1) Despite section 8 of the *Psychotherapy Act, 2007*, a person who holds a certificate of registration authorizing him or her to perform the controlled act of psychotherapy and is a member of one of the following Colleges may use the title "psychotherapist" if he or she complies with the conditions in subsections (2), (3) and (4):

1. The College of Nurses of Ontario.
2. The College of Occupational Therapists of Ontario.
3. The College of Physicians and Surgeons of Ontario.
4. The College of Psychologists of Ontario. 2009, c. 26, s. 24 (6).

Oral identification

(2) A person mentioned in subsection (1) shall not describe himself or herself orally as a "psychotherapist" to any person unless the member also mentions the full name of the College where he or she is a member and identifies himself or herself as a member of that College or identifies himself or herself using the title restricted to those who are members of the health profession to which the member belongs. 2009, c. 26, s. 24 (6).

Written identification

(3) A person mentioned in subsection (1) shall not use the title "psychotherapist" in writing in a way that identifies the member as a psychotherapist on a name tag, business card or any document, unless the member sets out his or her full name in writing, immediately followed by at least one of the following, followed in turn by "psychotherapist":

1. The full name of the College where he or she is a member.
2. The name of the health profession that the member practises.
3. The restricted title that the member may use under the health profession Act governing the member's profession. 2009, c. 26, s. 24 (6).

In accordance with regulations

(4) A person mentioned in subsection (1) shall use the title "psychotherapist" in accordance with the regulations made under subsection (5). 2009, c. 26, s. 24 (6).

Regulations

(5) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council of a College mentioned in paragraphs 1 to 4 of subsection (1) may make regulations governing the use of title "psychotherapist" by members of the College. 2009, c. 26, s. 24 (6).

Section Amendments with date in force (d/m/y)

2009, c. 26, s. 24 (6) - 30/12/2017

Holding out as a College

34 (1) No corporation shall falsely hold itself out as a body that regulates, under statutory authority, individuals who provide health care.

Idem

(2) No individual shall hold himself or herself out as a member, employee or agent of a body that the individual falsely represents as or knows is falsely represented as regulating, under statutory authority, individuals who provide health care. 1991, c. 18, s. 34.

Holding out as a health profession corporation

34.1 (1) No corporation shall hold itself out as a health profession corporation unless it holds a valid certificate of authorization. 2000, c. 42, Sched., s. 30.

Same

(2) No person shall hold himself or herself out as a shareholder, officer, director, agent or employee of a health profession corporation unless the corporation holds a valid certificate of authorization. 2000, c. 42, Sched., s. 30.

Section Amendments with date in force (d/m/y)

2000, c. 42, Sched., s. 30 - 01/11/2001

MISCELLANEOUS

Exemption, aboriginal healers and midwives

35 (1) This Act does not apply to,

(a) aboriginal healers providing traditional healing services to aboriginal persons or members of an aboriginal community; or

(b) aboriginal midwives providing traditional midwifery services to aboriginal persons or members of an aboriginal community.

Jurisdictions of Colleges

(2) Despite subsection (1), an aboriginal healer or aboriginal midwife who is a member of a College is subject to the jurisdiction of the College.

Definitions

(3) In this section,

"aboriginal healer" means an aboriginal person who provides traditional healing services; ("guérisseur autochtone")

"aboriginal midwife" means an aboriginal person who provides traditional midwifery services. ("sage-femme autochtone") 1991, c. 18, s. 35.

Confidentiality

36 (1) Every person employed, retained or appointed for the purposes of the administration of this Act, a health profession Act or the *Drug and Pharmacies Regulation Act* and every member of a Council or committee of a College shall keep confidential all information that comes to his or her knowledge in the course of his or her duties and shall not communicate any information to any other person except,

(a) to the extent that the information is available to the public under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*;

(b) in connection with the administration of this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*, including, without limiting the generality of this, in connection with anything relating to the registration of members,

complaints about members, allegations of members' incapacity, incompetence or acts of professional misconduct or the governing of the profession;

(c) to a body that governs a profession inside or outside of Ontario;

(d) as may be required for the administration of the *Drug Interchangeability and Dispensing Fee Act*, the *Healing Arts Radiation Protection Act*, the *Health Insurance Act*, the *Health Protection and Promotion Act*, the *Independent Health Facilities Act*, the *Laboratory and Specimen Collection Centre Licensing Act*, the *Long-Term Care Homes Act, 2007*, the *Retirement Homes Act, 2010*, the *Ontario Drug Benefit Act*, the *Coroners Act*, the *Controlled Drugs and Substances Act* (Canada) and the *Food and Drugs Act* (Canada);

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 36 (1) (d) of the Act is amended by striking out "the *Healing Arts Radiation Protection Act*". (See: 2017, c. 25, Sched. 9, s. 115 (1))

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 36 (1) (d) of the Act is amended by striking out "the *Independent Health Facilities Act*". (See: 2017, c. 25, Sched. 9, s. 115 (2))

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 36 (1) (d) of the Act is amended by adding "the *Oversight of Health Facilities and Devices Act, 2017*" after "the *Long-Term Care Homes Act, 2007*". (See: 2017, c. 25, Sched. 9, s. 115 (3))

(d.1) for a prescribed purpose, to a public hospital that employs or provides privileges to a member of a College, where the College is investigating a complaint about that member or where the information was obtained by an investigator appointed pursuant to subsection 75 (1) or (2) of the Code, subject to the limitations, if any, provided for in regulations made under section 43;

(d.2) for a prescribed purpose, to a person other than a public hospital who belongs to a class provided for in regulations made under section 43, where a College is investigating a complaint about a member of the College or where the information was obtained by an investigator appointed pursuant to subsection 75 (1) or (2) of the Code, subject to the limitations, if any, provided for in the regulations;

(e) to a police officer to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

(f) to the counsel of the person who is required to keep the information confidential under this section;

(g) to confirm whether the College is investigating a member, if there is a compelling public interest in the disclosure of that information;

(h) where disclosure of the information is required by an Act of the Legislature or an Act of Parliament;

(i) if there are reasonable grounds to believe that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons;

(j) with the written consent of the person to whom the information relates; or

(k) to the Minister in order to allow the Minister to determine,

(i) whether the College is fulfilling its duties and carrying out its objects under this Act, a health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*, or

(ii) whether the Minister should exercise any power of the Minister under this Act, or any Act mentioned in subclause (i). 2007, c. 10, Sched. M, s. 7 (1); 2014, c. 14, Sched. 2, s. 10; 2017, c. 11, Sched. 5, s. 2 (1, 2).

Reports required under Code

(1.1) Clauses (1) (c) and (d) do not apply with respect to reports required under section 85.1 or 85.2 of the Code. 1993, c. 37, s. 1. 1998, c. 18, Sched. G, s. 7 (2).

Definition

(1.2) In clause (1) (e),

"law enforcement proceeding" means a proceeding in a court or tribunal that could result in a penalty or sanction being imposed. 1998, c. 18, Sched. G, s. 7 (2); 2007, c. 10, Sched. M, s. 7 (2).

Limitation

(1.3) No person or member described in subsection (1) shall disclose, under clause (1) (e), any information with respect to a person other than a member. 1998, c. 18, Sched. G, s. 7 (2); 2007, c. 10, Sched. M, s. 7 (3).

No requirement

(1.4) Nothing in clause (1) (e) shall require a person described in subsection (1) to disclose information to a police officer unless the information is required to be produced under a warrant. 1998, c. 18, Sched. G, s. 7 (2); 2007, c. 10, Sched. M, s. 7 (4).

Confirmation of investigation

(1.5) Information disclosed under clause (l) (g) shall be limited to the fact that an investigation is or is not underway and shall not include any other information. 2007, c. 10, Sched. M, s. 7 (5).

Restriction

(1.6) Information disclosed to the Minister under clause (1) (k) shall only be used or disclosed for the purpose for which it was provided to the Minister or for a consistent purpose. 2017, c. 11, Sched. 5, s. 2 (3).

Not compellable

(2) No person or member described in subsection (1) shall be compelled to give testimony in a civil proceeding with regard to matters that come to his or her knowledge in the course of his or her duties. 1991, c. 18, s. 36 (2).

Evidence in civil proceedings

(3) No record of a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*, no report, document or thing prepared for or statement given at such a proceeding and no order or decision made in such a proceeding is admissible in a civil proceeding other than a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act* or a proceeding relating to an order under section 11.1 or 11.2 of the *Ontario Drug Benefit Act*. 1991, c. 18, s. 36 (3); 1996, c. 1, Sched. G, s. 27 (2).

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 1 - 31/12/1993; 1996, c. 1, Sched. G, s. 27 (2) - 27/05/1996; 1998, c. 18, Sched. G, s. 7 (1, 2) - 01/02/1999

2007, c. 10, Sched. M, s. 7 (1-5) - 04/06/2007

2014, c. 14, Sched. 2, s. 10 - 01/08/2016

2017, c. 11, Sched. 5, s. 2 (1-3) - 30/05/2017

2017, c. 25, Sched. 9, s. 115 (1-3) - not in force

Collection of personal information by College

36.1 (1) At the request of the Minister, a College shall collect information directly from members of the College as is reasonably necessary for the purpose of health human resources planning or research. 2017, c. 11, Sched. 5, s. 3 (1).

Unique identifiers

(2) A unique identifier shall be assigned by the Minister or a person designated by the Minister for each member of a College from whom information is collected under subsection (1). 2009, c. 26, s. 24 (7).

Form and manner

(2.1) The unique identifier shall be in the form and manner specified by the Minister. 2009, c. 26, s. 24 (7).

Members to provide information

(3) A member of a College who receives a request for information for the purpose of subsection (1) shall provide the information to the College within the time period and in the form and manner specified by the College. 2007, c. 10, Sched. M, s. 8.

Disclosure to Minister

(4) A College shall disclose the information collected under subsection (1) to the Minister within the time period and in the form and manner specified by the Minister. 2007, c. 10, Sched. M, s. 8.

Use, collection, disclosure and publication

(5) The following applies to information collected under subsection (1):

1. The information may only be used for the purposes set out under subsection (1).
2. The Minister shall not collect personal information if other information will serve the purposes set out under subsection (1).

3. The Minister shall not collect more personal information than is necessary for the purposes set out under subsection (1).
4. The Minister may disclose the information only for the purposes set out in subsection (1).
5. Reports and other documents using information collected under this section may be published for the purposes set out under subsection (1), and for those purposes only, but personal information about a member of a College shall not be included in those reports or documents. 2017, c. 11, Sched. 5, s. 3 (2).

(6) REPEALED: 2017, c. 11, Sched. 5, s. 3 (2).

Notice required by s. 39 (2) of FIPPA

(7) If the Minister requires a College to collect personal information from its members under subsection (1), the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* is given by,

(a) a public notice posted on the Ministry's website; or

(b) any other public method that may be prescribed. 2007, c. 10, Sched. M, s. 8.

Same

(8) If the Minister publishes a notice referred to under subsection (7), the Minister shall advise the College of the notice and the College shall also publish a notice about the collection on the College's website within 20 days of receiving the advice from the Minister. 2007, c. 10, Sched. M, s. 8.

Definitions

(9) In this section,

"health human resources planning" means ensuring the sufficiency and appropriate distribution of health providers; ("planification des ressources humaines en santé")

"information" includes personal information about members, but does not include personal health information; ("renseignements")

"Ministry" means the Ministry of Health and Long-Term Care; ("ministère")

"research" means the study of data and information in respect of health human resources planning. ("recherche") 2007, c. 10, Sched. M, s. 8; 2017, c. 11, Sched. 5, s. 3 (3, 4).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 8 - 04/06/2007

2009, c. 26, s. 24 (7) - 15/12/2009

2017, c. 11, Sched. 5, s. 3 (1-4) - 30/05/2017

Electronic health record

36.2 (1) The Minister may make regulations,

(a) requiring one or more Colleges to collect from their members information relating to their members that is specified in those regulations and that is, in the Minister's opinion, necessary for the purpose of developing or maintaining the electronic health record under Part V.1 of the *Personal Health Information Protection Act, 2004*, including ensuring that members are accurately identified for purposes of the electronic health record;

(b) requiring the College or Colleges to provide the information to the prescribed organization in the form, manner and timeframe specified by the prescribed organization;

(c) respecting the notice mentioned in subsection (4). 2016, c. 6, Sched. 1, s. 4.

Members to provide information

(2) Where the Minister has made a regulation under subsection (1), and a College has requested information from a member in compliance with the regulation, the member shall comply with the College's request. 2016, c. 6, Sched. 1, s. 4.

Use and disclosure by prescribed organization

(3) Despite a regulation made under subsection (1), the prescribed organization,

(a) may only collect, use or disclose information under this section for the purpose provided for in subsection (1);

(b) shall not use or disclose personal information collected under this section if other information will serve the purpose; and

(c) shall not use or disclose more personal information collected under this section than is necessary for the purpose. 2016, c. 6, Sched. 1, s. 4.

Notice required by s. 39 (2) of *FIPPA*

(4) Where the Minister has made a regulation under subsection (1), and a College is required to collect personal information from its members, the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act* is given by,

(a) a public notice posted on the prescribed organization's website; or

(b) any other public method that may be prescribed in regulations made by the Minister under subsection (1). 2016, c. 6, Sched. 1, s. 4.

Same

(5) If the prescribed organization publishes a notice referred to under subsection (4), the prescribed organization shall advise the College of the notice and the College shall also publish a notice about the collection on the College's website within 20 days. 2016, c. 6, Sched. 1, s. 4.

Definitions

(6) In this section,

"information" includes personal information, but does not include personal health information; ("renseignements")

"prescribed organization" has the same meaning as in section 2 of the *Personal Health Information Protection Act, 2004*. ("organisation prescrite") 2016, c. 6, Sched. 1, s. 4; 2017, c. 11, Sched. 5, s. 4.

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 4 - 03/06/2016

2017, c. 11, Sched. 5, s. 4 - 30/05/2017

Onus of proof to show registration

37 (1) A person who is charged with an offence to which registration under a health profession Act would be a defence shall be deemed, in the absence of evidence to the contrary, to have not been registered. 1991, c. 18, s. 37.

Onus of proof to show certificate of authorization

(2) A person who is charged with an offence to which holding a certificate of authorization would be a defence shall be deemed, in the absence of evidence to the contrary, to have not been issued a certificate of authorization. 2000, c. 42, Sched., s. 31; 2007, c. 10, Sched. M, s. 9 (1).

Injunctions

(3) Subsections (1) and (2) apply, with necessary modifications, to a person who is the subject of an application under section 87 of the Code. 2007, c. 10, Sched. M, s. 9 (2).

Section Amendments with date in force (d/m/y)

2000, c. 42, Sched., s. 31 - 01/11/2001

2007, c. 10, Sched. M, s. 9 (1, 2) - 04/06/2009

Immunity

38 No action or other proceeding for damages shall be instituted against the Crown, the Minister, a College supervisor appointed under section 5.0.1 or his or her staff, an employee of the Crown, the Advisory Council, a College, a Council, or a member, officer, employee, agent or appointee of the Advisory Council, a College, a Council, a committee of a Council or a panel of a committee of a Council for an act done in good faith in the performance or intended performance of a duty or in the exercise or the intended exercise of a power under this Act, a health profession Act, the *Drug and Pharmacies Regulation Act* or a regulation or a by-law under those Acts or for any neglect or default in the performance or exercise in good faith of the duty or power. 1991, c. 18, s. 38; 1998, c. 18, Sched. G, s. 8; 2007, c. 10, Sched. M, s. 10; 2009, c. 26, s. 24 (8).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 8 - 01/02/1999

2007, c. 10, Sched. M, s. 10 - 04/06/2007

2009, c. 26, s. 24 (8) - 15/12/2009

Service

39 (1) A notice or decision to be given to a person under this Act, the *Drug and Pharmacies Regulation Act* or a health profession Act may be given by mail or by fax. 2007, c. 10, Sched. M, s. 11.

When notice or decision given by mail received

(2) If a notice or decision is sent by mail addressed to a person at the person's last known address, there is a rebuttable presumption that it was received by the person on the fifth day after mailing. 2007, c. 10, Sched. M, s. 11.

When notice or decision given by fax received

(3) If a notice or decision is sent by fax to a person at the person's last known fax number, there is a rebuttable presumption that it was received by the person,

(a) on the day it was faxed, if faxed after midnight and before 4 p.m.; or

(b) on the following day, if faxed at any other time. 2007, c. 10, Sched. M, s. 11.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 11 - 04/06/2007

Offences

40 (1) Every person who contravenes subsection 27 (1), 29.1 (1) or 30 (1) is guilty of an offence and on conviction is liable,

(a) for a first offence, to a fine of not more than $25,000, or to imprisonment for a term of not more than one year, or both; and

(b) for a second or subsequent offence, to a fine of not more than $50,000, or to imprisonment for a term of not more than one year, or both. 2007, c. 10, Sched. M, s. 12; 2015, c. 18, s. 3.

Same

(2) Every individual who contravenes section 31, 32 or 33 or subsection 34 (2), 34.1 (2) or 36 (1) is guilty of an offence and on conviction is liable to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 12.

Same

(3) Every corporation that contravenes section 31, 32 or 33 or subsection 34 (1), 34.1 (1) or 36 (1) is guilty of an offence and on conviction is liable to a fine of not more than $50,000 for a first offence and not more than $200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 12.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 2 - 31/12/1993

2000, c. 42, Sched., s. 32 (1, 2) - 01/11/2001

2001, c. 8, s. 217 - 01/11/2001

2007, c. 10, Sched. M, s. 12 - 04/06/2007

2015, c. 18, s. 3 - 06/04/2015

Responsibility of employment agencies

41 Every person who procures employment for an individual and who knows that the individual cannot perform the duties of the position without contravening subsection 27 (1) is guilty of an offence and on conviction is liable to a fine of not more than $25,000 for a first offence, and not more than $50,000 for a second or subsequent offence. 1991, c. 18, s. 41; 2007, c. 10, Sched. M, s. 13.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 13 - 04/06/2007

Responsibility of employers

42 (1) The employer of a person who contravenes subsection 27 (1) while acting within the scope of his or her employment is guilty of an offence and on conviction is liable to a fine of not more than $25,000 for a first offence, and not more than $50,000 for a second or subsequent offence. 1991, c. 18, s. 42 (1); 2007, c. 10, Sched. M, s. 14 (1).

Responsibility of directors of corporate employers

(2) In addition, if the employer described in subsection (1) is a corporation, every director of the corporation who approved of, permitted or acquiesced in the contravention is guilty of an offence and on conviction is liable to a fine of not more than $25,000 for a first offence, and not more than $50,000 for a second or subsequent offence. 1991, c. 18, s. 42 (2); 2007, c. 10, Sched. M, s. 14 (2).

Exception

(3) Subsection (2) does not apply with respect to a corporation that operates a public hospital within the meaning of the *Public Hospitals Act* or to a corporation to which Part III of the *Corporations Act* applies. 1991, c. 18, s. 42 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "Part III of the *Corporations Act*" and substituting "the *Not-for-Profit Corporations Act, 2010*". See: 2010, c. 15, ss. 241 (1), 249.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 14 (1, 2) - 04/06/2007

2010, c. 15, s. 241 (1) - not in force

No limitation

42.1 Section 76 of the *Provincial Offences Act* does not apply to a prosecution under this Act, the *Drug and Pharmacies Regulation Act* or a health profession Act. 2007, c. 10, Sched. M, s. 15.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 15 - 04/06/2007

Regulations

43 (1) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations,

(a) prescribing forms of energy for the purposes of paragraph 7 of subsection 27 (2);

(b) exempting a person or activity from subsection 27 (1) or 30 (1);

(c) attaching conditions to an exemption in a regulation made under clause (b);

(d) allowing the use of the title "doctor", a variation or abbreviation or an equivalent in another language;

(e) respecting health profession corporations;

(f) governing the issue, renewal, suspension, revocation and expiration of certificates of authorization;

(g) governing the names of health profession corporations;

(g.1) prescribing purposes and providing for limitations for the purposes of clauses 36 (1) (d.1) and (d.2);

(g.2) providing for classes of persons for the purposes of clause 36 (1) (d.2);

(h) specifying in greater detail the things that shall be provided by or performed by a College under sections 15 to 22.11 of the Code;

(h.0.1) requiring that decisions made under subsections 15 (1) and (4), 18 (2) and (4) and 19 (6) and (8) of the Code be made within a reasonable time;

(h.0.2) requiring that notices required under subsections 15 (3) and 20 (1) of the Code and written reasons required under subsection 20 (1) of the Code be provided within a reasonable time;

(h.1) for the purposes of clause 36.1 (7) (b), prescribing alternative methods of giving the notice required by subsection 39 (2) of the *Freedom of Information and Protection of Privacy Act*;

Note: Clause (h.1) was enacted as clause (h) in the source law, the Statutes of Ontario, 2007, chapter 10, Schedule M, subsection 16 (1). The clause is renumbered in this consolidation to distinguish it from existing clause (h), enacted by the Statutes of Ontario, 2006, chapter 31, subsection 35 (2).

(h.2) prescribing information as information that is to be posted on a College website for the purposes of section 3.1 of the Code;

Note: Clause (h.2) was enacted as clause (i) in the source law, the Statutes of Ontario, 2007, chapter 10, Schedule M, subsection 16 (2). The clause is renumbered in this consolidation to distinguish it from existing clause (i), enacted by the Statutes of Ontario, 2006, chapter 31, subsection 35 (2).

(i) governing reports and certificates to be provided to the Fairness Commissioner, appointed under the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*, including their form, their manner of preparation, making them available to the public and requiring a College to provide such reports and certificates;

(j) governing other information to be provided to the Fairness Commissioner and requiring persons to provide that information;

(k) governing audits, including specifying audit standards and the scope of audits;

(l) prescribing a longer period in respect of a College for the purpose of section 22.23 of the Code;

(m) defining, for the purposes of sections 22.3 and 22.15 to 22.23 of the Code, any word or expression that is used in those sections but not defined in this Act;

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following clause:

(n) prescribing for the purposes of subsection 2 (2) of the Code, the provisions of the *Not-for-Profit Corporations Act, 2010* that apply to a College.

See: 2010, c. 15, ss. 241 (2), 249.

(o) establishing criteria for the definition of "patient" in relation to professional misconduct involving the sexual abuse of a patient for the purposes of subsection 1 (3) of the Code.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 43 (1) of the Act is amended by adding the following clauses: (See: 2017, c. 11, Sched. 5, s. 5 (2))

(p) respecting the composition of committees that a College is required to have pursuant to subsection 10 (1) of the Code and governing the relationship between such regulations and the by-laws of the College;

(q) respecting the qualification, selection, appointment and terms of office of members of committees that a College is required to have pursuant to subsection 10 (1) of the Code and governing the relationship between such regulations and the by-laws of the College;

(r) prescribing conditions that disqualify committee members from sitting on committees that a College is required to have pursuant to subsection 10 (1) of the Code and governing the removal of disqualified committee members and governing the relationship between such regulations and the by-laws of the College;

(s) specifying the composition of panels selected from amongst the members of the Registration Committee, Inquiries, Complaints and Reports Committee, Discipline Committee and Fitness to Practise Committee for the purposes of subsections 17 (2), 25 (2), 38 (2) and 64 (2) of the Code, and providing for quorum for such panels.

(t) prescribing additional information to be contained in a College's register for the purposes of paragraph 19 of subsection 23 (2) of the Code and designating such information as information subject to subsection 23 (13.1) of the Code;

(u) prescribing conduct for the purposes of subparagraph 3 vii of subsection 51 (5) of the Code;

(v) prescribing offences for the purposes of clause 51 (5.2) (a) of the Code.

(w) clarifying how a College is required to perform its functions under sections 25 to 69 and 72 to 74 of the Code with respect to matters involving allegations of a member's misconduct of a sexual nature, and providing for further functions and duties that are not inconsistent with those functions.

(x) prescribing additional functions of the patient relations program for the purposes of subsection 84 (3.1) of the Code.

(y) prescribing additional purposes for which funding may be provided under the program which Colleges are required to maintain under section 85.7 of the Code, and prescribing additional persons or classes of persons to whom funding may be paid for the purposes of subsection 85.7 (8) of the Code.

(z) governing transitional matters arising from the enactment of Schedule 5 to the *Protecting Patients Act, 2017*. 1991, c. 18, s. 43 (1); 2000, c. 42, Sched., s. 33; 2006, c. 31, s. 35 (2); 2007, c. 10, Sched. M, s. 16; 2009, c. 24, s. 33 (2); 2014, c. 14, Sched. 2, s. 11; 2015, c. 8, s. 38 (1); 2017, c. 2, Sched. 9, s. 10; 2017, c. 11, Sched. 5, s. 5 (1, 3-8).

Scope of regulations

(2) A regulation may be general or particular in its application. 1991, c. 18, s. 43 (2).

Definition

(3) In clause (1) (d),

"abbreviation" includes an abbreviation of a variation. 1991, c. 18, s. 43 (3).

Section Amendments with date in force (d/m/y)

2000, c. 42, Sched., s. 33 - 01/11/2001

2006, c. 31, s. 35 (2) - 01/03/2007

2007, c. 10, Sched. M, s. 16 (1) - 04/06/2007; 2007, c. 10, Sched. M, s. 16 (2) - 04/06/2009

2009, c. 24, s. 33 (2) - 15/12/2009

2010, c. 15, s. 241 (2) - not in force

2014, c. 14, Sched. 2, s. 11 - 01/08/2016

2015, c. 8, s. 38 (1) - 01/01/2018

2017, c. 2, Sched. 9, s. 10 - 22/03/2017; 2017, c. 11, Sched. 5, s. 5 (1, 7) - 01/05/2018; 2017, c. 11, Sched. 5, s. 5 (2) - not in force; 2017, c. 11, Sched. 5, s. 5 (3-6, 8) - 30/05/2017

Regulations

43.1 Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations governing funding under programs required under section 85.7 of the Code, including regulations,

(a) prescribing the maximum amount or a means of establishing the maximum amount of funding that may be provided for a person in respect of a case of sexual abuse;

(b) prescribing the period of time during which funding may be provided for a person in respect of a case of sexual abuse. 1993, c. 37, s. 3.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 3 - 31/12/1993

Expert committees

43.2 The Lieutenant Governor in Council may make regulations,

(a) establishing one or more expert committees for the purposes of this Act, the Code and health profession Acts;

(b) specifying the functions, duties, powers and membership of an expert committee;

(c) requiring an expert committee to provide reports and information to the Minister and providing for the content of such reports and information;

(d) requiring information to be provided by a College or Council to an expert committee, and governing the content of the information and the form and manner and time within which the information is to be provided to the committee. 2009, c. 26, s. 24 (9).

Section Amendments with date in force (d/m/y)

2009, c. 26, s. 24 (9) - 15/12/2009

References to health professionals

44 A reference in an Act or regulation to a person described in Column 1 of the Table shall be deemed to be a reference to a person described opposite in Column 2. 1991, c. 18, s. 44.

45 OMITTED (AMENDS OR REPEALS OTHER ACTS). 1991, c. 18, s. 45.

46 OMITTED (REVOKES REGULATIONS). 1991, c. 18, s. 46.

47, 48 OMITTED (AMENDS OR REPEALS OTHER ACTS). 1991, c. 18, ss. 47, 48.

49 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 1991, c. 18, s. 49.

50 OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1991, c. 18, s. 50.

TABLE

Item	Column 1	Column 2
1.	person registered as a chiropodist under the *Chiropody Act*	member of the College of Chiropodists of Ontario
2.	person registered as a dental technician under the *Dental Technicians Act*	member of the College of Dental Technologists of Ontario
3.	person licensed as a denture therapist under the *Denture Therapists Act*	member of the College of Denturists of Ontario
4.	person registered as a chiropractor under the *Drugless Practitioners Act*	member of the College of Chiropractors of Ontario
5.	person registered as a masseur under the *Drugless Practitioners Act*	member of the College of Massage Therapists of Ontario
6.	REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.	
7.	person registered as a physiotherapist under the *Drugless Practitioners Act*	member of the College of Physiotherapists of Ontario
7.1	person registered under the *Drugless Practitioners Act*	member of the College of Naturopaths of Ontario
8.	person registered as a dental hygienist under Part II of the *Health Disciplines Act*	member of the College of Dental Hygienists of Ontario
9.	person licensed under Part II of the *Health Disciplines Act*	member of the Royal College of Dental Surgeons of Ontario
10.	person licensed under Part III of the *Health Disciplines Act*	member of the College of Physicians and Surgeons of Ontario
11.	person who is the holder of a certificate issued under Part IV of the *Health Disciplines Act*	member of the College of Nurses of Ontario
12.	person licensed under Part V of the *Health Disciplines Act*	member of the College of Optometrists of Ontario
13.	person licensed under Part VI of the *Health Disciplines Act*	member of the Ontario College of Pharmacists
14.	Person registered under the *Ophthalmic Dispensers Act*	member of the College of Opticians of Ontario
15.	person registered under the *Psychologists Registration Act*	member of the College of Psychologists of Ontario
16.	person registered under the *Radiological Technicians Act*	member of the College of Medical Radiation and Imaging Technologists of Ontario
17.	member of the College of Medical Radiation Technologists of Ontario	member of the College of Medical Radiation and Imaging Technologists of Ontario

1991, c. 18, Table; See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011; 2007, c. 10, Sched. P, s. 20 (2); 2017, c. 25, Sched. 6, s. 17 (1).

Section Amendments with date in force (d/m/y)

Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2007, c. 10, Sched. P, s. 20 (2) - 01/07/2015

2017, c. 25, Sched. 6, s. 17 (1) - 01/01/2020

SCHEDULE 1

SELF GOVERNING HEALTH PROFESSIONS

Health Profession Acts	*Health Profession*
Audiology and Speech-Language Pathology Act, 1991	Audiology and Speech-Language Pathology
Chiropody Act, 1991	Chiropody
Chiropractic Act, 1991	Chiropractic
Dental Hygiene Act, 1991	Dental Hygiene
Dental Technology Act, 1991	Dental Technology
Dentistry Act, 1991	Dentistry
Denturism Act, 1991	Denturism
Dietetics Act, 1991	Dietetics
Homeopathy Act, 2007	Homeopathy
Kinesiology Act, 2007	Kinesiology
Massage Therapy Act, 1991	Massage Therapy
Medical Laboratory Technology Act, 1991	Medical Laboratory Technology
Medical Radiation and Imaging Technology Act, 2017	Medical Radiation and Imaging Technology
Medicine Act, 1991	Medicine
Midwifery Act, 1991	Midwifery
Naturopathy Act, 2007	Naturopathy

Nursing Act, 1991	Nursing
Occupational Therapy Act, 1991	Occupational Therapy
Opticianry Act, 1991	Opticianry
Optometry Act, 1991	Optometry
Pharmacy Act, 1991	Pharmacy
Physiotherapy Act, 1991	Physiotherapy
Psychology Act, 1991	Psychology
Psychotherapy Act, 2007	Psychotherapy
Respiratory Therapy Act, 1991	Respiratory Therapy
Traditional Chinese Medicine Act, 2006	Traditional Chinese Medicine

1991, c. 18, Sched. 1; 1998, c. 18, Sched. G, s. 9; 2006, c. 27, s. 18 (2); 2007, c. 10, Sched. O, s. 14; 2007, c. 10, Sched. Q, s. 14; 2007, c. 10, Sched. R, s. 19 (3); 2007, c. 10, Sched. P, s. 20 (3); 2017, c. 25, Sched. 6, s. 17 (2).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 9, 23 (2-4) - 01/02/1999

2006, c. 27, s. 18 (2) - 01/04/2013

2007, c. 10, Sched. O, s. 14 - 01/04/2013; 2007, c. 10, Sched. P, s. 20 (3) - 01/07/2015; 2007, c. 10, Sched. Q, s. 14 - 01/04/2015; 2007, c. 10, Sched. R, s. 19 (3) - 01/04/2015

2017, c. 25, Sched. 6, s. 17 (2) - 01/01/2020

SCHEDULE 2
HEALTH PROFESSIONS PROCEDURAL CODE

Note: This Code is deemed by section 4 of the *Regulated Health Professions Act, 1991* to be part of each health profession Act.

CONTENTS

Interpretation

1 (1) In this Code,

"alternative dispute resolution process" means mediation, conciliation, negotiation, or any other means of facilitating the resolution of issues in dispute; ("processus de règlement extrajudiciaire des différends")

"Board" means the Health Professions Appeal and Review Board under the *Ministry of Health and Long-Term Care Appeal and Review Boards Act, 1998*; ("Commission")

"by-laws" means by-laws made by the Council; ("règlements administratifs")

"certificate of authorization" means a certificate of authorization issued under the *Regulated Health Professions Act, 1991* or this Code; ("certificat d'autorisation")

"certificate of registration" means a certificate of registration issued by the Registrar; ("certificat d'inscription")

"Council" means the Council of the College; ("conseil")

"drug" means drug as defined in subsection 117 (1) of the *Drug and Pharmacies Regulation Act*; ("médicament")

"health profession corporation" means a corporation incorporated under the *Business Corporations Act* that holds a valid certificate of authorization issued under the *Regulated Health Professions Act, 1991* or this Code; ("société professionnelle de la santé")

"incapacitated" means, in relation to a member, that the member is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the member's certificate of registration be subject to terms, conditions or limitations, or that the member no longer be permitted to practise; ("frappé d'incapacité")

"member" means a member of the College; ("membre")

"Minister" means the Minister of Health and Long-Term Care; ("ministre")

"patient relations program" means a program to enhance relations between members and patients; ("programme de relations avec les patients")

"prescribed" means prescribed in the regulations; ("prescrit")

"quality assurance program" means a program to assure the quality of the practice of the profession and to promote continuing evaluation, competence and improvement among the members; ("programme d'assurance de la qualité")

"Registrar" means the Registrar of the College; ("registrateur")

"registration" means the issuance of a certificate of registration. ("inscription") 1991, c. 18, Sched. 2, s. 1 (1); 1998, c. 18, Sched. G, s. 10; 2000, c. 42, Sched., s. 34; 2006, c. 19, Sched. L, s. 11 (2); 2007, c. 10, Sched. M, s. 17; 2009, c. 26, s. 24 (10).

Hearing not required unless referred to

(2) Nothing in the health profession Act or this Code shall be construed to require a hearing to be held within the meaning of the *Statutory Powers Procedure Act* unless the holding of a hearing is specifically referred to. 1991, c. 18, Sched. 2, s. 1 (2).

Sexual abuse of a patient

(3) In this Code,

"sexual abuse" of a patient by a member means,

(a) sexual intercourse or other forms of physical sexual relations between the member and the patient,

(b) touching, of a sexual nature, of the patient by the member, or

(c) behaviour or remarks of a sexual nature by the member towards the patient. 1993, c. 37, s. 4.

Exception

(4) For the purposes of subsection (3),

"sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided. 1993, c. 37, s. 4.

Exception, spouses

(5) If the Council has made a regulation under clause 95 (1) (0.a), conduct, behaviour or remarks that would otherwise constitute sexual abuse of a patient by a member under the definition of "sexual abuse" in subsection (3) do not constitute sexual abuse if,

(a) the patient is the member's spouse; and

(b) the member is not engaged in the practice of the profession at the time the conduct, behaviour or remark occurs. 2013, c. 9, s. 1 (1).

Definitions

(6) For the purposes of subsections (3) and (5),

"patient", without restricting the ordinary meaning of the term, includes,

(a) an individual who was a member's patient within one year or such longer period of time as may be prescribed from the date on which the individual ceased to be the member's patient, and

(b) an individual who is determined to be a patient in accordance with the criteria in any regulations made under clause 43 (1) (o) of the *Regulated Health Professions Act, 1991*; ("patient")

"spouse", in relation to a member, means,

(a) a person who is the member's spouse as defined in section 1 of the *Family Law Act*, or

(b) a person who has lived with the member in a conjugal relationship outside of marriage continuously for a period of not less than three years. ("conjoint") 2017, c. 11, Sched. 5, s. 6.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 4 - 31/12/1993; 1998, c. 18, Sched. G, s. 10 - 01/02/1999

2000, c. 42, Sched., s. 34 - 01/11/2001

2006, c. 19, Sched. L, s. 11 (2) - 22/06/2006

2007, c. 10, Sched. M, s. 17 (1, 2, 4) - 04/06/2009; 2007, c. 10, Sched. M, s. 17 (3) - 04/06/2007

2009, c. 26, s. 24 (10) - 15/12/2009; 2009, c. 33, Sched. 18, s. 17 (2) - 15/12/2009

2013, c. 9, s. 1 (1) - 06/11/2013

2017, c. 11, Sched. 5, s. 6 - 01/05/2018

Statement of purpose, sexual abuse provisions

1.1 The purpose of the provisions of this Code with respect to sexual abuse of patients by members is to encourage the reporting of such abuse, to provide funding for therapy and counselling in connection with allegations of sexual abuse by members and, ultimately, to eradicate the sexual abuse of patients by members. 2017, c. 11, Sched. 5, s. 7.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 5 - 31/12/1993

2017, c. 11, Sched. 5, s. 7 - 01/05/2018

College is body corporate

2 (1) The College is a body corporate without share capital with all the powers of a natural person. 1991, c. 18, Sched. 2, s. 2 (1).

Corporations Act

(2) The *Corporations Act* does not apply in respect to the College. 1991, c. 18, Sched. 2, s. 2 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Not-for-Profit Corporations Act, 2010

(2) The *Not-for-Profit Corporations Act, 2010* does not apply to the College, except as may be prescribed by regulation made under clause 43 (1) (n) of the *Regulated Health Professions Act, 1991*. 2010, c. 15, s. 241 (3).

See: 2010, c. 15, ss. 241 (3), 249.

Section Amendments with date in force (d/m/y)

2010, c. 15, s. 241 (3) - not in force

Duty of College

2.1 It is the duty of the College to work in consultation with the Minister to ensure, as a matter of public interest, that the people of Ontario have access to adequate numbers of qualified, skilled and competent regulated health professionals. 2008, c. 18, s. 1.

Section Amendments with date in force (d/m/y)

2008, c. 18, s. 1 - 27/11/2008

Objects of College

3 (1) The College has the following objects:

1. To regulate the practice of the profession and to govern the members in accordance with the health profession Act, this Code and the *Regulated Health Professions Act, 1991* and the regulations and by-laws.
2. To develop, establish and maintain standards of qualification for persons to be issued certificates of registration.
3. To develop, establish and maintain programs and standards of practice to assure the quality of the practice of the profession.
4. To develop, establish and maintain standards of knowledge and skill and programs to promote continuing evaluation, competence and improvement among the members.

4.1 To develop, in collaboration and consultation with other Colleges, standards of knowledge, skill and judgment relating to the performance of controlled acts common among health professions to enhance interprofessional collaboration, while respecting the unique character of individual health professions and their members.

5. To develop, establish and maintain standards of professional ethics for the members.
6. To develop, establish and maintain programs to assist individuals to exercise their rights under this Code and the *Regulated Health Professions Act, 1991*.
7. To administer the health profession Act, this Code and the *Regulated Health Professions Act, 1991* as it relates to the profession and to perform the other duties and exercise the other powers that are imposed or conferred on the College.
8. To promote and enhance relations between the College and its members, other health profession colleges, key stakeholders, and the public.
9. To promote inter-professional collaboration with other health profession colleges.
10. To develop, establish, and maintain standards and programs to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues.
11. Any other objects relating to human health care that the Council considers desirable. 1991, c. 18, Sched. 2, s. 3 (1); 2007, c. 10, Sched. M, s. 18; 2009, c. 26, s. 24 (11).

Duty

(2) In carrying out its objects, the College has a duty to serve and protect the public interest. 1991, c. 18, Sched. 2, s. 3 (2).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 18 - 04/06/2009

2009, c. 26, s. 24 (11) - 15/12/2009

College website

3.1 (1) The College shall have a website, and shall include on its website information as may be prescribed in regulations made under clause 43 (1) (h.2) of the *Regulated Health Professions Act, 1991*. 2007, c. 10, Sched. M, s. 19.

Paper or electronic form

(2) Upon request and, if required by the College, the payment of a reasonable fee, the College shall provide the information required to be posted under subsection (1) in paper or electronic form. 2007, c. 10, Sched. M, s. 19.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 19 - 04/06/2009

Council

4 The College shall have a Council that shall be its board of directors and that shall manage and administer its affairs. 1991, c. 18, Sched. 2, s. 4.

Terms

5 (1) No term of a Council member who is elected shall exceed three years.

Multiple terms

(2) A person may be a Council member for more than one term but no person who is elected may be a Council member for more than nine consecutive years. 1991, c. 18, Sched. 2, s. 5.

Quorum

6 A majority of the members of the Council constitute a quorum. 1991, c. 18, Sched. 2, s. 6.

Meetings

7 (1) The meetings of the Council shall be open to the public and reasonable notice shall be given to the members of the College, to the Minister, and to the public. 2007, c. 10, Sched. M, s. 20 (1).

Posting of meeting information

(1.1) The College shall post on its website information regarding upcoming meetings of the Council, including the dates of those meetings, matters to be discussed at those meetings, and information and documentation that will be provided to members of the Council for the purpose of those meetings. 2017, c. 11, Sched. 5, s. 8.

Items where public excluded

(1.2) If the Registrar anticipates that the Council will exclude the public from any meeting or part of a meeting under subsection (2), the grounds for doing so shall be noted in the information posted under subsection (1.1) and information and documentation related to that meeting or part of that meeting shall not be posted under subsection (1.1). 2017, c. 11, Sched. 5, s. 8.

Exclusion of public

(2) Despite subsection (1), the Council may exclude the public from any meeting or part of a meeting if it is satisfied that,

(a) matters involving public security may be disclosed;

(b) financial or personal or other matters may be disclosed of such a nature that the harm created by the disclosure would outweigh the desirability of adhering to the principle that meetings be open to the public;

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

(d) personnel matters or property acquisitions will be discussed;

(e) instructions will be given to or opinions received from the solicitors for the College; or

(f) the Council will deliberate whether to exclude the public from a meeting or whether to make an order under subsection (3). 1991, c. 18, Sched. 2, s. 7 (2); 2007, c. 10, Sched. M, s. 20 (2).

Orders preventing public disclosure

(3) In situations in which the Council may exclude the public from meetings, it may make orders it considers necessary to prevent the public disclosure of matters disclosed in the meeting, including banning publication or broadcasting of those matters. 1991, c. 18, Sched. 2, s. 7 (3).

Grounds noted in minutes

(4) If the Council excludes the public from a meeting or makes an order under subsection (3), it shall have its grounds for doing so noted in the minutes of the meeting. 2007, c. 10, Sched. M, s. 20 (3).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 20 (1-3) - 04/06/2009

2017, c. 11, Sched. 5, s. 8 - 30/05/2017

Remuneration and expenses

8 Council members appointed by the Lieutenant Governor in Council shall be paid, by the Minister, the expenses and remuneration the Lieutenant Governor in Council determines. 1991, c. 18, Sched. 2, s. 8; 2006, c. 19, Sched. L, s. 10 (1).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. L, s. 10 (1) - 22/06/2006

Employees

9 (1) The Council may employ persons it considers advisable.

Registrar

(2) The Council shall appoint one of its employees as the Registrar. 1991, c. 18, Sched. 2, s. 9.

Committees

10 (1) The College shall have the following committees:

1. Executive Committee.
2. Registration Committee.
3. Inquiries, Complaints and Reports Committee.
4. Discipline Committee.
5. Fitness to Practise Committee.
6. Quality Assurance Committee.
7. Patient Relations Committee. 1991, c. 18, Sched. 2, s. 10 (1); 2007, c. 10, Sched. M, s. 21 (1).

Transitional

(1.1) For greater certainty, where, at the time subsection 21 (1) of Schedule M to the *Health System Improvements Act, 2007* comes into force, any matter that is before the Board based on anything done by the Committee formerly known as the Complaints Committee shall proceed as if the Board had the authority to do anything it could have done before the coming into force of sections 30 to 32 of that Schedule. 2007, c. 10, Sched. M, s. 21 (2).

Same

(1.2) Where a regulation made under the *Regulated Health Professions Act, 1991* or a health profession Act that was made before the coming into force of subsection 21 (1) of Schedule M to the *Health System Improvements Act, 2007* refers to the Complaints Committee, the reference shall be deemed to be to the Inquiries, Complaints and Reports Committee. 2009, c. 26, s. 24 (12).

Appointment

(2) The Council shall appoint the members of the committees. 1991, c. 18, Sched. 2, s. 10 (2).

Composition

(3) The composition of the committees shall be in accordance with the by-laws. 1991, c. 18, Sched. 2, s. 10 (3); 1998, c. 18, Sched. G, s. 11.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 10 (3) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 9)

Composition

(3) The composition of the committees shall be in accordance with the by-laws and with any regulations made pursuant to clauses 43 (1) (p) to (r) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 9.

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 11 - 01/02/1999

2007, c. 10, Sched. M, s. 21 (1, 2) - 04/06/2009

2009, c. 26, s. 24 (12) - 15/12/2009

2017, c. 11, Sched. 5, s. 9 - not in force

Annual reports

11 (1) Each committee named in subsection 10 (1) shall monitor and evaluate their processes and outcomes and shall annually submit a report of its activities to the Council in a form acceptable to the Council. 2007, c. 10, Sched. M, s. 22.

Exclusions from reports

(2) The Inquiries, Complaints and Reports Committee shall not submit a report that contains information, other than information of a general statistical nature, relating to,

(a) a referral by the Inquiries, Complaints and Reports Committee to the Discipline or Fitness to Practise Committee until a panel of the Discipline or Fitness to Practise Committee disposes of the matter;

(b) an approval for the Registrar to appoint an investigator until the investigation is completed and reported by the Registrar and the Inquiries, Complaints and Reports Committee decides not to make a referral with respect to the matter to the Discipline Committee or, if the Inquiries, Complaints and Reports Committee makes a referral with respect to the matter to the Discipline Committee, until a panel of the Discipline Committee disposes of the matter; or

(c) an interim order made by the Inquiries, Complaints and Reports Committee in respect of a member until a panel of the Discipline Committee disposes of the matter. 2007, c. 10, Sched. M, s. 22.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 22 - 04/06/2009

Executive Committee's exercise of Council's powers

12 (1) Between the meetings of the Council, the Executive Committee has all the powers of the Council with respect to any matter that, in the Committee's opinion, requires immediate attention, other than the power to make, amend or revoke a regulation or by-law.

Report to Council

(2) If the Executive Committee exercises a power of the Council under subsection (1), it shall report on its actions to the Council at the Council's next meeting. 1991, c. 18, Sched. 2, s. 12.

Members

13 (1) A person registered by the College is a member.

Suspended members

(2) A person whose certificate of registration is suspended is not a member. 1991, c. 18, Sched. 2, s. 13.

13.1

Section Amendments with date in force (d/m/y)

2009, c. 26, s. 24 (13) - no effect - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2019

Continuing jurisdiction

14 (1) A person whose certificate of registration is revoked or expires or who resigns as a member continues to be subject to the jurisdiction of the College for professional misconduct or incompetence referable to the time when the person was a member and may be investigated under section 75. 2007, c. 10, Sched. M, s. 23 (1).

Idem

(2) A person whose certificate of registration is suspended continues to be subject to the jurisdiction of the College for incapacity and for professional misconduct or incompetence referable to the time when the person was a member or to the period of the suspension and may be investigated under section 75. 1991, c. 18, Sched. 2, s. 14 (2); 2007, c. 10, Sched. M, s. 23 (2).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 23 (1, 2) - 04/06/2009

REGISTRATION

Registration

15 (1) If a person applies to the Registrar for registration, the Registrar shall,

(a) register the applicant; or

(b) refer the application to the Registration Committee. 1991, c. 18, Sched. 2, s. 15 (1).

Referrals to Registration Committee

(2) The Registrar shall refer an application for registration to the Registration Committee if the Registrar,

(a) has doubts, on reasonable grounds, about whether the applicant fulfils the registration requirements;

(a.1) is of the opinion that terms, conditions or limitations should be imposed on a certificate of registration of the applicant and the applicant is an individual described in subsection 22.18 (1);

(b) is of the opinion that terms, conditions or limitations should be imposed on a certificate of registration of the applicant and the applicant does not consent to the imposition; or

(c) proposes to refuse the application. 1991, c. 18, Sched. 2, s. 15 (2); 1993, c. 37, s. 6; 2009, c. 24, s. 33 (3).

Notice to applicant

(3) If the Registrar refers an application to the Registration Committee, he or she shall give the applicant notice of the statutory grounds for the referral and of the applicant's right to make written submissions under subsection 18 (1). 1991, c. 18, Sched. 2, s. 15 (3).

Terms, etc., attached on consent

(4) If the Registrar is of the opinion that a certificate of registration should be issued to an applicant with terms, conditions or limitations imposed and the applicant consents to the imposition, the Registrar may do so with the approval of a panel of the Registration Committee selected by the chair for the purpose. 1991, c. 18, Sched. 2, s. 15 (4).

Panels for consent

(5) Subsections 17 (2) and (3) apply with respect to the panel mentioned in subsection (4). 1991, c. 18, Sched. 2, s. 15 (5).

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 6 - 31/12/1993

2009, c. 24, s. 33 (3) - 15/12/2009

Disclosure of application file

16 (1) The Registrar shall give an applicant for registration, at his or her request, all the information and a copy of each document the College has that is relevant to the application.

Exception

(2) The Registrar may refuse to give an applicant anything that may, in the Registrar's opinion, jeopardize the safety of any person. 1991, c. 18, Sched. 2, s. 16.

Process for dealing with request

(3) The Registrar shall establish a process for the purposes of dealing with an applicant's request under subsection (1). 2015, c. 8, s. 38 (2).

Fee for access

(4) The Registrar may require an applicant to pay a fee for making information and documents available to the applicant if the Registrar first gives the applicant an estimate of the fee. 2015, c. 8, s. 38 (2).

Amount of fee

(5) The amount of the fee shall not exceed the amount of reasonable cost recovery. 2015, c. 8, s. 38 (2).

Waiver of fee

(6) The Registrar may waive the payment of all or any part of the fee that an applicant is required to pay under subsection (4) if, in the Registrar's opinion, it is fair and equitable to do so. 2015, c. 8, s. 38 (2).

Section Amendments with date in force (d/m/y)

2015, c. 8, s. 38 (2) - 01/01/2018

Panels

17 (1) An application for registration referred to the Registration Committee or an application referred back to the Registration Committee by the Board shall be considered by a panel selected by the chair from among the members of the Committee. 1991, c. 18, Sched. 2, s. 17 (1); 2007, c. 10, Sched. M, s. 24 (1).

Composition of panels

(2) A panel shall be composed of at least three persons, at least one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council. 2007, c. 10, Sched. M, s. 24 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 17 (2) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 10)

Composition of panels

(2) The panel selected by the chair shall be composed in accordance with regulations made pursuant to clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 10.

Quorum

(3) Three members of a panel constitute a quorum. 1991, c. 18, Sched. 2, s. 17 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 17 (3) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 10)

Quorum

(3) Quorum for the panel shall be in accordance with regulations made pursuant to clause 43 (1) (s) of the Regulated Health *Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 10.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 24 (1, 2) - 04/06/2009

2017, c. 11, Sched. 5, s. 10 - not in force

Consideration by panel

18 (1) An applicant may make written submissions to the panel within thirty days after receiving notice under subsection 15 (3) or within any longer period the Registrar may specify in the notice.

Orders by panel

(2) After considering the application and the submissions, the panel may make an order doing any one or more of the following:

1. Directing the Registrar to issue a certificate of registration.
2. Directing the Registrar to issue a certificate of registration if the applicant successfully completes examinations set or approved by the panel.
3. Directing the Registrar to issue a certificate of registration if the applicant successfully completes additional training specified by the panel.
4. Directing the Registrar to impose specified terms, conditions and limitations on a certificate of registration of the applicant and specifying a limitation on the applicant's right to apply under subsection 19 (1).

5. Directing the Registrar to refuse to issue a certificate of registration.

Idem

(3) A panel, in making an order under subsection (2), may direct the Registrar to issue a certificate of registration to an applicant who does not meet a registration requirement unless the requirement is prescribed as a non-exemptible requirement.

Order on consent

(4) The panel may, with the consent of the applicant, direct the Registrar to issue a certificate of registration with the terms, conditions and limitations specified by the panel imposed. 1991, c. 18, Sched. 2, s. 18.

Application for variation

19 (1) A member may apply to the Registration Committee for an order directing the Registrar to remove or modify any term, condition or limitation imposed on the member's certificate of registration as a result of a registration proceeding. 1991, c. 18, Sched. 2, s. 19 (1).

Limitations

(2) The right to apply under subsection (1) is subject to any limitation in the order imposing the term, condition or limitation or to which the member consented and to any limitation made under subsection (7) in the disposition of a previous application under this section. 1991, c. 18, Sched. 2, s. 19 (2).

Panels

(3) An application to the Registration Committee under subsection (1) or an application referred back to the Registration Committee by the Board shall be considered by a panel selected by the chair from among the members of the Committee. 1991, c. 18, Sched. 2, s. 19 (3); 2007, c. 10, Sched. M, s. 25 (1).

Idem

(4) Subsections 17 (2) and (3) apply with respect to the panel mentioned in subsection (3). 1991, c. 18, Sched. 2, s. 19 (4).

Submissions

(5) An applicant may make written submissions to the panel. 1991, c. 18, Sched. 2, s. 19 (5).

Orders

(6) After considering the application and the submissions, the panel may make an order doing any one or more of the following:

1. Refusing the application.
2. Directing the Registrar to remove any term, condition or limitation imposed on the certificate of registration.
3. Directing the Registrar to modify terms, conditions or limitations on the certificate of registration. 1991, c. 18, Sched. 2, s. 19 (6); 2007, c. 10, Sched. M, s. 25 (2).

Limitations on applications

(7) When an application has been disposed of under this section, the applicant may not make a new application under subsection (1) within six months of the disposition without leave of the Registrar. 2007, c. 10, Sched. M, s. 25 (3).

Registrar's leave

(8) The Registrar may only give leave for a new application to be made under subsection (7) if the Registrar is satisfied that there has been a material change in circumstances that justifies the giving of the leave. 2007, c. 10, Sched. M, s. 25 (3).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 25 (1-3) - 04/06/2009

Notice of orders

20 (1) A panel shall give the applicant notice of an order it makes under subsection 18 (2) or 19 (6) and written reasons for it if the order,

(a) directs the Registrar to refuse to issue a certificate of registration;

(b) directs the Registrar to issue a certificate of registration if the applicant successfully completes examinations or additional training;

(c) directs the Registrar to impose terms, conditions and limitations on a certificate of registration of the applicant; or

(d) refuses an application for an order removing or modifying any term, condition or limitation imposed on a certificate of registration. 1991, c. 18, Sched. 2, s. 20 (1).

Contents of notice

(2) A notice under subsection (1) shall inform the applicant of the order and of the provisions of section 19 and of subsections 21 (1) and (2). 1991, c. 18, Sched. 2, s. 20 (2); 2007, c. 10, Sched. M, s. 26.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 26 - 04/06/2009

Appeal to Board

21 (1) An applicant who has been given a notice under subsection 20 (1) of an order may require the Board to hold a review of the application and the documentary evidence in support of it, or a hearing of the application, by giving the Board and the Registration Committee notice in accordance with subsection (2).

Requirements of notice

(2) A notice under subsection (1) shall be a written notice, given within thirty days after the notice under subsection 20 (1) was given, specifying whether a review or a hearing is required.

Order, etc., to Board

(3) If the Registration Committee receives a notice that an applicant requires a hearing or review, it shall, within fifteen days after receiving the notice, give the Board a copy of the order made with respect to the application, the reasons for it and the documents and things upon which the decision to make the order was based.

When order may be carried out

(4) An order of a panel, notice of which is required under subsection 20 (1), may be carried out only when,

(a) the applicant has given the Registrar notice that the applicant will not be requiring a review or hearing;

(b) thirty-five days have passed since the notice of the order was given under subsection 20 (1) without the applicant requiring a review or hearing; or

(c) the Board has confirmed the order. 1991, c. 18, Sched. 2, s. 21.

Registration hearings or reviews

22 (1) This section applies to a hearing or review by the Board required by an applicant under subsection 21 (1). 1991, c. 18, Sched. 2, s. 22 (1).

Procedural provisions

(2) The following provisions apply with necessary modifications to a hearing or review:

1. Subsection 38 (4) (exclusion from panel).
2. Section 42 (disclosure of evidence).
3. Section 43 (no communication by panel members).
4. Section 50 (members of panel who participate).
5. Section 55 (release of evidence). 1991, c. 18, Sched. 2, s. 22 (2).

Idem

(3) The following provisions also apply with necessary modifications to a hearing:

1. Section 45 (hearings open).
2. Section 47 (sexual misconduct witnesses).
3. Section 48 (transcript of hearings). 1991, c. 18, Sched. 2, s. 22 (3).

Same

(3.1) The following provisions of the *Statutory Powers Procedure Act* also apply with necessary modifications to a review by the Board:

1. Section 21.1 (correction of errors).

2. Section 25.1 (rules). 1998, c. 18, Sched. G, s. 12.

Findings of fact

(4) The findings of fact in a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15, 15.1, 15.2 and 16 of the *Statutory Powers Procedure Act*. 1991, c. 18, Sched. 2, s. 22 (4); 2007, c. 10, Sched. M, s. 27 (1).

Idem

(5) The findings of fact in a review shall be based exclusively on the application and documentary evidence admissible or matters that may be noticed under sections 15, 15.1, 15.2 and 16 of the *Statutory Powers Procedure Act*. 1991, c. 18, Sched. 2, s. 22 (5); 2007, c. 10, Sched. M, s. 27 (2).

Disposal by Board

(6) The Board shall, after the hearing or review, make an order doing any one or more of the following:

1. Confirming the order made by the panel.
2. Requiring the Registration Committee to make an order directing the Registrar to issue a certificate of registration to the applicant if the applicant successfully completes any examinations or training the Registration Committee may specify.
3. Requiring the Registration Committee to make an order directing the Registrar to issue a certificate of registration to the applicant and to impose any terms, conditions and limitations the Board considers appropriate.
4. Referring the matter back to the Registration Committee for further consideration by a panel, together with any reasons and recommendations the Board considers appropriate. 1991, c. 18, Sched. 2, s. 22 (6); 2007, c. 10, Sched. M, s. 27 (3).

Idem

(7) The Board may make an order under paragraph 3 of subsection (6) only if the Board finds that the applicant substantially qualifies for registration and that the panel has exercised its powers improperly. 1991, c. 18, Sched. 2, s. 22 (7).

Limitation on order

(8) The Board, in making an order under subsection (6), shall not require the Registration Committee to direct the Registrar to issue a certificate of registration to an applicant who does not meet a registration requirement that is prescribed as a non-exemptible requirement. 1991, c. 18, Sched. 2, s. 22 (8).

Parties

(9) The College and the applicant are parties to a hearing or review. 1991, c. 18, Sched. 2, s. 22 (9).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 12 - 01/02/1999

2007, c. 10, Sched. M, s. 27 (1, 2) - 04/06/2007; 2007, c. 10, Sched. M, s. 27 (3) - 04/06/2009

Definitions

22.1 In this section and sections 22.2 to 22.14,

"audit" means an audit required under section 22.8; ("vérification")

"auditor" means an auditor appointed under section 22.8; ("vérificateur")

"Fairness Commissioner" means the Fairness Commissioner appointed under the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*; ("commissaire à l'équité")

"fair registration practices report" means a report required under section 22.7; ("rapport sur les pratiques d'inscription équitables")

"internationally trained individual" means an individual who has been trained in a country other than Canada to practise a health profession and who has applied for, or who intends to apply for, registration by a College; ("particulier formé à l'étranger")

"personal information" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*; ("renseignements personnels")

"record" means a record as defined in the *Freedom of Information and Protection of Privacy Act*; ("document")

"regulations" means the regulations made under clauses 43 (1) (h) to (k) of the *Regulated Health Professions Act, 1991*. ("règlements") 2006, c. 31, s. 35 (3); 2017, c. 2, Sched. 9, s. 10.

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

2017, c. 2, Sched. 9, s. 10 - 22/03/2017

Fair registration practices: general duty

22.2 The College has a duty to provide registration practices that are transparent, objective, impartial and fair. 2006, c. 31, s. 35 (3).

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

Information

22.3 The College shall provide information on its website with respect to the requirements for registration, the procedures for applying for registration and the amount of time that the registration process usually takes. 2009, c. 24, s. 33 (4).

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

2009, c. 24, s. 33 (4) - 15/12/2009

Qualifications

22.4 (1) The College shall make information publicly available on what documentation of qualifications must accompany an application and what alternatives may be acceptable to the College if an applicant cannot obtain the required documentation for reasons beyond his or her control. 2006, c. 31, s. 35 (3).

Same

(2) If the College makes its own assessment of qualifications, it shall do so in a way that is transparent, objective, impartial and fair and, if it relies on a third party to assess qualifications, it shall take reasonable measures to ensure that the third party makes the assessment in a way that is transparent, objective, impartial and fair. 2006, c. 31, s. 35 (3).

Same

(3) The College shall ensure that individuals assessing qualifications and making registration decisions or reviewing decisions have received training that includes, where appropriate,

(a) training on how to assess such qualifications and make such decisions;

(b) training in any special considerations that may apply in the assessment of applications and the process for applying those considerations. 2006, c. 31, s. 35 (3).

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

Functions

22.5 (1) It is the function of the Fairness Commissioner to,

(a) assess the registration practices of a College based on its obligations under this Code and the regulations;

(b) specify audit standards, the scope of audits, times when fair registration practices reports and auditors' reports shall be filed, the form of all required reports and certificates and the information that they must contain;

(c) establish eligibility requirements that a person must meet to be qualified to conduct audits;

(d) establish a roster of persons who in the opinion of the Fairness Commissioner have satisfied the eligibility requirements established under clause (c);

(e) consult with Colleges on the cost, scope and timing of audits;

(f) monitor third parties relied on by a College to assess the qualifications of individuals applying for registration by the College to help ensure that assessments are based on the obligations of the College under this Code and the regulations;

(g) advise a College or third parties relied on by a College to assess qualifications with respect to matters related to registration practices under this Code and the regulations;

(h) provide advice and recommendations to the Minister, including advice and recommendations that a College do or refrain from doing any action respecting a contravention by a College if the Fairness Commissioner determines that the College has failed to comply with any requirement imposed on it by sections 22.2 to 22.11; and

(i) perform such other functions as may be assigned by the Lieutenant Governor in Council. 2006, c. 31, s. 35 (3).

Scope

(2) A matter specified under clause (1) (b) or established under clause (1) (c) or (d) may be general or specific in its application and may be limited as to time and place. 2006, c. 31, s. 35 (3).

Same

(3) The Fairness Commissioner shall give notice to the College of all matters specified under clause (1) (b) and established under clauses (1) (c) and (d) and the notice may be given in the manner he or she considers appropriate. 2006, c. 31, s. 35 (3).

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

Review of practices

22.6 (1) The College shall undertake reviews of its registration practices at such times as the Fairness Commissioner may specify to ensure that the registration practices are transparent, objective, impartial and fair. 2006, c. 31, s. 35 (3).

Same

(2) The review shall include an analysis of,

(a) the extent to which the requirements for registration are necessary for or relevant to the practice of the profession;

(b) the efficiency and timeliness of decision-making; and

(c) the reasonableness of the fees charged by the College in respect of applications. 2006, c. 31, s. 35 (3).

Reports

(3) The College shall file a copy of the results of the review with the Fairness Commissioner within 30 days after the completion of the review. 2006, c. 31, s. 35 (3).

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

Fair registration practices reports

22.7 (1) The College shall prepare a fair registration practices report annually or at such other times as the Fairness Commissioner may specify. 2006, c. 31, s. 35 (3).

Same

(2) The College may combine its fair registration practices report with such other report of the College as the Fairness Commissioner may permit and in such case an audit shall be confined to those parts of the report that relate to registration practices. 2006, c. 31, s. 35 (3).

Other reports

(3) The Fairness Commissioner may require that the College provide the Fairness Commissioner with reports or information relating to the College's compliance with sections 15 to 22.11 and the regulations and the College shall prepare and file the reports with, or provide the information to, the Fairness Commissioner. 2006, c. 31, s. 35 (3).

Same

(4) Reports and information required under subsection (3) are in addition to the reports required under subsection (1) and section 22.8. 2006, c. 31, s. 35 (3).

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

Audits

22.8 (1) Every three years or at such other times as the Fairness Commissioner may specify, the Fairness Commissioner shall give notice to the College that an audit must be conducted in respect of its registration practices and of its compliance with this Code and the regulations. 2006, c. 31, s. 35 (3).

Notice of audit

(2) The Fairness Commissioner shall give the notice required by subsection (1) at least 90 days before the audit is to begin and the notice shall state,

(a) that the College must choose and appoint an auditor from the roster established by the Fairness Commissioner by the date specified in the notice;

(b) that if the College fails to choose and appoint an auditor by the date specified in the notice that the Fairness Commissioner will choose the auditor;

(c) the scope of the audit and the standards that will apply;

(d) the date by which the audit must be completed; and

(e) that the College is responsible for the payment of the auditor's fees and expenses. 2006, c. 31, s. 35 (3).

Choice of auditor

(3) The College shall, by the date specified in the notice, choose and appoint an auditor from the roster established by the Fairness Commissioner and notify the Fairness Commissioner of its choice. 2006, c. 31, s. 35 (3).

Failure to choose

(4) If the College fails to notify the Fairness Commissioner of the name of the auditor it has chosen and appointed by the date specified in the notice, the Fairness Commissioner shall choose the auditor and notify the College of his or her choice and the auditor shall be deemed to have been appointed by the College. 2006, c. 31, s. 35 (3).

Auditor's duties

(5) The auditor chosen and appointed under subsection (3) or (4) shall begin the audit promptly, shall conduct it in accordance with the scope of the audit and the audit standards set out in the notice under subsection (2) and shall complete it by the date set out in the notice. 2006, c. 31, s. 35 (3).

Collection of personal information

(6) An auditor may collect personal information, directly or indirectly, only for the purpose of an audit required under this section, but an auditor shall not retain any personal information after completing the audit and shall not include any personal information in any draft report or final report submitted in accordance with this section. 2006, c. 31, s. 35 (3).

Duty to furnish information

(7) A College shall co-operate with the auditor and shall,

(a) produce such records for, and provide such other information to, the auditor regarding its registration practices and any other matters related to compliance by the College with its obligations under sections 15 to 22.11 and the regulations as are reasonably necessary for the auditor to perform his or her duties under this Code, including any reports required from the College under section 22.6, 22.7 or 22.9 or the regulations; and

(b) provide the auditor with any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a record in readable form. 2006, c. 31, s. 35 (3).

Limitation

(8) Despite subsection (7), a College may refuse access to a record if,

(a) the record or any information in the record is subject to a legal privilege that restricts disclosure of the record or the information; or

(b) an Act of Ontario or of Canada or a court order prohibits disclosure of the record or any information in the record in the circumstances. 2006, c. 31, s. 35 (3).

Draft report

(9) The auditor shall prepare a draft report on the audit and provide a copy of it to the College, together with a notice that the College may, within 30 days, make submissions to the auditor on the draft report. 2006, c. 31, s. 35 (3).

Same

(10) The auditor shall consider the submissions, if any, made by the College and may make any changes the auditor considers appropriate before finalizing the report. 2006, c. 31, s. 35 (3).

Auditor's reports

(11) The auditor shall make a final report on the audit and shall file it with the Fairness Commissioner and provide a copy to the College to which the audit relates. 2006, c. 31, s. 35 (3).

Auditor's certificate

(12) The auditor shall file a certificate with the Fairness Commissioner certifying that the auditor made the audit in accordance with this Act and the regulations and that he or she has provided a copy of the auditor's report to the College. 2006, c. 31, s. 35 (3).

When audit is complete

(13) An audit is complete when the auditor has provided a copy of the final report to the College to which the audit relates and has filed with the Fairness Commissioner the final report and the certificate referred to in subsection (12) and, if the College made submissions to the auditor on the draft report, a copy of the submissions made by the College. 2006, c. 31, s. 35 (3).

Filing with Minister

(14) The Fairness Commissioner shall provide the Minister of Health and Long-Term Care with a copy of all auditors' reports within a reasonable time after receiving them. 2006, c. 31, s. 35 (3).

Auditor's fees and expenses

(15) The College shall pay the auditor's fees and expenses. 2006, c. 31, s. 35 (3).

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

Filing of reports by College

22.9 (1) The College shall file its fair registration practices reports with the Fairness Commissioner by the dates specified by the Fairness Commissioner. 2006, c. 31, s. 35 (3).

Report available to public

(2) The College shall make reports filed under subsection (1) available to the public. 2006, c. 31, s. 35 (3).

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

Form of reports

22.10 (1) Reports and certificates required by sections 22.7 and 22.8 and under the regulations shall be in the form and contain the information specified by the Fairness Commissioner or as may be specified in the regulations. 2006, c. 31, s. 35 (3).

Restriction on personal information

(2) Despite subsection (1), no report prepared by the College, the Fairness Commissioner or an auditor under sections 22.6 to 22.8 shall contain personal information. 2006, c. 31, s. 35 (3).

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

Certification of report

22.11 (1) A fair practices registration report shall include a statement certifying that all the information required to be provided in the report has been provided and that the information is accurate. 2006, c. 31, s. 35 (3).

Signature

(2) A person with authority to sign on behalf of the College shall sign the statement required by subsection (1). 2006, c. 31, s. 35 (3).

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

Offences

22.12 (1) A person is guilty of an offence who,

(a) furnishes false or misleading information in a fair registration practices report or other report or record filed with the Fairness Commissioner under this Code or otherwise provides false or misleading information to the Fairness Commissioner or to a person employed in the Office of the Fairness Commissioner;

(b) obstructs the Fairness Commissioner or a person employed in the Office of the Fairness Commissioner in exercising powers or performing duties under this Code;

(c) furnishes false or misleading information to an auditor;

(d) obstructs, fails to co-operate with or assist an auditor; or

(e) contravenes subsection (2). 2006, c. 31, s. 35 (3); 2017, c. 2, Sched. 9, s. 11 (1).

Same, intimidation

(2) No person shall intimidate, coerce, penalize or discriminate against another person because that person,

(a) has co-operated or may co-operate with the Fairness Commissioner, an auditor or a person employed in the Office of the Fairness Commissioner in exercising powers or performing duties under this Code; or

(b) has provided, or may provide, records or other information in the course of an audit or other activity or proceeding under this Code in respect of fair registration practices. 2006, c. 31, s. 35 (3); 2017, c. 2, Sched. 9, s. 11 (2).

Penalties

(3) Every person who is guilty of an offence under subsection (1) is liable on conviction,

(a) to a fine of not more than $50,000; or

(b) if the person is a corporation, to a fine of not more than $100,000. 2006, c. 31, s. 35 (3); 2009, c. 33, Sched. 18, s. 29 (1).

Consent to prosecution

(4) No prosecution for an offence under subsection (1) shall be instituted except with the consent in writing of the Attorney General. 2006, c. 31, s. 35 (3); 2009, c. 33, Sched. 18, s. 29 (2).

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

2009, c. 33, Sched. 18, s. 29 (1, 2) - 15/12/2009

2017, c. 2, Sched. 9, s. 11 (1, 2) - 01/09/2017

Immunity

22.13 (1) No proceeding shall be commenced against the Fairness Commissioner or anyone employed in the Office of the Fairness Commissioner for any act done or omitted in good faith in the execution or intended execution of his or her duties under this Code. 2006, c. 31, s. 35 (3); 2017, c. 2, Sched. 9, s. 12.

Testimony

(2) Neither the Fairness Commissioner nor anyone employed in the Office of the Fairness Commissioner is a competent or compellable witness in a civil proceeding outside this Code in connection with anything done under this Code. 2006, c. 31, s. 35 (3); 2017, c. 2, Sched. 9, s. 12.

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

2017, c. 2, Sched. 9, s. 12 - 01/09/2017

Limitation on powers

22.14 Neither the Fairness Commissioner nor anyone employed in the Office of the Fairness Commissioner,

(a) has power to influence a registration decision by the College or Registration Committee, to provide representation or advice to an applicant or potential applicant for registration in respect of a registration decision or to otherwise involve himself or herself in a registration decision or any review decision on behalf of an applicant or potential applicant for registration;

(b) has status at any proceeding of a College, the Registration Committee, the Board, a court or other tribunal in relation to any matter arising from an application for registration; or

(c) has the power to act as legal counsel or agent for any person in a proceeding described in clause (b) or in preparing for the proceeding. 2006, c. 31, s. 35 (3); 2017, c. 2, Sched. 9, s. 12.

Section Amendments with date in force (d/m/y)

2006, c. 31, s. 35 (3) - 01/03/2007

2017, c. 2, Sched. 9, s. 12 - 01/09/2017

Definitions

22.15 (1) In this section and in sections 22.16 to 22.23,

"Agreement on Internal Trade" means the Agreement on Internal Trade signed in 1994 by the governments of Canada, the provinces of Canada, the Northwest Territories and the Yukon Territory, as amended from time to time; ("Accord sur le commerce intérieur")

"occupational standards", in relation to a certificate of registration, means the knowledge, skills and judgment that an individual must possess in order to be issued the certificate of registration, as established by the College, and against which the College measures the qualifications of an applicant for registration when assessing whether the applicant is qualified to practise the profession to the extent permitted by the certificate of registration; ("normes professionnelles")

"out-of-province certificate" means a certificate, licence, registration, or other form of official recognition that,

(a) attests to an individual being qualified to practise the profession and authorizes the individual to practise the profession, use a title or designation relating to the profession, or both, and

(b) is granted to the individual by a body or individual that is authorized under an Act of Canada or of a province or territory of Canada that is a party to the Agreement on Internal Trade, other than Ontario, to grant such certificate, licence, registration, or other form of official recognition. ("certificat extraprovincial") 2009, c. 24, s. 33 (5).

Federal Act

(2) For greater certainty, the reference in clause (b) of the definition of "out-of-province certificate" in subsection (1), to an Act of Canada that authorizes a body or individual to grant a certificate, licence, registration, or other form of official recognition, does not include the *Trade-marks Act* (Canada). 2009, c. 24, s. 33 (5).

Section Amendments with date in force (d/m/y)

2009, c. 24, s. 33 (5) - 15/12/2009

Purposes

22.16 The purposes of sections 22.15 to 22.23 are,

(a) to eliminate or reduce measures established or implemented by the College that restrict or impair the ability of an individual to obtain a certificate of registration when the individual holds an equivalent out-of-province certificate; and

(b) to support the Government of Ontario in fulfilling its obligations under Chapter Seven of the Agreement on Internal Trade. 2009, c. 24, s. 33 (5).

Section Amendments with date in force (d/m/y)

2009, c. 24, s. 33 (5) - 15/12/2009

Ontario residency cannot be required

22.17 The College shall not make it a registration requirement that an applicant reside in Ontario, if the applicant resides in another province or territory of Canada that is a party to the Agreement on Internal Trade. 2009, c. 24, s. 33 (5).

Section Amendments with date in force (d/m/y)

2009, c. 24, s. 33 (5) - 15/12/2009

When applicant holds out-of-province certificate

22.18 (1) This section applies if an individual applying to the College for registration already holds an out-of-province certificate that is equivalent to the certificate of registration being applied for. 2009, c. 24, s. 33 (5).

Material additional training, etc., cannot be required

(2) The College shall not impose any registration requirement that would require the applicant to have, undertake, obtain or undergo any material additional training, experience, examinations or assessments. 2009, c. 24, s. 33 (5).

Exception, registration requirements listed on website

(3) Despite subsection (2), the College is not prohibited from imposing on the applicant any registration requirement that,

(a) is listed on the publicly accessible website referred to in clause 9 (3) (a) of the *Ontario Labour Mobility Act, 2009*; and

(b) is stated on the website to be a permissible registration requirement for the certificate of registration being applied for, adopted by the Government of Ontario under Article 708 of the Agreement on Internal Trade. 2009, c. 24, s. 33 (5).

Other exceptions

(4) Despite subsection (2), if the conditions set out in subsection (6) are met, the College is not prohibited from imposing one or both of the following registration requirements on the applicant:

1. Requiring the applicant to demonstrate proficiency in English or in French if equivalent proficiency in the language was not a requirement for the granting of the out-of-province certificate.
2. Requiring the applicant to undertake, obtain or undergo material additional training, experience, examinations or assessments if the applicant has not, within a period of time fixed by the College, before submitting the application for registration, practised the profession to the extent that would be permitted by the certificate of registration for which the applicant is applying. 2009, c. 24, s. 33 (5).

Other permitted registration requirements

(5) Subsection (2) does not prohibit the College from imposing registration requirements that would require the applicant to do one or more of the following:

1. If the conditions set out in subsection (6) are met:
    i. Pay a fee upon application for registration and upon registration.
    ii. Obtain professional liability insurance or any other insurance or similar protection.
    iii. Post a bond.
    iv. Undergo a police record check.
    v. Provide evidence of good character.
2. If the condition set out in paragraph 2 of subsection (6) is met, provide a certificate, letter or other evidence from every body or individual from whom the applicant currently holds an out-of-province certificate, confirming that the out-of-province certificate is in good standing.
3. If the conditions set out in subsection (6) are met, demonstrate knowledge of matters applicable to the practice of the profession in Ontario, as long as this does not involve material additional training, experience, examinations or assessments.
4. If the conditions set out in subsection (6) are met, meet any other requirement specified by the College that does not involve material additional training, experience, examinations or assessments. 2009, c. 24, s. 33 (5); 2015, c. 30, s. 28.

Conditions for subss. (4) and (5)

(6) The conditions referred to in subsections (4) and (5) are:

1. Subject to subsection (9), the requirement imposed by the College on applicants who hold an out-of-province certificate must be the same as, or substantially similar to but no more onerous than, the requirement imposed by the College on applicants who do not hold an out-of-province certificate.
2. The requirement imposed by the College must not be a disguised restriction on labour mobility. 2009, c. 24, s. 33 (5).

Permitted measures

(7) This section does not prohibit the College from carrying out the following measures in respect of the applicant if the conditions set out in subsection (8) are met:

1. Refusing to issue a certificate of registration to the applicant or imposing terms, conditions or limitations on the applicant's certificate of registration if, in the opinion of the Registration Committee, such action is necessary to protect the public interest as a result of complaints, or criminal, disciplinary or other proceedings, against the applicant in any jurisdiction whether in or outside Canada, relating to the applicant's competency, conduct or character.
2. If the out-of-province certificate held by the applicant is subject to a term, condition or limitation,
    i. imposing an equivalent term, condition or limitation on the certificate of registration to be issued to the applicant, or
    ii. refusing to register the applicant, if the College does not impose an equivalent term, condition or limitation on the certificate of registration being applied for. 2009, c. 24, s. 33 (5).

Conditions for subs. (7)

(8) The conditions referred to in subsection (7) are:

1. Subject to subsection (9), the measure carried out by the College with respect to applicants who hold an out-of-province certificate must be the same as, or substantially similar to but no more onerous than, the measure carried out by the College with respect to applicants who do not hold an out-of-province certificate.
2. The measure carried out by the College must not be a disguised restriction on labour mobility. 2009, c. 24, s. 33 (5).

Costs

(9) The College shall ensure that any registration requirements it imposes on the applicant and any measures it carries out with respect to the applicant in connection with the registration of the applicant do not result in the imposition on the applicant of fees or other costs that are more onerous than those the College would impose if the applicant did not hold an out-of-province certificate, unless the difference in such fees or other costs reflects the actual cost differential to the College. 2009, c. 24, s. 33 (5).

Expeditious registration

(10) The College shall ensure that its imposition of registration requirements on the applicant under subsections (3), (4) and (5) and its imposition of terms, conditions or limitations on the applicant's certificate of registration under subsection (7) do not prevent the expeditious registration of the applicant. 2009, c. 24, s. 33 (5).

Section Amendments with date in force (d/m/y)

2009, c. 24, s. 33 (5) - 15/12/2009

2015, c. 30, s. 28 - 01/11/2018

Transition

22.19 Sections 22.17 and 22.18 apply to,

(a) an application for registration made to the College on or after the day this section comes into force; and

(b) an application for registration made to the College before the day this section comes into force, if the application has not been finally decided before that day. 2009, c. 24, s. 33 (5).

Section Amendments with date in force (d/m/y)

2009, c. 24, s. 33 (5) - 15/12/2009

Occupational standards

22.20 (1) The College shall, to the extent possible and where practical,

(a) ensure that the process it follows in establishing or amending occupational standards for certificates of registration is conducive to labour mobility within Canada;

(b) take steps to reconcile differences between the occupational standards it has established for certificates of registration and occupational standards in effect with respect to the profession in the other provinces and territories of Canada that are parties to the Agreement on Internal Trade; and

(c) ensure that the occupational standards it establishes for certificates of registration are consistent with such common interprovincial or international occupational standards as may have been developed for the profession. 2009, c. 24, s. 33 (5).

No limitation

(2) Subsection (1) does not limit the objects of the College under section 3 or the powers of the Council under section 95 to establish such occupational standards for the profession as it considers appropriate to protect the public. 2009, c. 24, s. 33 (5).

Section Amendments with date in force (d/m/y)

2009, c. 24, s. 33 (5) - 15/12/2009

Notice of proposed occupational standards

22.21 If the College wishes to establish or amend occupational standards for a certificate of registration, it shall,

(a) give notice of the proposed new or amended standards to,

(i) the Minister,

(ii) the co-ordinating Minister under the *Ontario Labour Mobility Act, 2009*, and

(iii) the granting bodies and individuals referred to in clause (b) of the definition of "out-of-province certificate" in subsection 22.15 (1); and

(b) afford those granting bodies and individuals an opportunity to comment on the development of the new or amended standards. 2009, c. 24, s. 33 (5).

Section Amendments with date in force (d/m/y)

2009, c. 24, s. 33 (5) - 15/12/2009

Conflict

22.22 (1) If any of sections 22.16 to 22.21 conflicts with the health profession Act or a regulation or by-law made under the health profession Act or under this Code, sections 22.16 to 22.21 prevail to the extent of the conflict. 2009, c. 24, s. 33 (5).

Same

(2) This conflict provision prevails over any other conflict provision in the health profession Act, even if the other conflict provision is enacted after this one, unless the other conflict provision refers expressly to sections 22.16 to 22.21 of this Code. 2009, c. 24, s. 33 (5).

Section Amendments with date in force (d/m/y)

2009, c. 24, s. 33 (5) - 15/12/2009

Regulations and by-laws to conform

22.23 Within 12 months after the day this section comes into force or within such longer period as may be prescribed, the Council shall take such steps as are within its power to make, amend or revoke regulations and by-laws under this Code and under the health profession Act so that they conform with sections 22.16 to 22.21 of this Code. 2009, c. 24, s. 33 (5).

Section Amendments with date in force (d/m/y)

2009, c. 24, s. 33 (5) - 15/12/2009

Register

23 (1) The Registrar shall maintain a register. 2007, c. 10, Sched. M, s. 28.

Contents of register

(2) The register shall contain the following:

1. Each member's name, business address and business telephone number, and, if applicable, the name of every health profession corporation of which the member is a shareholder.
2. Where a member is deceased, the name of the deceased member and the date upon which the member died, if known to the Registrar.
3. The name, business address and business telephone number of every health profession corporation.
4. The names of the shareholders of each health profession corporation who are members of the College.
5. Each member's class of registration and specialist status.

6. The terms, conditions and limitations that are in effect on each certificate of registration.
7. A notation of every caution that a member has received from a panel of the Inquiries, Complaints and Reports Committee under paragraph 3 of subsection 26 (1), and any specified continuing education or remedial programs required by a panel of the Inquiries, Complaints and Reports Committee using its powers under paragraph 4 of subsection 26 (1).
8. A notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and that has not been finally resolved, including the date of the referral and the status of the hearing before a panel of the Discipline Committee, until the matter has been resolved.
9. A copy of the specified allegations against a member for every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and that has not been finally resolved.
10. Every result of a disciplinary or incapacity proceeding.
11. A notation and synopsis of any acknowledgements and undertakings in relation to matters involving allegations of professional misconduct or incompetence before the Inquiries, Complaints and Reports Committee or the Discipline Committee that a member has entered into with the College and that are in effect.
12. A notation of every finding of professional negligence or malpractice, which may or may not relate to the member's suitability to practise, made against the member, unless the finding is reversed on appeal.
13. A notation of every revocation or suspension of a certificate of registration.
14. A notation of every revocation or suspension of a certificate of authorization.
15. Information that a panel of the Registration Committee, Discipline Committee or Fitness to Practise Committee specifies shall be included.
16. Where findings of the Discipline Committee are appealed, a notation that they are under appeal, until the appeal is finally disposed of.
17. Where, during or as a result of a proceeding under section 25, a member has resigned and agreed never to practise again in Ontario, a notation of the resignation and agreement.
18. Where the College has an inspection program established under clause 95 (1) (h) or (h.1), the outcomes of inspections conducted by the college.
19. Information that is required to be kept in the register in accordance with regulations made pursuant to clause 43 (1) (t) of the *Regulated Health Professions Act, 1991*.
20. Information that is required to be kept in the register in accordance with the by-laws. 2017, c. 11, Sched. 5, s. 11 (1).

Publication ban

(3) No action shall be taken under this section which violates a publication ban, and nothing in this section requires or authorizes the violation of a publication ban. 2007, c. 10, Sched. M, s. 28.

Panels specifying information in register

(4) In disposing of a matter, a panel of the Registration, Discipline or Fitness to Practise Committee may, for the purposes of paragraph 15 of subsection (2), specify information that is to be included in the register in addition to the information specified in other paragraphs of subsection (2). 2007, c. 10, Sched. M, s. 28; 2017, c. 11, Sched. 5, s. 11 (2).

Access to information by the public

(5) All of the information required by paragraphs 1 to 19 of subsection (2) and all information designated as public in the by-laws shall, subject to subsections (6), (7), (8), (9) and (11), be made available to an individual during normal business hours, and shall be posted on the College's website within a reasonable amount of time of the Registrar having received the information and in a manner that is accessible to the public or in any other manner and form specified by the Minister. 2017, c. 11, Sched. 5, s. 11 (3).

When information may be withheld from the public

(6) The Registrar may refuse to disclose to an individual or to post on the College's website an address or telephone number or other information designated as information to be withheld from the public in the by-laws if the Registrar has reasonable grounds to believe that disclosure may jeopardize the safety of an individual. 2007, c. 10, Sched. M, s. 28.

Same

(7) The Registrar may refuse to disclose to an individual or to post on the College's website information that is available to the public under subsection (5), if the Registrar has reasonable grounds to believe that the information is obsolete and no longer relevant to the member's suitability to practise. 2007, c. 10, Sched. M, s. 28.

Same, personal health information

(8) The Registrar shall not disclose to an individual or post on the College's website information that is available to the public under subsection (5) that is personal health information, unless the personal health information is that of a member and it is in the public interest that the information be disclosed. 2007, c. 10, Sched. M, s. 28.

Restriction, personal health information

(9) The Registrar shall not disclose to an individual or post on the College's website under subsection (8) more personal health information than is reasonably necessary. 2007, c. 10, Sched. M, s. 28.

Personal health information

(10) In subsections (8) and (9),

"personal health information" means information that identifies an individual and that is referred to in clauses (a) through (g) of the definition of "personal health information" in subsection 4 (1) of the *Personal Health Information Protection Act, 2004*. 2007, c. 10, Sched. M, s. 28.

Other cases when information may be withheld

(11) The Registrar shall refuse to disclose to an individual or to post on the College's website information required by paragraph 10 of subsection (2) if,

(a) a finding of professional misconduct was made against the member and the order made was only a reprimand or only a fine, or a finding of incapacity was made against the member;

(b) more than six years have passed since the information was prepared or last updated;

(c) the member has made an application to the relevant committee for the removal of the information from public access because the information is no longer relevant to the member's suitability to practise, and if,

(i) the relevant committee believes that a refusal to disclose the information outweighs the desirability of public access to the information in the interest of any person affected or the public interest, and

(ii) the relevant committee has directed the Registrar to remove the information from public access; and

(d) the information does not relate to disciplinary proceedings concerning sexual abuse as defined in clause (a), (b) or (c) of the definition of "sexual abuse" in subsection 1 (3). 2007, c. 10, Sched. M, s. 28; 2017, c. 11, Sched. 5, s. 11 (4, 5).

Other cases when information may be withheld

(11.1) The Registrar shall refuse to disclose to an individual or to post on the College's website information required by paragraph 10 of subsection (2) if,

(a) the result of a discipline proceeding was that no finding of professional misconduct or incompetence was made against the member; and

(b) more than 90 days have passed since the information was prepared or last updated, unless before the expiry of the 90 days the member to whom the information relates specifically requests in writing that the Registrar continue to maintain public access to the information. 2017, c. 11, Sched. 5, s. 11 (6).

Information from register

(12) The Registrar shall provide to an individual a copy of any information in the register that the individual is entitled to obtain, upon the payment of a reasonable fee, if required. 2007, c. 10, Sched. M, s. 28.

Positive obligation

(13) Subject to subsection (11), where an individual inquires about a member, the Registrar shall make reasonable efforts to ensure that the individual is provided with a list of the information that is available to the public under subsection (5). 2007, c. 10, Sched. M, s. 28.

Correction of information

(13.1) The Registrar shall correct any information contained in the register that is required by paragraph 12 of subsection (2) or that is both required by paragraph 19 of subsection (2) and designated as subject to this subsection in a regulation made

under clause 43 (1) (t) of the *Regulated Health Professions Act, 1991*, where a member demonstrates, to the satisfaction of the Registrar, that the information contained in the register is incomplete or inaccurate and where the member provides the Registrar with the information that is necessary to enable the Registrar to correct the incomplete or inaccurate information. 2017, c. 11, Sched. 5, s. 11 (7).

Meaning of results of proceeding

(14) For the purpose of this section and section 56,

"result",

(a) when used in reference to a disciplinary proceeding, means the panel's finding that the member committed an act of professional misconduct or was incompetent, particulars of the grounds for the finding, a synopsis of the decision and the order made, including any reprimand, and where the panel has made no such finding, includes a notation that no such finding was made and the reason why no such finding was made, and

(b) when used in reference to an incapacity proceeding, means the panel's finding that the member is incapacitated and the order made by the panel. 2017, c. 11, Sched. 5, s. 11 (8).

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 7 (1-5) - 31/12/1993; 1998, c. 18, Sched. G, s. 13 (1-3) - 01/02/1999

2000, c. 42, Sched., s. 35 (1, 2) - 01/11/2001

2001, c. 8, s. 218 (1-3) - 01/11/2001

2007, c. 10, Sched. M, s. 28 - 04/06/2009

2017, c. 11, Sched. 5, s. 11 (1-8) - 30/05/2017

Suspension for non-payment of fees

24 If a member fails to pay a fee that he or she is required to pay in accordance with the by-laws, the Registrar shall give the member notice of intention to suspend the member and may suspend the member's certificate of registration for failure to pay the fee 30 days after notice is given. 1998, c. 18, Sched. G, s. 14; 2007, c. 10, Sched. M, s. 29.

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 14 - 01/02/1999

2007, c. 10, Sched. M, s. 29 - 04/06/2009

COMPLAINTS AND REPORTS

Panel for investigation or consideration

25 (1) A panel shall be selected by the chair of the Inquiries, Complaints and Reports Committee from among the members of the Committee to investigate a complaint filed with the Registrar regarding the conduct or actions of a member or to consider a report that is made by the Registrar under clause 79 (a). 2007, c. 10, Sched. M, s. 30.

Composition

(2) A panel shall be composed of at least three persons, at least one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council. 2007, c. 10, Sched. M, s. 30.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 25 (2) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 12)

Composition of panels

(2) The panel selected by the chair shall be composed in accordance with regulations made pursuant to clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 12.

Quorum

(3) Three members of a panel constitute a quorum. 2007, c. 10, Sched. M, s. 30.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 25 (3) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 12)

Quorum

(3) Quorum for the panel shall be in accordance with regulations made pursuant to clause 43 (1) (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 12.

Complaint must be recorded

(4) A panel shall not be selected to investigate a complaint unless the complaint is in writing or is recorded on a tape, film, disk or other medium. 2007, c. 10, Sched. M, s. 30.

Complainant to be informed

(5) The Registrar shall give a complainant notice of receipt of his or her complaint and a general explanation of the processes of the College, including the jurisdiction and role of the Inquiries, Complaints and Reports Committee, together with a copy of the provisions of sections 28 to 29. 2007, c. 10, Sched. M, s. 30.

Notice to member

(6) The Registrar shall give the member, within 14 days of receipt of the complaint or the report,

(a) notice of the complaint, together with a copy of the provisions of sections 28 to 29, or notice of the receipt of the report;

(b) a copy of the provisions of section 25.2; and

(c) a copy of all available prior decisions involving the member unless the decision was to take no further action under subsection 26 (5). 2007, c. 10, Sched. M, s. 30.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 30 - 04/06/2009

2017, c. 11, Sched. 5, s. 12 - not in force

Alternative dispute resolution with respect to a complaint

25.1 (1) The Registrar may, with the consent of both the complainant and the member, refer the complainant and the member to an alternative dispute resolution process,

(a) if the matter has not yet been referred to the Discipline Committee under section 26; and

(b) if the matter does not involve an allegation of sexual abuse. 2007, c. 10, Sched. M, s. 30.

Confidentiality

(2) Despite this or any other Act, all communications at an alternative dispute resolution process and the facilitator's notes and records shall remain confidential and be deemed to have been made without prejudice to the parties in any proceeding. 2007, c. 10, Sched. M, s. 30.

Facilitator not to participate

(3) The person who acts as the alternative dispute resolution facilitator shall not participate in any proceeding concerning the same matter. 2007, c. 10, Sched. M, s. 30.

Ratification of resolution

(4) If the complainant and the member reach a resolution of the complaint through alternative dispute resolution, they shall advise the Registrar of the resolution, and the Registrar may,

(a) adopt the proposed resolution; or

(b) refer the decision of whether or not to adopt the proposed resolution to the panel. 2017, c. 11, Sched. 5, s. 13.

Referral to panel

(5) Where the Registrar makes a referral to the panel under clause (4) (b), the panel may,

(a) adopt the proposed resolution; or

(b) continue with its investigation of the complaint. 2017, c. 11, Sched. 5, s. 13.

Time limit for ADR

(6) If the complainant and the member do not reach a resolution of the complaint within 60 days of a referral to alternative dispute resolution under subsection (1), the Registrar or the panel shall not adopt any resolution reached after that date and the panel shall proceed with its investigation of the complaint. 2017, c. 11, Sched. 5, s. 13.

Extension of time

(7) Despite subsection (6), the Registrar or the panel may, where the Registrar or the panel believes it is in the public interest to do so, and with the agreement of the complainant and the member, adopt a resolution reached within 120 days of a referral to alternative dispute resolution under subsection (1). 2017, c. 11, Sched. 5, s. 13.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 30 - 04/06/2009

2017, c. 11, Sched. 5, s. 13 - 30/05/2017

Submissions by member

25.2 (1) A member who is the subject of a complaint or a report may make written submissions to the Inquiries, Complaints and Reports Committee within 30 days of receiving notice under subsection 25 (6). 2007, c. 10, Sched. M, s. 30.

Exception

(2) The Inquiries, Complaints and Reports Committee may specify a period of time of less than 30 days in which the member may make written submissions, and inform the member to that effect, if the Committee is of the opinion, on reasonable and probable grounds, that the conduct of the member exposes or is likely to expose his or her patients to harm or injury. 2007, c. 10, Sched. M, s. 30.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 30 - 04/06/2009

Withdrawal of complaint by Registrar

25.3 (1) At any time following the receipt of a complaint regarding the conduct or actions of a member and prior to any action being taken by a panel of the Inquiries, Complaints and Reports Committee under subsection 26 (1), the Registrar may, at the request of the complainant, withdraw the complaint if the Registrar believes that the withdrawal is in the public interest. 2017, c. 11, Sched. 5, s. 14.

Notice

(2) The Registrar shall give the complainant and the member, within 14 days of the Registrar having withdrawn the complaint, notice that the complaint has been withdrawn. 2017, c. 11, Sched. 5, s. 14.

Section Amendments with date in force (d/m/y)

2017, c. 11, Sched. 5, s. 14 - 30/05/2017

Interim suspension

25.4 (1) The Inquiries, Complaints and Reports Committee may, subject to subsections (2) and (6), at any time following the receipt of a complaint or following the appointment of an investigator pursuant to subsection 75 (1) or (2), make an interim order directing the Registrar to suspend, or to impose terms, conditions or limitations on, a member's certificate of registration if it is of the opinion that the conduct of the member exposes or is likely to expose the member's patients to harm or injury. 2017, c. 11, Sched. 5, s. 14.

No gender-based terms, conditions, limitations

(2) Despite subsection (1), the Inquiries, Complaints and Reports Committee shall not make an interim order directing the Registrar to impose any gender-based terms, conditions or limitations on a member's certificate of registration. 2017, c. 11, Sched. 5, s. 14.

Procedure following interim suspension

(3) If an order is made under subsection (1) by the Inquiries, Complaints and Reports Committee,

(a) the matter shall be investigated and prosecuted expeditiously; and

(b) the Inquiries, Complaints and Reports Committee, the Discipline Committee or the Fitness to Practise Committee, as the case may be, shall give precedence to the matter. 2017, c. 11, Sched. 5, s. 14.

Duration of order

(4) An order under subsection (1) continues in force until it is varied by the Inquiries, Complaints and Reports Committee or until the matter is withdrawn, resolved by way of an alternative dispute resolution process or otherwise finally disposed of by a panel of the Inquiries, Complaints and Reports Committee, the Discipline Committee or the Fitness to Practise Committee. 2017, c. 11, Sched. 5, s. 14.

Panel's order

(5) In a matter in which an order under subsection (1) was made, an order of a panel of the Discipline Committee or the Fitness to Practise Committee directing the Registrar to revoke, suspend or impose conditions on a member's certificate takes effect immediately despite any appeal. 2017, c. 11, Sched. 5, s. 14.

Restrictions on orders

(6) No order shall be made under subsection (1) unless the member has been given,

(a) notice of the intention to make the order;

(b) at least 14 days to make written submissions to the Committee; and

(c) a copy of the provisions of this section. 2017, c. 11, Sched. 5, s. 14.

Extraordinary action to protect public

(7) Despite subsection (6), an order may be made under subsection (1) without notice to the member, subject to the right of the member to make submissions while the suspension or the terms, conditions or limitations are in place, if the Committee is of the opinion, on reasonable and probable grounds, that the conduct of the member exposes or is likely to expose the member's patients to harm or injury and urgent intervention is needed. 2017, c. 11, Sched. 5, s. 14.

Section Amendments with date in force (d/m/y)

2017, c. 11, Sched. 5, s. 14 - 30/05/2017

What a panel may do

26 (1) A panel, after investigating a complaint or considering a report, considering the submissions of the member and making reasonable efforts to consider all records and documents it considers relevant to the complaint or the report, may do any one or more of the following:

1. Refer a specified allegation of the member's professional misconduct or incompetence to the Discipline Committee if the allegation is related to the complaint or the report.
2. Refer the member to a panel of the Inquiries, Complaints and Reports Committee under section 58 for incapacity proceedings.
3. Require the member to appear before a panel of the Inquiries, Complaints and Reports Committee to be cautioned.
4. Take action it considers appropriate that is not inconsistent with the health profession Act, this Code, the regulations or by-laws. 2007, c. 10, Sched. M, s. 30.

Prior decisions

(2) A panel of the Inquiries, Complaints and Reports Committee shall, when investigating a complaint or considering a report currently before it, consider all of its available prior decisions involving the member, including decisions made when that committee was known as the Complaints Committee, and all available prior decisions involving the member of the Discipline Committee, the Fitness to Practise Committee and the Executive Committee, unless the decision was to take no further action under subsection (5). 2007, c. 10, Sched. M, s. 30.

Quality assurance

(3) In exercising its powers under paragraph 4 of subsection (1), the panel may not refer the matter to the Quality Assurance Committee, but may require a member to complete a specified continuing education or remediation program. 2007, c. 10, Sched. M, s. 30.

Complaint in bad faith, etc.

(4) If the panel considers a complaint to be frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, it shall give the complainant and the member notice that it intends to take no action with respect to the complaint and that the complainant and the member have a right to make written submissions within 30 days after receiving the notice. 2007, c. 10, Sched. M, s. 30.

Same

(5) If the panel is satisfied, after considering the written submissions of the complainant and the member, that a complaint was frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, the panel shall not take action with respect to the complaint. 2007, c. 10, Sched. M, s. 30.

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 15 - 01/02/1999

2007, c. 10, Sched. M, s. 30 - 04/06/2009

Notice of decision

27 (1) A panel shall give the complainant and the member who is the subject of the complaint,

(a) a copy of its decision;

(b) a copy of its reasons, if the panel acted under paragraph 3 or 4 of subsection 26 (1); and

(c) a notice advising the member and the complainant of any right to request a review they may have under subsection 29 (2). 2007, c. 10, Sched. M, s. 30.

Same, report

(2) A panel shall give the member, in the case of a report,

(a) a copy of its decision; and

(b) a copy of its reasons, if the panel acted under paragraph 3 or 4 of subsection 26 (1). 2007, c. 10, Sched. M, s. 30.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 30 - 04/06/2009

Timely disposal

28 (1) A panel shall dispose of a complaint within 150 days after the filing of the complaint. 2007, c. 10, Sched. M, s. 30.

Impact of ADR on timelines

(2) Time spent by a complainant and member in an alternative dispute resolution process pursuant to a referral under section 25.1 shall not be included in the calculation of time under this section. 2017, c. 11, Sched. 5, s. 15.

If complaint not disposed of

(3) If a panel has not disposed of a complaint within 150 days after the complaint was filed, the Registrar shall provide the complainant with written notice of that fact and an expected date of disposition which shall be no more than 60 days from the date of the written notice. 2007, c. 10, Sched. M, s. 30.

If further delay

(4) If a panel has not disposed of the complaint by the expected date of disposition described in subsection (3), the Registrar shall,

(a) provide the member and complainant with written notice and reasons for the delay and the new expected date of disposition which shall be no more than 30 days from the date of the revised notice or from the expected date of disposition described in subsection (3), whichever is sooner; and

(b) provide the Board with written notice of and reasons for the delay as were provided to the member and complainant. 2007, c. 10, Sched. M, s. 30.

Powers of the Board

(5) The Board, on application of the member or the complainant, shall consider the written reasons for the delay and shall do any one of the following:

1. Direct the Inquiries, Complaints and Reports Committee to continue the investigation.
2. Make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee.
3. Investigate the complaint and make an order under subsection (9) within 120 days of the decision to investigate the complaint. 2007, c. 10, Sched. M, s. 30.

Board's investigatory powers

(6) In investigating a complaint under paragraph 3 of subsection (5), the Board has all the powers of a panel of the Inquiries, Complaints and Reports Committee and of the Registrar with respect to the investigation of the matter and may appoint an investigator under clause 75 (1) (c). 2007, c. 10, Sched. M, s. 30.

Continuing power of Inquiries, Complaints and Reports Committee

(7) The Inquiries, Complaints and Reports Committee may take action under section 26 at any time before the Board completes its investigation. 2007, c. 10, Sched. M, s. 30.

Same

(8) For greater certainty, if the Inquiries, Complaints and Reports Committee takes action as provided for in subsection (7), the Board no longer has jurisdiction to take action under section 26. 2007, c. 10, Sched. M, s. 30.

Powers of Board re an investigation

(9) After an investigation, the Board may do any one or more of the following:

1. Refer the matter to the Inquiries, Complaints and Reports Committee.
2. Make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee.
3. Require the Inquiries, Complaints and Reports Committee or a panel to do anything the Committee or a panel may do under the health profession Act and this Code except to request the Registrar to conduct an investigation. 2007, c. 10, Sched. M, s. 30.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 30 - 04/06/2009

2017, c. 11, Sched. 5, s. 15 - 30/05/2017

Powers of Board re time limits

28.1 If the Board is satisfied that no person will be unduly prejudiced, it may, on reasonable grounds, extend any time limit with respect to,

(a) a requirement, under subsection 21 (1), for a review or hearing by the Board;

(b) a request, under subsection 29 (2), for a review by the Board; or

(c) the Registrar's obligation to give to the Board, under subsection 32 (1), a record of an investigation of a complaint against a member and all relevant documents and things. 2007, c. 10, Sched. M, s. 30.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 30 - 04/06/2009

Review by Board

29 (1) Subject to section 30, the Board shall review a decision of a panel of the Inquiries, Complaints and Reports Committee if the Board receives a request under subsection (2). 2007, c. 10, Sched. M, s. 30.

Request for review

(2) The complainant or the member who is the subject of the complaint may request the Board to review a decision of a panel of the Inquiries, Complaints and Reports Committee unless the decision was,

(a) to refer an allegation of professional misconduct or incompetence to the Discipline Committee; or

(b) to refer the member to a panel of the Inquiries, Complaints and Reports Committee under section 58 for incapacity proceedings. 2007, c. 10, Sched. M, s. 30.

Time limit

(3) A request for a review may be made only within 30 days after the receipt of the notice of the right to request a review given under clause 27 (1) (c). 2007, c. 10, Sched. M, s. 30.

Limitation

(4) The Board shall not, under section 28.1, extend the time limit set out in subsection (3) for more than 60 days. 2007, c. 10, Sched. M, s. 30.

Parties

(5) The complainant and the member who is the subject of the complaint are parties to a review. 2007, c. 10, Sched. M, s. 30.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 30 - 04/06/2009

When no review

30 (1) The Board shall not review a decision if the party who requested the review withdraws the request and the other party consents. 1991, c. 18, Sched. 2, s. 30 (1).

Request in bad faith, etc.

(2) If the Board considers a request to review a decision to have been frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, it shall give the parties notice that it intends not to proceed with the review and that the parties have a right to make written submissions within thirty days after receiving the notice. 1991, c. 18, Sched. 2, s. 30 (2); 2007, c. 10, Sched. M, s. 31 (1).

Idem

(3) If the Board is satisfied, after considering the written submissions of the parties, that a request was frivolous, vexatious, made in bad faith, moot or otherwise an abuse of process, the Board shall not review the decision. 1991, c. 18, Sched. 2, s. 30 (3); 2007, c. 10, Sched. M, s. 31 (2).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 31 (1, 2) - 04/06/2009

Personal representative as complainant

31 A complainant's personal representative may act as the complainant for the purposes of a review of the decision by the Board if the complainant dies or becomes incapacitated. 1991, c. 18, Sched. 2, s. 31.

Record of decision to be reviewed

32 (1) If the Board is requested to review a decision, the Registrar shall give the Board, within fifteen days after the Board's request, a record of the investigation and the documents and things upon which the decision was based.

Disclosure

(2) Before reviewing a decision, the Board shall disclose to the parties everything given to it by the Registrar under subsection (1).

Exceptions

(3) The Board may refuse to disclose anything that may, in its opinion,

(a) disclose matters involving public security;

(b) undermine the integrity of the complaint investigation and review process;

(c) disclose financial or personal or other matters of such a nature that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that disclosure be made;

(d) prejudice a person involved in a criminal proceeding or in a civil suit or proceeding; or

(e) jeopardize the safety of any person. 1991, c. 18, Sched. 2, s. 32.

Conduct of review

33 (1) In a review, the Board shall consider either or both of,

(a) the adequacy of the investigation conducted; or

(b) the reasonableness of the decision.

Procedure

(2) In conducting a review, the Board,

(a) shall give the party requesting the review an opportunity to comment on the matters set out in clauses (1) (a) and (b) and the other party an opportunity to respond to those comments;

(b) may require the College to send a representative;

(c) may question the parties and the representative of the College;

(d) may permit the parties to make representations with respect to issues raised by any questions asked under clause (c); and

(e) shall not allow the parties or the representative of the College to question each other. 1991, c. 18, Sched. 2, s. 33.

Procedural provisions

34 (1) The following provisions apply with necessary modifications to a review by the Board:

1. Section 43 (no communication by panel members).
2. Section 45 (hearings open).
3. Section 47 (sexual misconduct witnesses).
4. Section 50 (members of panel who participate).
5. Section 55 (release of evidence). 1991, c. 18, Sched. 2, s. 34.

Same

(2) The following provisions of the *Statutory Powers Procedure Act* also apply with necessary modifications to a review by the Board:

1. Section 4 (waiver of procedural requirement).
2. Section 4.1 (disposition of proceeding without hearing).
3. Section 5.1 (written hearings).
4. Section 5.2 (electronic hearings).
5. Section 5.3 (pre-hearing conferences).
6. Section 21 (adjournments).
7. Section 21.1 (correction of errors).
8. Section 25.1 (rules). 1998, c. 18, Sched. G, s. 16.

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 16 - 01/02/1999

Powers of Board

35 (1) After conducting a review of a decision, the Board may do any one or more of the following:

1. Confirm all or part of the decision.
2. Make recommendations the Board considers appropriate to the Inquiries, Complaints and Reports Committee.
3. Require the Inquiries, Complaints and Reports Committee to do anything the Committee or a panel may do under the health profession Act and this Code except to request the Registrar to conduct an investigation. 1991, c. 18, Sched. 2, s. 35 (1); 2007, c. 10, Sched. M, s. 32 (1, 2).

Decision in writing

(2) The Board shall give its decision and reasons in writing to the parties and the Inquiries, Complaints and Reports Committee. 1991, c. 18, Sched. 2, s. 35 (2); 2007, c. 10, Sched. M, s. 32 (3).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 32 (1-3) - 04/06/2009

Inquiries, Complaints and Reports Committee referral

36 (1) The Inquiries, Complaints and Reports Committee may refer a specified allegation of a member's professional misconduct or incompetence to the Discipline Committee. 2007, c. 10, Sched. M, s. 33 (1).

Allegations of sexual abuse

(2) In deciding whether or not to refer an allegation of the sexual abuse of a patient to the Discipline Committee, the Inquiries, Complaints and Reports Committee shall take into account any opinion, required under subsection 85.3 (5), as to whether or not the member who is the subject of the report is likely to sexually abuse patients in the future. 1993, c. 37, s. 9; 2007, c. 10, Sched. M, s. 33 (2).

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 9 - 31/12/1993

2007, c. 10, Sched. M, s. 33 (1, 2) - 04/06/2009

37 REPEALED: 2017, c. 11, Sched. 5, s. 16.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 34 (1-3) - 04/06/2009

2017, c. 11, Sched. 5, s. 16 - 30/05/2017

Panel for discipline hearing

38 (1) The chair of the Discipline Committee shall select a panel from among the members of the Committee to hold a hearing of allegations of a member's professional misconduct or incompetence referred to the Committee by the Inquiries, Complaints and Reports Committee. 1991, c. 18, Sched. 2, s. 38 (1); 2007, c. 10, Sched. M, s. 35.

Composition

(2) A panel shall be composed of at least three and no more than five persons, at least two of whom shall be persons appointed to the Council by the Lieutenant Governor in Council. 1991, c. 18, Sched. 2, s. 38 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 38 (2) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 17 (1))

Composition

(2) The panel selected by the chair shall be composed in accordance with regulations made pursuant to clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 17 (1).

Idem

(3) At least one of the members of a panel shall be both a member of the College and a member of the Council. 1991, c. 18, Sched. 2, s. 38 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 38 (3) of Schedule 2 to the Act is repealed. (See: 2017, c. 11, Sched. 5, s. 17 (1))

Exclusion from panel

(4) No person shall be selected for a panel who has taken part in the investigation of what is to be the subject-matter of the panel's hearing. 1991, c. 18, Sched. 2, s. 38 (4).

Quorum

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

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 38 (5) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 17 (2))

Quorum

(5) Quorum for the panel shall be in accordance with regulations made pursuant to clause 43 (1) (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 17 (2).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 35 - 04/06/2009

2017, c. 11, Sched. 5, s. 17 (1, 2) - not in force

Panel members deemed to continue

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

Amendment of notice of hearing

40 A panel may at any time permit a notice of hearing of allegations against a member to be amended to correct errors or omissions of a minor or clerical nature if it is of the opinion that it is just and equitable to do so and the panel may make any order it considers necessary to prevent prejudice to the member. 1991, c. 18, Sched. 2, s. 40.

Parties

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

Non-party participation in hearings

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

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

(b) the participation of the person, would, in the opinion of the panel, be of assistance to the panel. 1993, c. 37, s. 10; 2007, c. 10, Sched. M, s. 36.

Extent of participation

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

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 10 - 31/12/1993

2007, c. 10, Sched. M, s. 36 - 04/06/2009

Disclosure of evidence

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

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

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

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

Exception

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

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 11 - 31/12/1993

Disclosure of evidence

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

Exception

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

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 12 - 31/12/1993; 1998, c. 18, Sched. G, s. 17 - 01/02/1999

Production orders

42.2 (1) Where, in relation to a hearing involving allegations of a member's misconduct of a sexual nature, the member seeks an order of the panel of the Discipline Committee for the production and disclosure of a record that contains information for which there is a reasonable expectation of privacy from a person who is not a party to the hearing, any one or more of the following assertions made by the member are not sufficient on their own to establish that the record is likely relevant to an issue in the hearing or to the competence of a witness to testify:

1. That the record exists.
2. That the record relates to medical or psychiatric treatment, therapy or counselling that the complainant or a witness has received or is receiving.
3. That the record relates to the incident that is the subject-matter of the proceedings.
4. That the record may disclose a prior inconsistent statement of the complainant or a witness.
5. That the record may relate to the credibility of the complainant or a witness.
6. That the record may relate to the reliability of the testimony of the complainant or a witness merely because the complainant or witness has received or is receiving psychiatric treatment, therapy or counselling.
7. That the record may reveal allegations of sexual abuse of the complainant or a witness by a person other than the member.
8. That the record relates to the sexual activity of the complainant or a witness with any person, including the member.
9. That the record relates to the presence or absence of a recent complaint.
10. That the record relates to the sexual reputation of the complainant or a witness.
11. That the record was made close in time to a complaint or report or to the activity that forms the subject-matter of the allegation against the member. 2017, c. 11, Sched. 5, s. 18.

Same

(2) A panel of the Discipline Committee may order the person who has possession or control of the record to produce the record or part of the record if the panel is satisfied that the member has established that the record is likely relevant to an issue in the hearing or to the competence of a witness to testify in the hearing and the production of the record is necessary in the interest of justice. 2017, c. 11, Sched. 5, s. 18.

Factors to be considered

(3) In determining whether to grant an order for the production of records in accordance with this section, the panel shall consider,

(a) the regulatory nature of the proceedings;

(b) the primary purpose of the proceedings, which is to protect the public and regulate the profession in the public interest;

(c) the privacy interest of the complainant or a witness in the record sought; and

(d) the nature and purpose of the record sought in the motion. 2017, c. 11, Sched. 5, s. 18.

Standing

(4) Despite subsection 41.1 (1), the panel shall, upon the application of any person who has a privacy interest in the records referred to in subsection (1) of this section, grant the person standing on the member's motion for production of the records. 2017, c. 11, Sched. 5, s. 18.

Interpretation

(5) In subsection (1),

"allegations of a member's misconduct of a sexual nature" include, but are not limited to, allegations that the member sexually abused a patient. 2017, c. 11, Sched. 5, s. 18.

Section Amendments with date in force (d/m/y)

2017, c. 11, Sched. 5, s. 18 - 01/05/2018

No communication by panel members

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

Legal advice

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

Hearings public

45 (1) A hearing shall, subject to subsection (2), be open to the public. 1991, c. 18, Sched. 2, s. 45 (1).

Exclusion of public

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

(a) matters involving public security may be disclosed;

(b) financial or personal or other matters may be disclosed at the hearing of such a nature that the harm created by disclosure would outweigh the desirability of adhering to the principle that hearings be open to the public;

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

(d) the safety of a person may be jeopardized. 1991, c. 18, Sched. 2, s. 45 (2); 2007, c. 10, Sched. M, s. 37.

Orders preventing public disclosure

(3) In situations in which the panel may make an order that the public be excluded from a hearing, it may make orders it considers necessary to prevent the public disclosure of matters disclosed at the hearing, including orders banning the publication or broadcasting of those matters. 1991, c. 18, Sched. 2, s. 45 (3).

Public information may be disclosed

(4) No order shall be made under subsection (3) that prevents the publication of anything that is contained in the register and available to the public. 1991, c. 18, Sched. 2, s. 45 (4).

Exclusion of public

(5) The panel may make an order that the public be excluded from the part of a hearing dealing with a motion for an order under subsection (2). 1991, c. 18, Sched. 2, s. 45 (5).

Orders with respect to matters in submissions

(6) The panel may make any order necessary to prevent the public disclosure of matters disclosed in the submissions relating to any motion described in subsection (5), including prohibiting the publication or broadcasting of those matters. 1991, c. 18, Sched. 2, s. 45 (6).

Reasons for order, etc.

(7) The panel shall ensure that any order it makes under this section and its reasons are available to the public in writing. 1991, c. 18, Sched. 2, s. 45 (7).

Reconsidering of order

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

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 37 - 04/06/2009

Exception to closed hearings

46 If a panel makes an order under subsection 45 (2) wholly or partly in relation to a person, the panel may allow the person and his or her personal representative to attend the hearing and may, in its discretion, allow another person to attend if, in the opinion of the panel, to do so does not undermine the reasons for making the order and does not cause undue prejudice to a party. 2007, c. 10, Sched. M, s. 38.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 38 - 04/06/2009

Sexual misconduct witnesses

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

Interpretation

(2) In subsection (1),

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

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 13 - 31/12/1993

Transcript of hearings

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

(a) the oral evidence is recorded;

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

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

Transcripts filed with court

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

Admissibility of evidence

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

Members of panel who participate

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

Professional misconduct

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

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

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

(b.0.1) the member has failed to co-operate with the Quality Assurance Committee or any assessor appointed by that committee;

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

(c) the member has committed an act of professional misconduct as defined in the regulations. 1991, c. 18, Sched. 2, s. 51 (1); 1993, c. 37, s. 14 (1); 2007, c. 10, Sched. M, s. 39 (1); 2017, c. 11, Sched. 5, s. 19 (1).

Orders

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

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

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

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

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

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

Idem

(3) In making an order under paragraph 2 or 3 of subsection (2), a panel may specify criteria to be satisfied for the removal of a suspension or the removal of terms, conditions and limitations imposed on a member's certificate of registration. 1991, c. 18, Sched. 2, s. 51 (3).

Suspension of order

(4) A panel may suspend the effect of all or part of an order made under subsection (2) for a specified period and on specified conditions. 1991, c. 18, Sched. 2, s. 51 (4); 2007, c. 10, Sched. M, s. 39 (2).

No gender-based terms, conditions, limitations

(4.1) In making an order under paragraph 3 of subsection (2), a panel shall not make any order directing the Registrar to impose any gender-based terms, conditions or limitations on a member's certificate of registration. 2017, c. 11, Sched. 5, s. 19 (2).

Interim suspension of certificate

(4.2) The panel shall immediately make an interim order suspending a member's certificate of registration until such time as the panel makes an order under subsection (5) or (5.2) if the panel finds that the member has committed an act of professional misconduct,

(a) under clause (1) (a) and the offence is prescribed for the purposes of clause (5.2) (a) in a regulation made under clause 43 (1) (v) of the *Regulated Health Professions Act, 1991*;

(b) under clause (1) (b) and the misconduct includes or consists of any of the conduct listed in paragraph 3 of subsection (5); or

(c) by sexually abusing a patient and the sexual abuse involves conduct listed under subparagraphs 3 i to vii of subsection (5). 2017, c. 11, Sched. 5, s. 19 (2).

Non-application to mandatory orders

(4.3) For greater certainty, subsection (4) does not apply to a mandatory order made under subsection (5) or a mandatory order made under subsection (5.2). 2017, c. 11, Sched. 5, s. 19 (2).

Orders relating to sexual abuse

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

1. Reprimand the member.

2. Suspend the member's certificate of registration if the sexual abuse does not consist of or include conduct listed in paragraph 3 and the panel has not otherwise made an order revoking the member's certificate of registration under subsection (2).

3. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following:

   i. Sexual intercourse.

   ii. Genital to genital, genital to anal, oral to genital or oral to anal contact.

   iii. Masturbation of the member by, or in the presence of, the patient.

   iv. Masturbation of the patient by the member.

   v. Encouraging the patient to masturbate in the presence of the member.

   vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.

vii. Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 19 (3).

Interpretation

(5.1) For greater certainty, for the purposes of subsection (5),

"sexual nature" does not include touching or conduct of a clinical nature appropriate to the service provided. 2017, c. 11, Sched. 5, s. 19 (3).

Mandatory revocation

(5.2) The panel shall, in addition to anything else the panel may do under subsection (2), reprimand the member and revoke the member's certificate of registration if,

(a) the member has been found guilty of professional misconduct under clause (1) (a) and the offence is prescribed in a regulation made under clause 43 (1) (v) of the *Regulated Health Professions Act, 1991*; or

(b) the member has been found guilty of professional misconduct under clause (1) (b) and the misconduct includes or consists of any of the conduct listed in paragraph 3 of subsection (5). 2017, c. 11, Sched. 5, s. 19 (3).

Statement re impact of sexual abuse

(6) Before making an order under subsection (5), the panel shall consider any written statement that has been filed, and any oral statement that has been made to the panel, describing the impact of the sexual abuse on the patient. 1993, c. 37, s. 14 (3).

Same

(7) The statement may be made by the patient or by his or her representative. 1993, c. 37, s. 14 (3).

Same

(8) The panel shall not consider the statement unless a finding of professional misconduct has been made. 1993, c. 37, s. 14 (3).

Notice to member

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

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 14 (1-3) - 31/12/1993

2007, c. 10, Sched. M, s. 39 (1, 2) - 04/06/2009

2017, c. 11, Sched. 5, s. 19 (1-3) - 30/05/2017

Incompetence

52 (1) A panel shall find a member to be incompetent if the member's professional care of a patient displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the member is unfit to continue to practise or that the member's practice should be restricted. 1991, c. 18, Sched. 2, s. 52 (1); 2007, c. 10, Sched. M, s. 40 (1).

Order

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

1. Directing the Registrar to revoke the member's certificate of registration.
2. Directing the Registrar to suspend the member's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified period of time or indefinite period of time. 1991, c. 18, Sched. 2, s. 52 (2); 2007, c. 10, Sched. M, s. 40 (2).

Idem

(3) In making an order under paragraph 2 or 3 of subsection (2), a panel may specify criteria to be satisfied for the removal of a suspension or the removal of terms, conditions and limitations imposed on a member's certificate of registration. 1991, c. 18, Sched. 2, s. 52 (3); 2007, c. 10, Sched. M, s. 40 (3).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 40 (1-3) - 04/06/2009

Costs if proceedings unwarranted

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

College's costs

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

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

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 15 - 31/12/1993

Decision to complainant

54 A panel shall give its decision and reasons in writing to the parties and, if the matter had been referred to the Discipline Committee by the Inquiries, Complaints and Reports Committee, to the complainant in the matter. 1991, c. 18, Sched. 2, s. 54; 2007, c. 10, Sched. M, s. 41.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 41 - 04/06/2009

Release of evidence

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

Publication of decisions

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

Publication of member's name

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

(a) the results of the proceeding may be obtained by a person from the register; or

(b) the member requests the publication of his or her name.

Withholding of member's name

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

INCAPACITY

Registrar's inquiry

57 If the Registrar believes that a member may be incapacitated, the Registrar shall make inquiries he or she considers appropriate and shall report the results of the inquiries to the Inquiries, Complaints and Reports Committee. 1991, c. 18, Sched. 2, s. 57; 2007, c. 10, Sched. M, s. 42.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 42 - 04/06/2009

Panel shall inquire

58 (1) A panel selected by the chair of the Inquiries, Complaints and Reports Committee from among the members of the Committee shall inquire into whether a member is incapacitated if,

(a) the Inquiries, Complaints and Reports Committee receives a report from the Registrar under section 57; or

(b) a referral is made from a panel of the Inquiries, Complaints and Reports Committee under paragraph 2 of subsection 26 (1). 2007, c. 10, Sched. M, s. 43.

Notice to member

(2) The Inquiries, Complaints and Reports Committee shall give a member notice that it intends to inquire into whether the member is incapacitated. 2007, c. 10, Sched. M, s. 43.

Transitional

(3) A board of inquiry that was constituted under this section, as it existed immediately before the coming into force of section 43 of Schedule M to the *Health System Improvements Act, 2007*, shall be deemed to continue to be validly constituted and to have the authority to do anything that it could have done before the coming into force of section 44 of that Schedule, and where the board of inquiry was to give a copy of a report to the Executive Committee, that Committee may continue to act with respect to that matter and shall have the authority to do anything it could have done before the coming into force of sections 44 to 47 of that Schedule. 2007, c. 10, Sched. M, s. 43.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 43 - 04/06/2009

Inquiries by panel

59 (1) A panel shall make the inquiries it considers appropriate. 2007, c. 10, Sched. M, s. 44.

Physical or mental examinations

(2) If, after making inquiries, a panel has reasonable and probable grounds to believe that the member who is the subject of the inquiry is incapacitated, the panel may require the member to submit to physical or mental examinations conducted or ordered by a health professional specified by the panel and may, subject to section 63, make an order directing the Registrar to suspend the member's certificate of registration until he or she submits to the examinations. 2007, c. 10, Sched. M, s. 44.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 44 - 04/06/2009

Panel's report

60 The panel shall give a copy of its report and a copy of any report on an examination required under subsection 59 (2) to the member who was the subject of the inquiry. 2007, c. 10, Sched. M, s. 44.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 44 - 04/06/2009

Referral to Fitness to Practise Committee

61 After giving a copy of its report and copy of any report on an examination required under subsection 59 (2) to the member, the panel may refer the matter to the Fitness to Practise Committee. 2007, c. 10, Sched. M, s. 44.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 44 - 04/06/2009

Interim suspension

62 (1) The panel may, subject to section 63, make an interim order directing the Registrar to suspend or impose terms, conditions or limitations on a member's certificate of registration if it is of the opinion that the physical or mental state of the member exposes or is likely to expose his or her patients to harm or injury. 2017, c. 11, Sched. 5, s. 20.

No gender-based terms

(2) Despite subsection (1), the panel shall not make an interim order directing the Registrar to impose any gender-based terms, conditions or limitations on a member's certificate of registration. 2017, c. 11, Sched. 5, s. 20.

Procedure following interim suspension

(3) If an order is made under subsection (1) in relation to a matter,

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

(b) the Inquiries, Complaints and Reports Committee and the Fitness to Practise Committee shall give precedence to the matter. 2017, c. 11, Sched. 5, s. 20.

Duration of order

(4) An order under subsection (1) continues in force until it is varied by the panel of the Inquiries, Complaints and Reports Committee or until the matter is finally disposed of by a panel of the Inquiries, Complaints and Reports Committee or the Fitness to Practise Committee. 2017, c. 11, Sched. 5, s. 20.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 45 (1, 2) - 04/06/2009

2017, c. 11, Sched. 5, s. 20 - 30/05/2017

Restrictions on orders

63 (1) No order shall be made with respect to a member under subsection 59 (2) or subsection 62 (1) unless the member has been given,

(a) notice of the intention to make the order;

(b) at least 14 days to make written submissions to the panel; and

(c) in the case of an order under subsection 62 (1), a copy of the provisions of section 62. 2017, c. 11, Sched. 5, s. 21.

Extraordinary action to protect the public

(2) Despite subsection (1), an order may be made without notice to the member, subject to the right of the member to make submissions while the suspension is in place to the panel that made the order, if the panel is of the opinion on reasonable and probable grounds that the physical or mental state of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed. 2007, c. 10, Sched. M, s. 46.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 46 - 04/06/2009

2017, c. 11, Sched. 5, s. 21 - 30/05/2017

Panels for Fitness to Practise hearings

64 (1) The chair of the Fitness to Practise Committee shall select a panel from among the members of the Committee to hold a hearing of any matter referred to the Committee by a panel of the Inquiries, Complaints and Reports Committee. 1991, c. 18, Sched. 2, s. 64 (1); 2007, c. 10, Sched. M, s. 47 (1).

Composition

(2) A panel shall be composed of at least three persons, at least one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council. 1991, c. 18, Sched. 2, s. 64 (2); 2007, c. 10, Sched. M, s. 47 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 64 (2) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 22)

Composition of panels

(2) The panel selected by the chair shall be composed in accordance with regulations made pursuant to clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 22.

Quorum

(3) Three members of a panel constitute a quorum. 1991, c. 18, Sched. 2, s. 64 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 64 (3) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 22)

Quorum

(3) Quorum for the panel shall be in accordance with regulations made pursuant to clause 43 (1) (s) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 22.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 47 (1, 2) - 04/06/2009

2017, c. 11, Sched. 5, s. 22 - not in force

Parties

65 The College, the member who is alleged to be incapacitated and any other person specified by the panel are parties to a hearing. 1991, c. 18, Sched. 2, s. 65.

Reports of health professionals

66 (1) A report prepared and signed by a health professional containing his or her findings and the facts upon which they are based is admissible as evidence at a hearing without proof of its making or of the health professional's signature if the party introducing the report gives the other parties a copy of the report at least ten days before the hearing.

Testimony of health professionals

(2) A health professional may not give evidence in his or her professional capacity at a hearing unless a report, prepared and signed by the health professional containing his or her findings and the facts upon which they are based, is introduced as evidence.

Cross-examination

(3) If a report described in subsection (1) is introduced by a party, the other parties may summon and cross-examine the person who prepared the report. 1991, c. 18, Sched. 2, s. 66.

Exception

(4) A panel may, in its discretion, allow a party to introduce evidence that is inadmissible under this section and may make directions it considers necessary to ensure that the other parties are not prejudiced. 1998, c. 18, Sched. G, s. 18.

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 18 - 01/02/1999

Procedural provisions

67 The following provisions apply with necessary modifications to a hearing by a panel of the Fitness to Practise Committee:

1. Subsection 22 (4) (findings of fact).
2. Subsection 38 (4) (exclusion from panel).
3. Section 39 (panel members deemed to continue).
4. Section 42 (disclosure of evidence).

4.1 Section 42.1 (disclosure of evidence by member).

5. Section 43 (no communication by panel members).
6. Section 44 (legal advice).
7. Section 47 (sexual misconduct witnesses).
8. Section 50 (members of panel who participate).
9. Section 55 (release of evidence). 1991, c. 18, Sched. 2, s. 67; 1993, c. 37, s. 16; 2007, c. 10, Sched. M, s. 48.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 16 - 31/12/1993

2007, c. 10, Sched. M, s. 48 - 04/06/2009

Hearings closed

68 (1) A hearing by a panel of the Fitness to Practise Committee shall, subject to subsection (2), be closed to the public. 1991, c. 18, Sched. 2, s. 68 (1); 2007, c. 10, Sched. M, s. 49 (1).

Open on request of member in some cases

(2) A hearing shall be open to the public if the person who is alleged to be incapacitated requests it in a written notice received by the Registrar before the day the hearing commences, unless the panel is satisfied that,

(a) matters involving public security may be disclosed;

(b) financial or personal matters or other matters may be disclosed at the hearing of such a nature that the harm created by disclosure would outweigh the desirability of adhering to the principle that hearings be open to the public;

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

(d) the safety of any person may be jeopardized. 1991, c. 18, Sched. 2, s. 68 (2); 2007, c. 10, Sched. M, s. 49 (2).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 49 (1, 2) - 04/06/2009

Orders

69 (1) If a panel finds that a member is incapacitated, it shall make an order doing any one or more of the following:

1. Directing the Registrar to revoke the member's certificate of registration.
2. Directing the Registrar to suspend the member's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified period of time or indefinite period of time. 1991, c. 18, Sched. 2, s. 69 (1); 2007, c. 10, Sched. M, s. 50 (1).

Idem

(2) In making an order under paragraph 2 or 3 of subsection (1), a panel may specify criteria to be satisfied for the removal of a suspension or the removal of terms, conditions and limitations imposed on a member's certificate of registration. 1991, c. 18, Sched. 2, s. 69 (2); 2007, c. 10, Sched. M, s. 50 (2).

Varying

(3) A member or the College may apply to the Fitness to Practise Committee for an order directing the Registrar to remove or modify any term, condition or limitation imposed on the member's certificate of registration as a result of paragraph 3 of subsection (1) and the chair may select a panel to deal with the application. 2007, c. 10, Sched. M, s. 50 (3).

Limitations

(4) The right to apply under subsection (3) is subject to any limitation in the order or to which the member consented and to any limitation made under subsection (5) in the disposition of a previous application to vary. 2007, c. 10, Sched. M, s. 50 (3).

Limitations on applications

(5) The panel, in disposing of an application by a member under subsection (3), may fix a period of time not longer than six months during which the member may not make a further application. 2007, c. 10, Sched. M, s. 50 (3).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 50 (1-3) - 04/06/2009

APPEALS TO COURT

Appeals from decisions

70 (1) A party to proceedings before the Board concerning a registration hearing or review or to proceedings before a panel of the Discipline or Fitness to Practise Committee, other than a hearing of an application under subsection 72 (1), may appeal from the decision of the Board or panel to the Divisional Court.

Basis of appeal

(2) An appeal under subsection (1) may be made on questions of law or fact or both.

Court's powers

(3) In an appeal under subsection (1), the Court has all the powers of the panel that dealt with the matter and, in an appeal from the Board, the Court also has all the powers of the Board. 1991, c. 18, Sched. 2, s. 70.

No stay of certain orders pending appeal

71 An order made by a panel of the Discipline Committee on the grounds of incompetence or by a panel of the Fitness to Practise Committee on the grounds of incapacity, directing the Registrar to revoke, suspend or impose terms, limitations or conditions on a member's certificate, takes effect immediately despite any appeal. 1991, c. 18, Sched. 2, s. 71.

No stay of certain orders pending appeal

71.1 Section 71 also applies to an order made by a panel of the Discipline Committee because of a finding that a member has committed sexual abuse of the kind described in paragraph 3 of subsection 51 (5) or an act of professional misconduct described in subsection 51 (5.2). 2017, c. 11, Sched. 5, s. 23.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 17 - 31/12/1993

2017, c. 11, Sched. 5, s. 23 - 30/05/2017

Order where public at risk

71.2 If the conduct of the member exposes or is likely to expose his or her patients to harm or injury and urgent intervention is needed, the College may apply to a judge of the Superior Court of Justice for an order declaring that an order that was made by a panel of the Discipline Committee on the grounds of professional misconduct and that directs the Registrar to revoke, suspend or impose terms, conditions or limitations on a member's certificate shall take effect immediately despite any appeal and any other Act. 2007, c. 10, Sched. M, s. 51.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 51 - 04/06/2009

REINSTATEMENT

Applications for reinstatement

72 (1) A person whose certificate of registration has been revoked or suspended as a result of disciplinary or incapacity proceedings may apply in writing to the Registrar to have a new certificate issued or the suspension removed. 1991, c. 18, Sched. 2, s. 72 (1).

Time of application

(2) An application under subsection (1) shall not be made earlier than,

(a) one year after the date on which the certificate of registration was revoked or suspended; or

(b) six months after a decision has been made in a previous application under subsection (1). 2007, c. 10, Sched. M, s. 52.

Time of application, sexual abuse cases

(3) An application under subsection (1), in relation to a revocation for sexual abuse of a patient, shall not be made earlier than,

(a) five years after the date on which the certificate of registration was revoked; or

(b) six months after a decision has been made in a previous application under subsection (1). 2007, c. 10, Sched. M, s. 52.

Notice where complainant

(4) The Registrar shall give the complainant in the original proceeding notice of an application under subsection (1). 2007, c. 10, Sched. M, s. 52.

Reasons for reinstatement

(5) The person making the application under subsection (1) shall provide reasons why the certificate should be issued or the suspension be removed. 2007, c. 10, Sched. M, s. 52.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 18 - 31/12/1993

2007, c. 10, Sched. M, s. 52 - 04/06/2009

Referral to Committee

73 (1) The Registrar shall refer the application, if the revocation or suspension was on the grounds of,

(a) professional misconduct or incompetence, to the Discipline Committee; or

(b) incapacity, to the Fitness to Practise Committee.

Hearings

(2) The chair of a committee to which an application is referred shall select a panel from among the members of the committee to hold a hearing of the application.

Procedural provisions

(3) The following provisions apply with necessary modifications to a hearing of an application by a panel of the Discipline Committee:

1. Subsection 22 (4) (findings of fact).
2. Subsection 38 (2) (composition).
3. Subsection 38 (3) (composition).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 3 of subsection 73 (3) of Schedule 2 to the Act is repealed. (See: 2017, c. 11, Sched. 5, s. 24)

4. Subsection 38 (5) (quorum).
5. Section 43 (no communication by panel members).
6. Section 44 (legal advice).
7. Section 45 (hearings open).
8. Section 47 (sexual misconduct witnesses).
9. Section 48 (transcript of hearings).
10. Section 50 (members of panel who participate).
11. Section 55 (release of evidence).

Idem

(4) The following provisions apply with necessary modifications to a hearing of an application by a panel of the Fitness to Practise Committee:

1. Subsection 22 (4) (findings of fact).
2. Section 43 (no communication by panel members).
3. Section 44 (legal advice).
4. Section 47 (sexual misconduct witnesses).
5. Section 48 (transcript of hearings).
6. Section 50 (members of panel who participate).
7. Section 55 (release of evidence).
8. Subsection 64 (2) (composition).
9. Subsection 64 (3) (quorum).
10. Section 68 (hearings closed).

Order

(5) A panel may, after a hearing, make an order doing any one or more of the following:

1. Directing the Registrar to issue a certificate of registration to the applicant.
2. Directing the Registrar to remove the suspension of the applicant's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the applicant's certificate of registration. 1991, c. 18, Sched. 2, s. 73 (1-5).

Limitation for sexual abuse cases

(5.1) A panel may not make an order directing that the Registrar issue a new certificate of registration to an applicant whose certificate had been revoked for sexual abuse of a patient unless the prescribed conditions are met. 1993, c. 37, s. 19.

Decision

(6) A panel that held a hearing of an application shall give its decision and reasons in writing to the applicant and the Registrar. 1991, c. 18, Sched. 2, s. 73 (6).

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 19 - 31/12/1993

2017, c. 11, Sched. 5, s. 24 - not in force

Orders without hearing

74 (1) The Council or Executive Committee may, without a hearing, with respect to a person whose certificate of registration has been revoked or suspended as a result of disciplinary or incapacity proceedings, make an order doing any one or more of the following:

1. Directing the Registrar to issue a new certificate of registration to the applicant.
2. Directing the Registrar to remove the suspension of the applicant's certificate of registration.
3. Directing the Registrar to impose specified terms, conditions and limitations on the applicant's certificate of registration if an order is made under paragraph 1 or 2. 1991, c. 18, Sched. 2, s. 74.

Limitation

(2) This section does not apply with respect to a revocation for sexual abuse of a patient. 1993, c. 37, s. 20.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 20 - 31/12/1993

REGISTRAR'S POWERS OF INVESTIGATION

Investigators

75 (1) The Registrar may appoint one or more investigators to determine whether a member has committed an act of professional misconduct or is incompetent if,

(a) the Registrar believes on reasonable and probable grounds that the member has committed an act of professional misconduct or is incompetent and the Inquiries, Complaints and Reports Committee approves of the appointment;

(b) the Inquiries, Complaints and Reports Committee has received information about a member from the Quality Assurance Committee under paragraph 4 of subsection 80.2 (1) and has requested the Registrar to conduct an investigation; or

(c) the Inquiries, Complaints and Reports Committee has received a written complaint about the member and has requested the Registrar to conduct an investigation. 2007, c. 10, Sched. M, s. 53.

Emergencies

(2) The Registrar may appoint an investigator if,

(a) the Registrar believes on reasonable and probable grounds that the conduct of the member exposes or is likely to expose his or her patients to harm or injury, and that the investigator should be appointed immediately; and

(b) there is not time to seek approval from the Inquiries, Complaints and Reports Committee. 2007, c. 10, Sched. M, s. 53.

Report

(3) Where an investigator has been appointed under subsection (2), the Registrar shall report the appointment of the investigator to the Inquiries, Complaints and Reports Committee within five days. 2007, c. 10, Sched. M, s. 53.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 53 - 04/06/2009

Application of *Public Inquiries Act, 2009*

76 (1) An investigator may inquire into and examine the practice of the member to be investigated and section 33 of the *Public Inquiries Act, 2009* applies to that inquiry and examination. 2009, c. 33, Sched. 6, s. 84.

Reasonable inquiries

(1.1) An investigator may make reasonable inquiries of any person, including the member who is the subject of the investigation, on matters relevant to the investigation. 2009, c. 6, s. 1.

Idem

(2) An investigator may, on the production of his or her appointment, enter at any reasonable time the place of practice of the member and may examine anything found there that is relevant to the investigation. 1991, c. 18, Sched. 2, s. 76 (2); 2007, c. 10, Sched. M, s. 54.

Obstruction prohibited

(3) No person shall obstruct an investigator or withhold or conceal from him or her or destroy anything that is relevant to the investigation. 1991, c. 18, Sched. 2, s. 76 (3).

Member to co-operate

(3.1) A member shall co-operate fully with an investigator. 2009, c. 6, s. 1.

Conflicts

(4) This section applies despite any provision in any Act relating to the confidentiality of health records. 1991, c. 18, Sched. 2, s. 76 (4).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 54 - 04/06/2007

2009, c. 6, s. 1 - 23/04/2009

2009, c. 33, Sched. 6, s. 84 - 01/06/2011

Entries and searches

77 (1) A justice of the peace may, on the application of the investigator made without notice, issue a warrant authorizing an investigator to enter and search a place and examine any document or thing specified in the warrant if the justice of the peace is satisfied that the investigator has been properly appointed and that there are reasonable and probable grounds established upon oath for believing that,

(a) the member being investigated has committed an act of professional misconduct or is incompetent; and

(b) there is something relevant to the investigation at the place. 2007, c. 10, Sched. M, s. 55.

Hours of execution

(2) A warrant issued under subsection (1) may be executed only between 8 a.m. and 8 p.m. unless the warrant specifies otherwise. 2007, c. 10, Sched. M, s. 55.

Application for dwelling

(2.1) An application for a warrant under subsection (1) to enter a dwelling shall specifically indicate that the application relates to a dwelling. 2007, c. 10, Sched. M, s. 55.

Assistance and entry by force

(3) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) may be assisted by other persons and may enter a place by force. 1991, c. 18, Sched. 2, s. 77 (3).

Investigator to show identification

(4) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) shall produce his or her identification, on request, to any person at the place. 1991, c. 18, Sched. 2, s. 77 (4).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 55 - 04/06/2007

Copying of documents and objects

78 (1) An investigator may copy, at the College's expense, a document or object that an investigator may examine under subsection 76 (2) or under the authority of a warrant issued under subsection 77 (1).

Removal for documents and objects

(2) An investigator may remove a document or object described in subsection (1) if,

(a) it is not practicable to copy it in the place where it is examined; or

(b) a copy of it is not sufficient for the purposes of the investigation.

Return of documents and objects or copies

(3) If it is practicable to copy a document or object removed under subsection (2), the investigator shall,

(a) if it was removed under clause (2) (a), return the document or object within a reasonable time; or

(b) if it was removed under clause (2) (b), provide the person who was in possession of the document or object with a copy of it within a reasonable time.

Copy as evidence

(4) A copy of a document or object certified by an investigator to be a true copy shall be received in evidence in any proceeding to the same extent and shall have the same evidentiary value as the document or object itself.

Definition

(5) In this section,

"document" means a record of information in any form and includes any part of it. 1991, c. 18, Sched. 2, s. 78.

Report of investigation

79 The Registrar shall report the results of an investigation to,

(a) the Inquiries, Complaints and Reports Committee if the investigator was appointed under clause 75 (1) (a) or (b) or subsection 75 (2);

(b) the Inquiries, Complaints and Reports Committee if the investigator was appointed under clause 75 (1) (c), at the request of the Inquiries, Complaints and Reports Committee; or

(c) the Board if the investigator was appointed under clause 75 (1) (c) by the Board exercising the Registrar's powers under subsection 28 (6). 2007, c. 10, Sched. M, s. 56.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 56 - 04/06/2009

QUALITY ASSURANCE COMMITTEE

79.1 REPEALED: 2007, c. 10, Sched. M, s. 57.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 21 - 31/12/1993

2007, c. 10, Sched. M, s. 57 - 04/06/2009

Quality assurance program required

80 The Council shall make regulations under clause 95 (1) (r) prescribing a quality assurance program. 1991, c. 18, Sched. 2, s. 80; 2000, c. 26, Sched. H, s. 3 (1).

Section Amendments with date in force (d/m/y)

2000, c. 26, Sched. H, s. 3 (1) - 06/12/2000

Minimum requirements for quality assurance program

80.1 A quality assurance program prescribed under section 80 shall include,

(a) continuing education or professional development designed to,

(i) promote continuing competence and continuing quality improvement among the members,

(ii) address changes in practice environments, and

(iii) incorporate standards of practice, advances in technology, changes made to entry to practice competencies and other relevant issues in the discretion of the Council;

(b) self, peer and practice assessments; and

(c) a mechanism for the College to monitor members' participation in, and compliance with, the quality assurance program. 2007, c. 10, Sched. M, s. 58.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 58 - 04/06/2009

2009, c. 26, s. 24 (14) - no effect - see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2019

Powers of the Committee

80.2 (1) The Quality Assurance Committee may do only one or more of the following:

1. Require individual members whose knowledge, skill and judgment have been assessed under section 82 and found to be unsatisfactory to participate in specified continuing education or remediation programs.
2. Direct the Registrar to impose terms, conditions or limitations for a specified period to be determined by the Committee on the certificate of registration of a member,
    i. whose knowledge, skill and judgment have been assessed or reassessed under section 82 and have been found to be unsatisfactory, or
    ii. who has been directed to participate in specified continuing education or remediation programs as required by the Committee under paragraph 1 and has not completed those programs successfully.
3. Direct the Registrar to remove terms, conditions or limitations before the end of the specified period, if the Committee is satisfied that the member's knowledge, skill and judgment are now satisfactory.
4. Disclose the name of the member and allegations against the member to the Inquiries, Complaints and Reports Committee if the Quality Assurance Committee is of the opinion that the member may have committed an act of professional misconduct, or may be incompetent or incapacitated. 2007, c. 10, Sched. M, s. 58.

Notice

(2) No direction shall be given to the Registrar under paragraph 2 of subsection (1) unless the member has been given notice of the Quality Assurance Committee's intention to give direction, and at least 14 days to make written submissions to the Committee. 2007, c. 10, Sched. M, s. 58.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 58 - 04/06/2009

Assessors

81 The Quality Assurance Committee may appoint assessors for the purposes of a quality assurance program. 1991, c. 18, Sched. 2, s. 81.

Co-operation with Committee and assessors

82 (1) Every member shall co-operate with the Quality Assurance Committee and with any assessor it appoints and in particular every member shall,

(a) permit the assessor to enter and inspect the premises where the member practises;

(b) permit the assessor to inspect the member's records of the care of patients;

(c) give the Committee or the assessor the information in respect of the care of patients or in respect of the member's records of the care of patients the Committee or assessor requests in the form the Committee or assessor specifies;

(d) confer with the Committee or the assessor if requested to do so by either of them; and

(e) participate in a program designed to evaluate the knowledge, skill and judgment of the member, if requested to do so by the Committee.

Inspection of premises

(2) Every person who controls premises where a member practises, other than a private dwelling, shall allow an assessor to enter and inspect the premises.

Inspection of records

(3) Every person who controls records relating to a member's care of patients shall allow an assessor to inspect the records.

Exception

(4) Subsection (3) does not require a patient or his or her representative to allow an assessor to inspect records relating to the patient's care.

Conflict

(5) This section applies despite any provision in any Act relating to the confidentiality of health records. 1991, c. 18, Sched. 2, s. 82.

Confidentiality of information

83 (1) Except as provided in section 80.2 and in this section, the Quality Assurance Committee and any assessor appointed by it shall not disclose, to any other committee, information that,

(a) was given by the member; or

(b) relates to the member and was obtained under section 82. 1991, c. 18, Sched. 2, s. 83 (1); 2007, c. 10, Sched. M, s. 59 (1).

Exception if member gave false information

(2) Where relevant to a proceeding before a committee, information described in subsection (1) may be disclosed to that committee for the purpose of showing that the member knowingly gave false information to the Quality Assurance Committee or an assessor. 2007, c. 10, Sched. M, s. 59 (2).

(3) REPEALED: 2007, c. 10, Sched. M, s. 59 (3).

Use in other Committees

(4) Information that was disclosed contrary to subsection (1) shall not be used against the member to whom it relates in a proceeding before the Discipline or Fitness to Practise Committees. 1991, c. 18, Sched. 2, s. 83 (4).

(5) REPEALED: 2004, c. 3, Sched. B, s. 11 (1).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 19 - 01/02/1999

2004, c. 3, Sched. B, s. 11 (1) - 01/11/2004

2007, c. 10, Sched. M, s. 59 (1-3) - 04/06/2009

Quality assurance and other information

83.1 (1) In this section,

"disclose" means, with respect to quality assurance information, to provide or make the information available to a person who is not,

(a) a member of the Quality Assurance Committee,

(b) an assessor appointed by the Committee, a person engaged on its behalf such as a mentor or a person conducting an assessment program on its behalf, or

(c) a person providing administrative support to the Committee or the Registrar or the Committee's legal counsel,

and "disclosure" has a corresponding meaning; ("divulguer", "divulgation")

"proceeding" includes a proceeding that is within the jurisdiction of the Legislature and that is held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, a committee of a College under the *Regulated Health Professions Act, 1991*, a committee of the Board under the *Drugless Practitioners Act*, a committee of the College under the *Social Work and Social Service Work Act, 1998*, an arbitrator or a mediator, but does not include any activities carried on by the Quality Assurance Committee; ("instance")

"quality assurance information" means information that,

(a) is collected by or prepared for the Quality Assurance Committee for the sole or primary purpose of assisting the Committee in carrying out its functions,

(b) relates solely or primarily to any activity that the Quality Assurance Committee carries on as part of its functions,

(c) is prepared by a member or on behalf of a member solely or primarily for the purpose of complying with the requirements of the prescribed quality assurance program, or

(d) is provided to the Quality Assurance Committee under subsection (3),

but does not include,

(e) the name of a member and allegations that the member may have committed an act of professional misconduct, or may be incompetent or incapacitated,

(f) information that was referred to the Quality Assurance Committee from another committee of the College or the Board, or

(g) information that a regulation made under this Code specifies is not quality assurance information and that the Quality Assurance Committee receives after the day on which that regulation is made; ("renseignements sur l'assurance de la qualité")

"witness" means a person, whether or not a party to a proceeding, who, in the course of the proceeding,

(a) is examined or cross-examined for discovery, either orally or in writing,

(b) makes an affidavit, or

(c) is competent or compellable to be examined or cross-examined or to produce a document, whether under oath or not. ("témoin") 2004, c. 3, Sched. B, s. 11 (2).

Conflict

(2) In the event of a conflict between this section and a provision under any other Act, this section prevails unless it specifically provides otherwise. 2004, c. 3, Sched. B, s. 11 (2).

Disclosure to Quality Assurance Committee

(3) Despite the *Personal Health Information Protection Act, 2004*, a person may disclose any information to the Quality Assurance Committee for the purposes of the committee. 2004, c. 3, Sched. B, s. 11 (2).

Quality assurance information

(4) Despite the *Personal Health Information Protection Act, 2004*, no person shall disclose quality assurance information except as permitted by the *Regulated Health Professions Act, 1991*, including this Code or an Act named in Schedule 1 to that Act or regulations or by-laws made under the *Regulated Health Professions Act, 1991* or under an Act named in Schedule 1 to that Act. 2004, c. 3, Sched. B, s. 11 (2).

Non-disclosure in proceeding

(5) No person shall ask a witness and no court or other body conducting a proceeding shall permit or require a witness in the proceeding to disclose quality assurance information except as permitted or required by the provisions relating to the quality assurance program. 2004, c. 3, Sched. B, s. 11 (2).

Non-admissibility of evidence

(6) Quality assurance information is not admissible in evidence in a proceeding. 2004, c. 3, Sched. B, s. 11 (2).

Non-retaliation

(7) No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that the person has disclosed information to the Quality Assurance Committee under subsection (3), but a person may be disciplined for disclosing false information to the Committee. 2004, c. 3, Sched. B, s. 11 (2).

Immunity

(8) No action or other proceeding may be instituted against a person who in good faith discloses information to a Quality Assurance Committee at the request of the Committee or for the purposes of assisting the Committee in carrying out its functions. 2004, c. 3, Sched. B, s. 11 (2).

Section Amendments with date in force (d/m/y)

2004, c. 3, Sched. B, s. 11 (2) - 01/11/2004

PATIENT RELATIONS PROGRAM

Patient relations program

84 (1) The College shall have a patient relations program. 1991, c. 18, Sched. 2, s. 84 (1).

Measures for sexual abuse of patients

(2) The patient relations program must include measures for preventing and dealing with sexual abuse of patients. 1993, c. 37, s. 22 (1); 2007, c. 10, Sched. M, s. 60 (1).

Same

(3) The measures for preventing and dealing with sexual abuse of patients must include,

(a) educational requirements for members;

(b) guidelines for the conduct of members with their patients;

(c) training for the College's staff; and

(d) the provision of information to the public. 1991, c. 18, Sched. 2, s. 84 (3); 1993, c. 37, s. 22 (2); 2007, c. 10, Sched. M, s. 60 (2).

Other functions

(3.1) The patient relations program shall perform any other functions that are prescribed in regulations made under clause 43 (1) (x) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 25.

Report on program

(4) The Council shall give the Health Professions Regulatory Advisory Council a written report describing the patient relation program and, when changes are made to the program, a written report describing the changes. 1991, c. 18, Sched. 2, s. 84 (4).

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 22 (1, 2) - 31/12/1993

2007, c. 10, Sched. M, s. 60 (1, 2) - 04/06/2009

2017, c. 11, Sched. 5, s. 25 - 30/05/2017

Advice to Council

85 The Patient Relations Committee shall advise the Council with respect to the patient relations program. 1991, c. 18, Sched. 2, s. 85.

REPORTING OF HEALTH PROFESSIONALS

Reporting by members

85.1 (1) A member shall file a report in accordance with section 85.3 if the member has reasonable grounds, obtained in the course of practising the profession, to believe that another member of the same or a different College has sexually abused a patient.

If name not known

(2) A member is not required to file a report if the member does not know the name of the member who would be the subject of the report.

If information from a patient

(3) If a member is required to file a report because of reasonable grounds obtained from one of the member's patients, the member shall use his or her best efforts to advise the patient of the requirement to file the report before doing so. 1993, c. 37, s. 23.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 23 - 31/12/1993

Reporting by facilities

85.2 (1) A person who operates a facility where one or more members practise shall file a report in accordance with section 85.3 if the person has reasonable grounds to believe that a member who practises at the facility is incompetent, incapacitated, or has sexually abused a patient. 1993, c. 37, s. 23; 2007, c. 10, Sched. M, s. 61.

When non-individuals have reasonable grounds

(2) For the purposes of subsection (1), a person who operates a facility but who is not an individual shall be deemed to have reasonable grounds if the individual who is responsible for the operation of the facility has reasonable grounds. 1993, c. 37, s. 23.

If name not known

(3) A person who operates a facility is not required to file a report if the person does not know the name of the member who would be the subject of the report. 1993, c. 37, s. 23.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 23 - 31/12/1993

2007, c. 10, Sched. M, s. 61 - 04/06/2009

Requirements of required reports

85.3 (1) A report required under section 85.1 or 85.2 must be filed in writing with the Registrar of the College of the member who is the subject of the report. 1993, c. 37, s. 23.

Timing of report

(2) The report must be filed within 30 days after the obligation to report arises unless the person who is required to file the report has reasonable grounds to believe that the member will continue to sexually abuse the patient or will sexually abuse other patients, or that the incompetence or the incapacity of the member is likely to expose a patient to harm or injury and there is urgent need for intervention, in which case the report must be filed forthwith. 2007, c. 10, Sched. M, s. 62 (1).

Contents of report

(3) The report must contain,

(a) the name of the person filing the report;

(b) the name of the member who is the subject of the report;

(c) an explanation of the alleged sexual abuse, incompetence or incapacity;

(d) if the grounds of the person filing the report are related to a particular patient of the member who is the subject of the report, the name of that patient, subject to subsection (4). 1993, c. 37, s. 23; 2007, c. 10, Sched. M, s. 62 (2).

Patients not named without consent

(4) The name of a patient who may have been sexually abused must not be included in a report unless the patient, or if the patient is incapable, the patient's representative, consents in writing to the inclusion of the patient's name. 1993, c. 37, s. 23.

If reporter providing psychotherapy

(5) If a member who is required to file a report under section 85.1 is providing psychotherapy to the member who would be the subject of the report, the report must also contain the opinion of the member filing the report, if he or she is able to form one, as to whether or not the member who is the subject of the report is likely to sexually abuse patients in the future. 1993, c. 37, s. 23.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 23 - 31/12/1993

2007, c. 10, Sched. M, s. 62 (1, 2) - 04/06/2009

Additional reports, psychotherapy

85.4 (1) A member who files a report in respect of which subsection 85.3 (5) applies, shall file an additional report to the same College if the member ceases to provide psychotherapy to the member who was the subject of the first report.

Timing of additional report

(2) The additional report must be filed forthwith. 1993, c. 37, s. 23.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 23 - 31/12/1993

Reporting by employers, etc.

85.5 (1) A person who terminates the employment or revokes, suspends or imposes restrictions on the privileges of a member or who dissolves a partnership, a health profession corporation or association with a member for reasons of professional misconduct, incompetence or incapacity shall file with the Registrar within thirty days after the termination, revocation, suspension, imposition or dissolution a written report setting out the reasons. 1993, c. 37, s. 23; 2000, c. 42, Sched., s. 36.

Same

(2) Where a member resigns, or voluntarily relinquishes or restricts his or her privileges or practice, and the circumstances set out in paragraph 1 or 2 apply, a person referred to in subsection (3) shall act in accordance with those paragraphs:

1. Where a person referred to in subsection (3) has reasonable grounds to believe that the resignation, relinquishment or restriction, as the case may be, is related to the member's professional misconduct, incompetence or incapacity, the person shall file with the Registrar within 30 days after the resignation, relinquishment or restriction a written report setting out the grounds upon which the person's belief is based.
2. Where the resignation, relinquishment or restriction, as the case may be, takes place during the course of, or as a result of, an investigation conducted by or on behalf of a person referred to in subsection (3) into allegations related to professional misconduct, incompetence or incapacity on the part of the member, the person referred to in subsection (3) shall file with the Registrar within 30 days after the resignation, relinquishment or restriction a written report setting out the nature of the allegations being investigated. 2014, c. 14, Sched. 2, s. 12.

Application

(3) This section applies to every person, other than a patient, who employs or offers privileges to a member or associates in partnership or otherwise with a member for the purpose of offering health services. 1993, c. 37, s. 23.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 23 - 31/12/1993

2000, c. 42, Sched., s. 36 - 01/11/2001

2014, c. 14, Sched. 2, s. 12 - 01/08/2016

Immunity for reports

85.6 No action or other proceeding shall be instituted against a person for filing a report in good faith under section 85.1, 85.2, 85.4 or 85.5. 1993, c. 37, s. 23.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 23 - 31/12/1993

Reporting by members re: offences

85.6.1 (1) A member shall file a report in writing with the Registrar if the member has been found guilty of an offence. 2007, c. 10, Sched. M, s. 63; 2009, c. 26, s. 24 (15).

Timing of report

(2) The report must be filed as soon as reasonably practicable after the member receives notice of the finding of guilt. 2007, c. 10, Sched. M, s. 63.

Contents of report

(3) The report must contain,

(a) the name of the member filing the report;

(b) the nature of, and a description of the offence;

(c) the date the member was found guilty of the offence;

(d) the name and location of the court that found the member guilty of the offence; and

(e) the status of any appeal initiated respecting the finding of guilt. 2007, c. 10, Sched. M, s. 63.

Publication ban

(4) The report shall not contain any information that violates a publication ban. 2007, c. 10, Sched. M, s. 63.

Same

(5) No action shall be taken under this section which violates a publication ban and nothing in this section requires or authorizes the violation of a publication ban. 2007, c. 10, Sched. M, s. 63.

Additional reports

(6) A member who files a report under subsection (1) shall file an additional report if there is a change in status of the finding of guilt as the result of an appeal. 2007, c. 10, Sched. M, s. 63.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 63 - 04/06/2009

2009, c. 26, s. 24 (15) - 15/12/2009

Reporting by members re: professional negligence and malpractice

85.6.2 (1) A member shall file a report in writing with the Registrar if there has been a finding of professional negligence or malpractice made against the member. 2007, c. 10, Sched. M, s. 63; 2009, c. 26, s. 24 (16).

Timing of report

(2) The report must be filed as soon as reasonably practicable after the member receives notice of the finding made against the member. 2007, c. 10, Sched. M, s. 63.

Contents of report

(3) The report must contain,

(a) the name of the member filing the report;

(b) the nature of, and a description of the finding;

(c) the date that the finding was made against the member;

(d) the name and location of the court that made the finding against the member; and

(e) the status of any appeal initiated respecting the finding made against the member. 2007, c. 10, Sched. M, s. 63.

Publication ban

(4) The report shall not contain any information that violates a publication ban. 2007, c. 10, Sched. M, s. 63.

Same

(5) No action shall be taken under this section which violates a publication ban and nothing in this section requires or authorizes the violation of a publication ban. 2007, c. 10, Sched. M, s. 63.

Additional reports

(6) A member who files a report under subsection (1) shall file an additional report if there is a change in status of the finding made against the member as the result of an appeal. 2007, c. 10, Sched. M, s. 63.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 63 - 04/06/2009

2009, c. 26, s. 24 (16) - 15/12/2009

Reporting by members re: other professional memberships and findings

85.6.3 (1) A member shall advise the Registrar in writing if the member is a member of another body that governs a profession inside or outside of Ontario. 2017, c. 11, Sched. 5, s. 26.

Findings of misconduct or incompetence

(2) A member shall file a report in writing with the Registrar if there has been a finding of professional misconduct or incompetence made against the member by another body that governs a profession inside or outside of Ontario. 2017, c. 11, Sched. 5, s. 26.

Timing of report

(3) The report must be filed as soon as reasonably practicable after the member receives notice of the finding made against the member. 2017, c. 11, Sched. 5, s. 26.

Contents of report

(4) The report must contain,

(a) the name of the member filing the report;

(b) the nature of, and a description of, the finding;

(c) the date that the finding was made against the member;

(d) the name and location of the body that made the finding against the member; and

(e) the status of any appeal initiated respecting the finding made against the member. 2017, c. 11, Sched. 5, s. 26.

Publication ban

(5) The report shall not contain any information that violates a publication ban. 2017, c. 11, Sched. 5, s. 26.

Same

(6) No action shall be taken under this section which violates a publication ban and nothing in this section requires or authorizes the violation of a publication ban. 2017, c. 11, Sched. 5, s. 26.

Additional reports

(7) A member who files a report under subsection (1) shall file an additional report if there is a change in status of the finding made against the member as the result of an appeal. 2017, c. 11, Sched. 5, s. 26.

Section Amendments with date in force (d/m/y)

2017, c. 11, Sched. 5, s. 26 - 01/05/2018

Reporting by members re: charges and bail conditions, etc.

85.6.4 (1) A member shall file a report in writing with the Registrar if the member has been charged with an offence, and the report shall include information about every bail condition or other restriction imposed on, or agreed to, by the member in connection with the charge. 2017, c. 11, Sched. 5, s. 27.

Timing of report

(2) The report must be filed as soon as reasonably practicable after the member receives notice of the charge, bail condition or restriction. 2017, c. 11, Sched. 5, s. 27.

Contents of report

(3) The report must contain,

(a) the name of the member filing the report;

(b) the nature of, and a description of, the charge;

(c) the date the charge was laid against the member;

(d) the name and location of the court in which the charge was laid or in which the bail condition or restriction was imposed on or agreed to by the member;

(e) every bail condition imposed on the member as a result of the charge;

(f) any other restriction imposed on or agreed to by the member relating to the charge; and

(g) the status of any proceedings with respect to the charge. 2017, c. 11, Sched. 5, s. 27.

Publication ban

(4) The report shall not contain any information that violates a publication ban. 2017, c. 11, Sched. 5, s. 27.

Same

(5) No action shall be taken under this section which violates a publication ban and nothing in this section requires or authorizes the violation of a publication ban. 2017, c. 11, Sched. 5, s. 27.

Additional reports

(6) A member who files a report under subsection (1) shall file an additional report if there is a change in the status of the charge or bail conditions. 2017, c. 11, Sched. 5, s. 27.

Section Amendments with date in force (d/m/y)

2017, c. 11, Sched. 5, s. 27 - 01/05/2018

FUNDING FOR THERAPY AND COUNSELLING

Funding provided by College

85.7 (1) There shall be a program, established by the College, to provide funding for the following purposes in connection with allegations of sexual abuse by members:

1. Therapy and counselling for persons alleging sexual abuse by a member.

2. Any other purposes prescribed in regulations made under clause 43 (1) (y) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 28 (1).

Funding governed by regulations

(2) The funding shall be provided in accordance with the regulations made under the *Regulated Health Professions Act, 1991*. 1993, c. 37, s. 23.

Administration

(3) The Patient Relations Committee shall administer the program. 1993, c. 37, s. 23.

Eligibility

(4) A person is eligible for funding if,

(a) it is alleged, in a complaint or report, that the person was sexually abused by a member while the person was a patient of the member; or

(b) the alternative requirements prescribed in the regulations made by the Council are satisfied. 2017, c. 11, Sched. 5, s. 28 (2).

Timing

(5) Where a request is made for funding pursuant to subsection (1), a determination of the person's eligibility for such funding in accordance with subsection (4) shall be made within a reasonable period of time of the request having been received. 2017, c. 11, Sched. 5, s. 28 (2).

Not a finding

(5.1) The determination of a person's eligibility for funding in accordance with subsection (4) does not constitute a finding against the member and shall not be considered by any other committee of the College dealing with the member. 2017, c. 11, Sched. 5, s. 28 (2).

Cessation of eligibility

(5.2) Despite subsection (4), a person's eligibility to receive funding pursuant to subsection (1) ceases upon the occurrence of any of the prescribed circumstances. 2017, c. 11, Sched. 5, s. 28 (2).

No assessment

(6) A person is not required to undergo a psychological or other assessment before receiving funding. 1993, c. 37, s. 23.

Choice of therapist or counsellor

(7) A person who is eligible for funding is entitled to choose any therapist or counsellor, subject to the following restrictions:

1. The therapist or counsellor must not be a person to whom the eligible person has any family relationship.
2. The therapist or counsellor must not be a person who, to the College's knowledge, has at any time or in any jurisdiction been found guilty of professional misconduct of a sexual nature or been found civilly or criminally liable for an act of a similar nature.
3. If the therapist or counsellor is not a member of a regulated health profession, the College may require the person to sign a document indicating that he or she understands that the therapist or counsellor is not subject to professional discipline. 1993, c. 37, s. 23.

Payment

(8) Funding shall be paid only to the therapist or counsellor chosen by the person or to other persons or classes of persons prescribed in any regulation made under clause 43 (1) (y) of the *Regulated Health Professions Act, 1991*. 2017, c. 11, Sched. 5, s. 28 (3).

Use of funding

(9) Funding shall be used only to pay for therapy or counselling and for any other purposes prescribed in any regulation made under clause 43 (1) (y) of the *Regulated Health Professions Act, 1991* and shall not be applied directly or indirectly for any other purpose. 2017, c. 11, Sched. 5, s. 28 (3).

Same

(10) Funding may be used to pay for therapy or counselling that was provided at any time after the alleged sexual abuse took place. 2017, c. 11, Sched. 5, s. 28 (3).

Other coverage

(11) The funding that is provided to a person for therapy and counselling shall be reduced by the amount that the Ontario Health Insurance Plan or a private insurer is required to pay for therapy or counselling for the person during the period of time during which funding may be provided for the person under the program. 2017, c. 11, Sched. 5, s. 28 (3).

Right of recovery

(12) The College is entitled to recover from the member, in a proceeding brought in a court of competent jurisdiction, money paid in accordance with this section for an eligible person referred to in subsection (4). 2017, c. 11, Sched. 5, s. 28 (3).

Person not required to testify

(13) The eligible person shall not be required to appear or testify in the proceeding. 1993, c. 37, s. 23.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 23 - 31/12/1993

2007, c. 10, Sched. M, s. 64 - 04/06/2009

2017, c. 11, Sched. 5, s. 28 (1-3) - 01/05/2018

HEALTH PROFESSION CORPORATIONS

Professional corporations

85.8 (1) Subject to the regulations made under subsection 43 (1) of the *Regulated Health Professions Act, 1991* and the by-laws, one or more members of the same health profession may establish a health profession corporation for the purposes of practising their health profession. 2005, c. 28, Sched. B, s. 2 (1).

Same

(2) The provisions of the *Business Corporations Act*, including the regulations made under that Act, that apply with respect to professional corporations apply with respect to a health profession corporation established under subsection (1). 2005, c. 28, Sched. B, s. 2 (1).

Section Amendments with date in force (d/m/y)

2000, c. 42, Sched., s. 37 - 01/11/2001

2001, c. 8, s. 219 - 01/11/2001

2005, c. 28, Sched. B, s. 2 (1) - 01/01/2006

Notice of change of shareholder

85.9 A health profession corporation shall notify the Registrar within the time and in the form and manner determined under the by-laws of a change in the shareholders of the corporation who are members of the College. 2000, c. 42, Sched., s. 37; 2007, c. 10, Sched. M, s. 69.

Section Amendments with date in force (d/m/y)

2000, c. 42, Sched., s. 37 - 01/11/2001

2007, c. 10, Sched. M, s. 69 - 04/06/2009

Application of Act, etc.

85.10 The following things apply to a member who practises a health profession through a health profession corporation:

1. The *Regulated Health Professions Act, 1991* and the regulations made under that Act.
2. The health profession Act governing the member's health profession and the regulations and by-laws made under that Act. 2001, c. 8, s. 220; 2007, c. 10, Sched. M, s. 65.

Section Amendments with date in force (d/m/y)

2001, c. 8, s. 220 - 01/11/2001

2007, c. 10, Sched. M, s. 65 - 04/06/2009

Professional, fiduciary and ethical obligations to patients

85.11 (1) The professional, fiduciary and ethical obligations of a member to a person on whose behalf the member is practising a health profession,

(a) are not diminished by the fact that the member is practising through a health profession corporation; and

(b) apply equally to the corporation and to its directors, officers, shareholders, agents and employees. 2000, c. 42, Sched., s. 37; 2001, c. 8, s. 221 (1).

Investigation

(2) Subsections (3) and (4) apply if an action or the conduct of a member practising on behalf of a health profession corporation is the subject of one of the following:

1. A complaint.
2. A mandatory report.
3. A specified allegation of professional misconduct or incompetence.
4. An investigation, review or hearing by the Board.
5. An investigation, inspection or assessment by an investigator or assessor appointed under the Code.
6. An inquiry by a panel of the Inquiries, Complaints and Reports Committee.
7. A referral to the Discipline Committee or the Fitness to Practise Committee.
8. A hearing by a committee of the college. 2001, c. 8, s. 221 (2); 2007, c. 10, Sched. M, s. 66.

Same

(3) In the circumstances described in subsection (2), any power that the College may exercise in respect of the member may be exercised in respect of the health profession corporation. 2001, c. 8, s. 221 (2).

Liability

(4) In the circumstances described in subsection (2), the health profession corporation is jointly and severally liable with the member for all fines, costs and expenses that the member is ordered to pay. 2001, c. 8, s. 221 (2).

Section Amendments with date in force (d/m/y)

2000, c. 42, Sched., s. 37 - 01/11/2001

2001, c. 8, s. 221 (1, 2) - 01/11/2001

2007, c. 10, Sched. M, s. 66 - 04/06/2009

Conflict in duties

85.12 If there is a conflict between a member's duty to a patient, the college or the public and the member's duty to a health profession corporation as a director or officer of the corporation, the duty to the patient, the college or the public prevails. 2001, c. 8, s. 222.

Section Amendments with date in force (d/m/y)

2001, c. 8, s. 222 - 01/11/2001

Restrictions apply to corporation's certificate

85.13 A term, condition or limitation imposed on the certificate of registration of a member practising a health profession through a health profession corporation applies to the certificate of authorization of the corporation in relation to the practice of the health profession through the member. 2000, c. 42, Sched., s. 37.

Section Amendments with date in force (d/m/y)

2000, c. 42, Sched., s. 37 - 01/11/2001

Prohibition, professional misconduct

85.14 (1) In the course of practising a health profession, a health profession corporation shall not do, or fail to do, something that would constitute professional misconduct if a member of the health profession did, or failed to do, it. 2001, c. 8, s. 223.

Prohibition, contraventions

(2) A health profession corporation shall not contravene any provision of,

(a) the *Regulated Health Professions Act, 1991* and the regulations made under that Act; or

(b) the health profession Act governing the member's health profession and the regulations and by-laws made under that Act. 2001, c. 8, s. 223; 2007, c. 10, Sched. M, s. 67.

Prohibition, corporate matters

(3) A health profession corporation shall not practise a health profession when it does not satisfy the requirements for a professional corporation under subsection 3.2 (2) of the *Business Corporations Act* or a requirement established under subsection 3.2 (6) of that Act. 2005, c. 28, Sched. B, s. 2 (2).

Section Amendments with date in force (d/m/y)

2001, c. 8, s. 223 - 01/11/2001

2005, c. 28, Sched. B, s. 2 (2) - 01/01/2006

2007, c. 10, Sched. M, s. 67 - 04/06/2009

MISCELLANEOUS

Right to use French

86 (1) A person has the right to use French in all dealings with the College. 1991, c. 18, Sched. 2, s. 86 (1).

Language preferences

(1.1) The College shall identify and record the language preference of each College member and identify the language preference of each member of the public who has dealings with the College. 2007, c. 10, Sched. M, s. 68.

Council to ensure right

(2) The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use French in all dealings with the College. 1991, c. 18, Sched. 2, s. 86 (2).

Definition

(3) In this section,

"dealings" means any service or procedure available to the public or to members and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews. 1991, c. 18, Sched. 2, s. 86 (3).

Limitation

(4) A person's right under subsection (1) is subject to the limits that are reasonable in the circumstances. 1991, c. 18, Sched. 2, s. 86 (4).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 68 - 04/06/2009

Court orders

87 The College may apply to the Superior Court of Justice for an order directing a person to comply with a provision of the health profession Act, this Code, the *Regulated Health Professions Act, 1991*, the regulations under those Acts or the by-laws made under clause 94 (1) (l.2), (l.3) (s), (t), (t.1), (t.2), (v), (w) or (y). 1991, c. 18, Sched. 2, s. 87; 1998, c. 18, Sched. G, s. 20; 2000, c. 42, Sched., s. 38; 2001, c. 8, s. 224; 2006, c. 19, Sched. C, s. 1 (1).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 20 - 1/02/1999

2000, c. 42, Sched., s. 38 - 01/11/2001

2001, c. 8, s. 224 - 01/11/2001

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006

Evidence of Registrar

88 A statement purporting to be certified by the Registrar under the seal of the College as a statement of information from the records kept by the Registrar in the course of his or her duties is admissible in court as proof, in the absence of evidence to the contrary, of the information in it without proof of the Registrar's appointment or signature or of the seal of the College. 1991, c. 18, Sched. 2, s. 88.

89 REPEALED: 2002, c. 24, Sched. B, s. 25.

Section Amendments with date in force (d/m/y)

2001, c. 8, s. 225 - 01/11/2001

2002, c. 24, Sched. B, s. 25 - 01/01/2004

90 REPEALED: 1993, c. 37, s. 24.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 24 - 31/12/1993

91 REPEALED: 2007, c. 10, Sched. M, s. 70.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. M, s. 70 - 04/06/2007

Making false representations to obtain certificates

92 (1) Every person who makes a representation, knowing it to be false,

(a) for the purpose of having a certificate of registration issued is guilty of an offence and on conviction is liable to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence; or

(b) for the purpose of having a certificate of authorization issued is guilty of an offence and on conviction is liable to a fine of not more than $50,000 for a first offence and not more than $200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 71.

Assisting the making of false representation

(2) Every person who knowingly assists a person in committing an offence under subsection (1) is guilty of an offence and on conviction is liable,

(a) in the case of an individual, to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence; or

(b) in the case of a corporation, to a fine of not more than $50,000 for a first offence and not more than $200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 71.

Section Amendments with date in force (d/m/y)

2000, c. 42, Sched., s. 39 - 01/11/2001

2007, c. 10, Sched. M, s. 71 - 04/06/2007

Protection for reporters from reprisals

92.1 No person shall do anything, or refrain from doing anything, relating to another person's employment or to a contract providing for the provision of services by that other person, in retaliation for that other person filing a report or making a complaint as long as the report was filed, or the complaint was made, in good faith. 1993, c. 37, s. 25.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 25 - 31/12/1993

Offences

93 (1) Every person who contravenes an order made under subsection 7 (3) or section 45 or 47, or who contravenes subsection 76 (3), 82 (2) or (3), 85.2 (1), 85.5 (1) or (2) or 85.14 (2) or section 92.1 is guilty of an offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence; or

(b) in the case of a corporation to a fine of not more than $50,000 for a first offence and not more than $200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 72; 2009, c. 26, s. 24 (17).

Same

(2) Every person who contravenes subsection 85.1 (1) or 85.4 (1) is guilty of an offence and on conviction is liable to a fine of not more than $50,000. 2017, c. 11, Sched. 5, s. 29.

Sexual abuse reporting by facilities

(3) Despite subsection (1), every person who contravenes subsection 85.2 (1) in respect of a matter concerning the sexual abuse of a patient is guilty of an offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than $50,000; or

(b) in the case of a corporation to a fine of not more than $200,000. 2017, c. 11, Sched. 5, s. 29.

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 26 (1, 2) - 31/12/1993

2007, c. 10, Sched. M, s. 72 - 04/06/2007

2009, c. 26, s. 24 (17) - 15/12/2009

2017, c. 11, Sched. 5, s. 29 - 30/05/2017

Forms

93.1 The College may require that forms approved by the College be used for any purpose under the Act. 1998, c. 18, Sched. G, s. 21.

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 21 - 01/02/1999

By-laws

94 (1) The Council may make by-laws relating to the administrative and internal affairs of the College and, without limiting the generality of the foregoing, the Council may make by-laws,

(a) adopting a seal for the College;

(b) providing for the execution of documents by the College;

(c) respecting banking and finance;

(d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;

(d.1) respecting the election of Council members, including the requirements for members to be able to vote, electoral districts and election recounts;

(d.2) respecting the qualification and terms of office of Council members who are elected;

(d.3) prescribing conditions disqualifying elected members from sitting on the Council and governing the removal of disqualified Council members;

(e) providing procedures for the election of the President and Vice-President of the College, the selection of the chairs of the committees, the filling of a vacancy in those offices, and setting out the duties and powers of the President, Vice-President and the chairs;

(f) respecting the calling, holding and conducting of the Council meetings and respecting the duties of the Council's members;

(g) respecting the calling, holding and conducting of meetings of the members;

(g.1) providing that a meeting of the Council or of members or a meeting of a committee or of a panel that is held for any purpose other than for the conducting of a hearing may be held in any manner that allows all the persons participating to communicate with each other simultaneously and instantaneously;

(g.2) prescribing what constitutes a conflict of interest for members of the Council or a committee and regulating or prohibiting the carrying out of the duties of those members in cases in which there is a conflict of interest;

(h) providing for the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and for the payment of the expenses of the Council and committees in the conduct of their business;

(h.1) respecting the filling of vacancies on the Council or on committees;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 94 (1) (h.1) of Schedule 2 to the Act is repealed and the following substituted: (See: 2017, c. 11, Sched. 5, s. 30 (1))

(h.1) subject to the regulations made under clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*,

(i) respecting the filling of vacancies on the Council or on committees,

(ii) providing for the composition of committees,

(iii) respecting the qualification, selection, appointment and terms of office of members of committees required by subsection 10 (1) who are not members of the Council,

(iv) prescribing conditions that disqualify committee members from sitting on committees required under subsection 10 (1) and governing the removal of disqualified committee members;

(h.2) providing for the composition of committees;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 94 (1) (h.2) of Schedule 2 to the Act is repealed. (See: 2017, c. 11, Sched. 5, s. 30 (1))

(h.3) respecting the qualification, selection, appointment and terms of office of members of committees required by subsection 10 (1) who are not members of the Council;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 94 (1) (h.3) of Schedule 2 to the Act is repealed. (See: 2017, c. 11, Sched. 5, s. 30 (1))

(h.4) prescribing conditions disqualifying committee members from sitting on committees required under subsection 10 (1) and governing the removal of disqualified committee members;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 94 (1) (h.4) of Schedule 2 to the Act is repealed. (See: 2017, c. 11, Sched. 5, s. 30 (1))

(i) providing for the appointment, powers and duties of committees other than the committees required by subsection 10 (1);

(j) delegating to the Executive Committee powers and duties of the Council, other than the power to make, amend or revoke regulations and by-laws;

(k) providing for a code of ethics for the members;

(l) providing for the appointment of inspectors for the purposes of regulations made under clause 95 (1) (h);

(l.1) respecting the maintenance of the register kept by the Registrar and providing for the issuing of certificates when information contained in the register is made available to the public under section 23;

(l.2) specifying information as information to be kept in the register for the purposes of paragraph 20 of subsection 23 (2), designating information kept in the register as public for the purposes of subsection 23 (5), and designating information kept in the register as public for the purposes of subsection 23 (5) that may be withheld from the public for the purposes of subsection 23 (6);

(l.3) requiring members to give the College their home addresses and such other information as may be specified in the by-law about themselves and the places they practise the profession, the services they provide there, their participation in continuing education programs and the names, business addresses, telephone numbers and facsimile numbers of their associates, partners, employers and employees and prescribing the form and manner in which the information shall be given;

(l.4) respecting the duties and office of the Registrar;

(m) providing procedures for the making, amending and revoking of by-laws;

(n) prescribing forms and providing for their use;

(o) respecting the management of the property of the College;

(p) authorizing the College to make arrangements for the indemnity of members against professional liability and providing levies to be paid by members;

(q) respecting membership of the College in a national organization of bodies with similar functions, the payment of annual assessments and representation at meetings;

(r) authorizing the making of grants to advance scientific knowledge or the education of persons wishing to practise the profession, to maintain or improve the standards of practice of the profession or to provide public information about, and encourage interest in, the past and present role of the profession in society;

(s) requiring members to pay annual fees, fees upon application for a certificate and upon registration and fees for examinations, appeals from examinations, election recounts and continuing education programs and for anything the Registrar or a committee of the College is required or authorized to do and requiring members to pay penalties for the late payment of any fee;

(t) specifying the amount of any fee or penalty required under clause (s);

(t.1) prescribing the form and manner in which a health profession corporation shall notify the Registrar of a change in the shareholders of the corporation and the time period for doing so;

(t.2) requiring the payment of fees upon application for a certificate of authorization and for the issue or renewal of a certificate of authorization and specifying the amount of such fees;

(u) requiring persons to pay fees, set by the Registrar or by by-law, for anything the Registrar is required or authorized to do;

(v) requiring members to pay specified amounts to pay for the program required under section 85.7, including amounts that are different for different members or classes of members and including amounts,

(i) that are specified in the by-law,

(ii) that are calculated according to a method set out in the by-law, or

(iii) that are determined by a person specified in the by-law;

(w) requiring members to participate in an arrangement set up by the College in which members pay a person such amounts as may be determined by the person for the members or for classes of members and the person pays amounts to the College to pay for the program required under section 85.7;

(x) authorizing the Patient Relations Committee to require therapists and counsellors who are providing therapy or counselling that is funded through the program required under section 85.7 and persons who are receiving such therapy or counselling, to provide a written statement, signed in each case by the therapist or counsellor and by the person, containing details of the therapist's or counsellor's training and experience, and confirming that therapy or counselling is being provided and that the funds received are being devoted only to that purpose;

(y) requiring members to have professional liability insurance that satisfies the requirements specified in the by-laws or to belong to a specified association that provides protection against professional liability and requiring members to give proof of the insurance or membership to the Registrar in the manner set out in the by-laws;

(z) respecting the designation of life or honourary members of the College and prescribing their rights and privileges;

(z.1) exempting any member or class of member from a by-law made under this section;

(z.2) specifying or setting out anything that is required to be specified or set out under this subsection. 1991, c. 18, Sched. 2, s. 94 (1); 1998, c. 18, Sched. G, s. 22 (1-4); 2000, c. 42, Sched., s. 40; 2007, c. 10, Sched. M, s. 73 (1, 2); 2017, c. 11, Sched. 5, s. 30 (2).

Circulation of certain by-laws

(2) A by-law shall not be made under clause (1) (l.2), (l.3), (s), (t), (v), (w) or (y) unless the proposed by-law is circulated to every member at least 60 days before it is approved by the Council. 1998, c. 18, Sched. G, s. 22 (5).

Exception

(2.1) Despite subsection (2), the Council may, with the approval of the Minister, exempt a by-law from the requirement that it be circulated or abridge the 60-day period referred to in subsection (2) to such lesser period as the Minister may determine. 1998, c. 18, Sched. G, s. 22 (5).

Copies of by-laws, etc.

(3) A copy of the by-laws and standards of practice made by the Council, and any documents that are referred to in the by-laws and regulations made by the Council shall be given to the Minister and to each member and shall be made available to the public during normal business hours in the office of the College. 2007, c. 10, Sched. M, s. 73 (3).

Public copies

(3.1) Any person is entitled to a copy of any by-law, standard of practice or other document mentioned in subsection (3) on the payment of a reasonable fee, if required, to the Registrar. 2007, c. 10, Sched. M, s. 73 (3).

Unanimous by-laws, etc.

(4) A by-law or resolution signed by all the members of the Council is as valid and effective as if passed at a meeting of the Council called, constituted and held for the purpose. 1991, c. 18, Sched. 2, s. 94 (4).

Application

(5) Subsections (3) and (4) apply to by-laws made under this section or under a health profession Act. 1998, c. 18, Sched. G, s. 22 (6).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 22 (1-6) - 01/02/1999

2000, c. 42, Sched., s. 40 - 01/11/2001

2007, c. 10, Sched. M, s. 73 (1-3) - 04/06/2009

2017, c. 11, Sched. 5, s. 30 (1) - not in force; 2017, c. 11, Sched. 5, s. 30 (2) - 30/05/2017

Regulations

95 (1) Subject to the approval of the Lieutenant Governor in Council and with prior review of the Minister, the Council may make regulations,

(0.a) providing that the spousal exception in subsection 1 (5) applies in respect of the College;

(a) prescribing classes of certificates of registration and imposing terms, conditions and limitations on the certificates of registration of a class;

(b) respecting applications for certificates of registration or classes of them and the issuing, suspension, revocation and expiration of the certificates or classes of them;

(c) prescribing standards and qualifications for the issue of certificates of registration;

(d) prescribing certain registration requirements as non-exemptible requirements for the purposes of subsection 18 (3) and 22 (8);

(e) defining specialties in the profession, providing for certificates relating to those specialties, the qualifications for and suspension and revocation of those certificates and governing the use of prescribed terms, titles or designations by members indicating a specialization in the profession;

(f) requiring, for purposes associated with the registration of members, the successful completion of examinations as set and approved, from time to time, by the College, other persons or associations of persons and providing for an appeal of the results of the examinations;

(g) governing or prohibiting the delegation by or to members of controlled acts set out in subsection 27 (2) of the *Regulated Health Professions Act, 1991*;

(h) requiring and providing for the inspection and examination of premises used in connection with the practice of the profession and of equipment, books, accounts, reports and records of members relating to their practices;

(h.1) providing for the direct observation of a member in his or her practice, including the direct observation by inspectors of procedures, during the course of an inspection or examination provided for under clause (h);

(i) prescribing what constitutes a conflict of interest in the practice of the profession and regulating or prohibiting the practice of the profession in cases in which there is a conflict of interest;

(j) defining professional misconduct for the purposes of clause 51 (1) (c);

(k) designating acts of professional misconduct that must be reported;

(l) respecting the promotion or advertising of the practice of the profession;

(m) respecting the reporting and publication of decisions of panels;

(n) prescribing the standards of practice of the profession and prohibiting members from acting beyond the scope of practice of the profession in the course of practising the profession;

(o) requiring members to keep prescribed records in respect of their practice;

(p) regulating or prohibiting the use of terms, titles and designations by members in respect of their practices;

(q) prescribing alternative requirements for eligibility for funding under clause 85.7 (4) (b);

(q.1) prescribing the circumstances in respect of which a person's eligibility for funding ceases for the purposes of subsection 85.7 (5.2);

(r) prescribing a quality assurance program;

(r.1) specifying information for the purposes of clause (g) of the definition of "quality assurance information" in subsection 83.1 (1);

(s) respecting the giving of notice of meetings and hearings that are to be open to the public;

(t) providing for the exemption of any member from the regulations made by the Council;

(u) prescribing anything that is referred to in the health profession Act or this Code as being prescribed. 1998, c. 18, Sched. G, s. 23 (1); 2004, c. 3, Sched. B, s. 11 (3); 2007, c. 10, Sched. M, s. 74 (1); 2009, c. 6, s. 2; 2013, c. 9, s. 1 (2); 2017, c. 11, Sched. 5, s. 31.

Note: The following apply with respect to regulations made under paragraphs 1 to 7, 14, 22, 23, 27 to 31, 31.2 to 32, 34, 35 and 38 of subsection 95 (1) that are in force immediately before the Statutes of Ontario, 1998, chapter 18, Schedule G, subsection 23 (1) comes into force:

Despite the coming into force of the Statutes of Ontario, 1998, chapter 18, Schedule G, subsection 23 (1) (repealing the authority under which the regulations are made), the regulations shall be deemed to continue in force until they are revoked by the authority that made them.

A reference to by-laws in any Act listed in Schedule 1 shall be deemed to include a reference to regulations which are deemed to continue in force. See: 1998, c. 18, Sched. G, ss. 23 (2-4), 74.

Standards of practice

(1.1) A regulation under clause (1) (n) may adopt by reference, in whole or in part and with such changes as are considered necessary, any code, standard or guideline relating to standards of practice of the profession and require compliance with the code, standard or guideline as adopted. 1998, c. 18, Sched. G, s. 23 (1).

Rolling incorporation

(1.2) If a regulation under subsection (1.1) so provides, a scientific, administrative or technical document adopted by reference shall be a reference to it, as amended from time to time, and whether the amendment was made before or after the regulation was made. 2007, c. 10, Sched. M, s. 74 (2).

Third party external document

(1.2.1) A document adopted under subsection (1.2) must be a document created by a recognized body and must not be a document created by the College. 2007, c. 10, Sched. M, s. 74 (2).

Exception

(1.2.2) Despite subsection (1.2.1), the incorporation by reference of a document created by the College that was made before the coming into force of that subsection remains valid until it is revoked. 2007, c. 10, Sched. M, s. 74 (2).

Copies available for inspection

(1.3) A copy of every code, standard or guideline adopted by reference under subsection (1.1) shall be available for public inspection during normal business hours in the office of the College and shall be posted on the College's website or be available through a hyperlink at the College's website. 2007, c. 10, Sched. M, s. 74 (2).

Circulation

(1.4) A regulation shall not be made under subsection (1) unless the proposed regulation is circulated to every member at least 60 days before it is approved by the Council. 1998, c. 18, Sched. G, s. 23 (1).

Same

(1.5) Subsection (1.4) does not apply to a regulation if the Minister required that the Council make the regulation under clause 5 (1) (c) of the *Regulated Health Professions Act, 1991*. 1998, c. 18, Sched. G, s. 23 (1).

Exception

(1.6) Despite subsection (1.4), the Council may, with the approval of the Minister, exempt a regulation from the requirement that it be circulated or abridge the 60-day period referred to in subsection (1.4) to such lesser period as the Minister may determine. 1998, c. 18, Sched. G, s. 23 (1).

Adopted documents

(1.7) Subsections (1.4) and (1.6) apply with necessary modifications to an amendment to a scientific, administrative or technical document adopted by reference under subsection (1.1). 2007, c. 10, Sched. M, s. 74 (3).

Quality assurance program – continuing education

(2) Regulations made under clause (1) (r) may require members to participate in continuing education programs. 1991, c. 18, Sched. 2, s. 95 (2); 2000, c. 26, Sched. H, s. 3 (2).

(2.1), (2.2) REPEALED: 2007, c. 10, Sched. M, s. 74 (4).

Scope of regulations

(3) A regulation may be general or particular in its application. 1991, c. 18, Sched. 2, s. 95 (3).

Section Amendments with date in force (d/m/y)

1993, c. 37, s. 27 (2) - 31/12/1993; 1998, c. 18, Sched. G, s. 23 (1) - 01/02/1999

2000, c. 26, Sched. H, s. 3 (2, 3) - 06/12/2000

2004, c. 3, Sched. B, s. 11 (3) - 20/05/2004

2006, c. 19, Sched. L, s. 10 (2) - 22/06/2006

2007, c. 10, Sched. M, s. 74 (1-4) - 04/06/2009

2009, c. 6, s. 2 - 23/04/2009

2013, c. 9, s. 1 (2) - 06/11/2013

2017, c. 11, Sched. 5, s. 31 - 01/05/2018

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Dental Technology Act, 1991

S.O. 1991, CHAPTER 23

Consolidation Period: From December 15, 2009 to the e-Laws currency date.

Last amendment: 2009, c. 26, s. 5.

Legislative History: 1998, c. 18, Sched. G, s. 28; 2007, c. 10, Sched. B, s. 5; 2009, c. 26, s. 5.

Definitions

1 In this Act,

"College" means the College of Dental Technologists of Ontario; ("Ordre")

"Health Professions Procedural Code" means the Health Professions Procedural Code set out in Schedule 2 to the *Regulated Health Professions Act, 1991*; ("Code des professions de la santé")

"member" means a member of the College; ("membre")

"profession" means the profession of dental technology; ("profession")

"this Act" includes the Health Professions Procedural Code. ("la présente loi") 1991, c. 23, s. 1.

Health Professions Procedural Code

2 (1) The Health Professions Procedural Code shall be deemed to be part of this Act. 1991, c. 23, s. 2 (1).

Terms in Code

(2) In the Health Professions Procedural Code as it applies in respect of this Act,

"College" means the College of Dental Technologists of Ontario; ("Ordre")

"health profession Act" means this Act; ("loi sur une profession de la santé")

"profession" means the profession of dental technology; ("profession")

"regulations" means the regulations under this Act. ("règlements") 1991, c. 23, s. 2 (2).

Definitions in Code

(3) Definitions in the Health Professions Procedural Code apply with necessary modifications to terms in this Act. 1991, c. 23, s. 2 (3).

Scope of practice

3 The practice of dental technology is the design, construction, repair or alteration of dental prosthetic, restorative and orthodontic devices. 1991, c. 23, s. 3.

Governing Board continued as College

4 The Governing Board of Dental Technicians is continued under the name College of Dental Technologists of Ontario in English and Ordre des technologues dentaires de l'Ontario in French. 1991, c. 23, s. 4.

Council

5 (1) The Council shall be composed of,

(a) seven persons who are members elected in accordance with the by-laws;

(b) at least five and no more than six persons appointed by the Lieutenant Governor in Council who are not,

(i) members,

(ii) members of a College as defined in the *Regulated Health Professions Act, 1991*, or

(iii) members of a Council as defined in the *Regulated Health Professions Act, 1991*. 1991, c. 23, s. 5 (1); 1998, c. 18, Sched. G, s. 28 (1); 2009, c. 26, s. 5.

Who can vote in elections

(2) Subject to the by-laws, every member who practises or resides in Ontario and who is not in default of payment of the annual membership fee is entitled to vote in an election of members of the Council. 1991, c. 23, s. 5 (2); 1998, c. 18, Sched. G, s. 28 (2).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. G, s. 28 (1, 2) - 01/02/1999

2009, c. 26, s. 5 - 15/12/2009

President and Vice-President

6 The Council shall have a President and Vice-President who shall be elected annually by the Council from among the Council's members. 1991, c. 23, s. 6.

Restricted titles

7 (1) No person other than a member shall use the title "dental technologist", a variation or abbreviation or an equivalent in another language. 1991, c. 23, s. 7 (1).

Idem

(2) No person shall use the title "dental technician" or a variation or abbreviation of it. 1991, c. 23, s. 7 (2).

Representations of qualification, etc.

(3) No person other than a member shall hold himself or herself out as a person who is qualified to practise in Ontario as a dental technologist or in a specialty of dental technology. 1991, c. 23, s. 7 (3).

Exception

(4) Despite subsection (2), a member may use the title "dental technician" or a variation or abbreviation of it for three years after this Act comes into force. 1991, c. 23, s. 7 (4).

Definition

(5) In this section,

"abbreviation" includes an abbreviation of a variation. 1991, c. 23, s. 7 (5).

Notice if suggestions referred to Advisory Council

8 (1) The Registrar shall give a notice to each member if the Minister refers to the Advisory Council, as defined in the *Regulated Health Professions Act, 1991*, a suggested,

(a) amendment to this Act;

(b) amendment to a regulation made by the Council; or

(c) regulation to be made by the Council. 1991, c. 23, s. 8 (1).

Requirements re notice

(2) A notice mentioned in subsection (1) shall set out the suggestion referred to the Advisory Council and the notice shall be given within thirty days after the Council of the College receives the Minister's notice of the suggestion. 1991, c. 23, s. 8 (2).

Offence

9 Every person who contravenes subsection 7 (1), (2) or (3) is guilty of an offence and on conviction is liable to a fine of not more than $25,000 for a first offence and not more than $50,000 for a second or subsequent offence. 2007, c. 10, Sched. B, s. 5 (1).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. B, s. 5 (1) - 04/06/2007

Transition

10 A person who, on the day before this Act comes into force, was registered under the *Dental Technicians Act* shall be deemed to be the holder of a certificate of registration issued under this Act subject to any term, condition or limitation to which the registration was subject. 1991, c. 23, s. 10.

11., 12 REPEALED: 2007, c. 10, Sched. B, s. 5 (2).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. B, s. 5 (2) - 04/06/2007

13 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 1991, c. 23, s. 13.

14 OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1991, c. 23, s. 14.

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Dental Technology Act, 1991
Loi de 1991 sur les technologues dentaires

ONTARIO REGULATION 874/93
REGISTRATION

Consolidation Period: From February 17, 2012 to the e-Laws currency date.

Last amendment: 20/12.

Legislative History: 875/93, 605/98, 20/12.

This Regulation is made in English only.

1. The following are prescribed as classes of certificates of registration:

1. General.
2. Inactive. O. Reg. 874/93, s. 1.

2. A person may apply for the issue of a certificate of registration in a class set out in section 1 by submitting an application to the Registrar, in the form that shall be supplied by the Registrar, together with the application fee. O. Reg. 874/93, s. 2.

3. It is a registration requirement for a certificate of registration of any class that the applicant provide details of any of the following that relate to the applicant:

1. Any of the following that result from a charge under any federal, provincial, territorial or municipal law, or law of a jurisdiction outside Canada:
    i. A conviction.
    ii. A finding of guilt.
    iii. A verdict of unfit to stand trial.
    iv. A verdict of not criminally responsible on account of mental disorder.
2. A finding of professional misconduct, incompetency or incapacity in Ontario in relation to another health profession, or in another jurisdiction in relation to the profession or another health profession.
3. A current proceeding for professional misconduct, incompetency or incapacity in Ontario in relation to another health profession, or in another jurisdiction in relation to the profession or another health profession.
4. An unsuccessful application for registration as a dental technologist in Ontario or another jurisdiction.
5. An attempt to pass a licensing examination in Ontario or another jurisdiction that has not, at the time of the application, resulted in a passing grade. O. Reg. 874/93, s. 3; O. Reg. 20/12, s. 1.

4. It is a condition of a certificate of registration of any class that the member provide the College with details of any of the following that relate to the member and that occur or arise after the registration of the member:

1. Any of the following that result from a charge under any federal, provincial, territorial or municipal law, or law of a jurisdiction outside Canada:
    i. A conviction.
    ii. A finding of guilt.
    iii. A verdict of unfit to stand trial.
    iv. A verdict of not criminally responsible on account of mental disorder.
2. A finding of professional misconduct, incompetency or incapacity in Ontario in relation to another health profession, or in another jurisdiction in relation to the profession or another health profession.
3. A proceeding for professional misconduct, incompetency or incapacity in Ontario in relation to another profession, or in another jurisdiction in relation to the profession or another health profession. O. Reg. 874/93, s. 4; O. Reg. 20/12, s. 2.

5. (1) An applicant for issuance of a general certificate of registration must meet the following non-exemptible registration requirements:

1. The applicant must have,
   i. in the case of an applicant other than an applicant under subparagraph ii,
      A. successfully completed Grade 12 or its equivalent, and
      B. successfully completed an approved program in dental technology at a College of Applied Arts and Technology in Ontario, or at an educational institution outside of Ontario that the Registration Committee considers to be the equivalent to the educational program currently being taught in the Colleges of Applied Arts and Technology in Ontario,
      C. REVOKED: O. Reg. 20/12, s. 3 (1).
   ii. in the case of an applicant who has previously held a certificate of registration under the Act or under a predecessor of the Act which certificate has lapsed,
      A. successfully completed a course of training as a dental technologist that, in the opinion of the Registration Committee, is substantially similar, but not equivalent, to the training described in sub-subparagraph i B, and
      B. provided evidence of having successfully completed refresher courses such that the combination of the course of training in sub-subparagraph A and the refresher courses is, in the opinion of the Registration Committee, equivalent to the training described in sub-subparagraph i B.
2. The applicant must have successfully completed the registration examinations set or approved by the Registration Committee, and complied with all requirements associated with those examinations, including payment of the examination fees required by the by-laws.
3. The applicant must provide proof of eligibility to acquire professional liability insurance and, before the issuance of a certificate, must show proof of actual coverage, in the amount and in the form as required by the by-laws.
4. REVOKED: O. Reg. 20/12, s. 3 (3).

O. Reg. 874/93, s. 5 (1); O. Reg. 875/93, s. 1; O. Reg. 20/12, ss. 3 (1)-(3).

(2) REVOKED: O. Reg. 20/12, s. 3 (4).

6. The following are registration requirements for a general certificate of registration:

1. The applicant's past and present conduct must afford reasonable grounds for belief that the applicant,
   i. does not have any quality or characteristic, including any mental or physical condition or disorder, that could affect his or her ability to practise dental technology in a safe manner,
   ii. will practise dental technology with decency, integrity, honesty and in accordance with the law, and
   iii. will display professional behaviour.
2. The applicant must be a Canadian citizen or a permanent resident of Canada or be authorized under the *Immigration and Refugee Protection Act* (Canada) to engage in the practice of the profession.
3. The applicant must be able to speak and write either English or French with reasonable fluency. O. Reg. 20/12, s. 4.

7. (1) The following are conditions of a general certificate of registration:

1. The member shall not engage in the practice of the profession unless the member is a Canadian citizen or a permanent resident of Canada or is authorized under the *Immigration and Refugee Protection Act* (Canada) to engage in the practice of the profession.
2. The member shall maintain professional liability insurance in the amount and in the form as required by the by-laws. O. Reg. 20/12, s. 4.

(2) A member shall, within 14 days of being requested to do so by the College or the Registrar or an employee of the College, provide evidence that the member is in compliance with subsection (1). O. Reg. 20/12, s. 4.

(3) Where a member fails to provide the evidence required under subsection (2) within the required time, the Registrar shall immediately give the member notice of intention to suspend the member and may suspend the member's certificate of registration where the member has not provided the evidence within 30 days from the giving of that notice. O. Reg. 20/12, s. 4.

8. (1) Where section 22.18 of the Health Professions Procedural Code applies to an applicant, the requirements of paragraphs 1 and 2 of subsection 5 (1) are deemed to have been met by the applicant. O. Reg. 20/12, s. 4.

(2) Despite subsection (1), it is a non-exemptible registration requirement that an applicant referred to in subsection (1) provide one or more certificates or letters or other evidence satisfactory to the Registrar or a panel of the Registration Committee confirming that the applicant is in good standing as a dental technologist in every jurisdiction where the applicant holds an out-of-province certificate. O. Reg. 20/12, s. 4.

(3) An applicant referred to in subsection (1) is deemed to have met the requirements of paragraph 3 of section 6 where the requirements for the issuance of the applicant's out-of-province certificate of registration included language proficiency requirements equivalent to those required by that paragraph. O. Reg. 20/12, s. 4.

(4) Despite subsection (1), an applicant is not deemed to have met a requirement if that requirement is described in subsection 22.18 (3) of the Health Professions Procedural Code. O. Reg. 20/12, s. 4.

9. (1) It is a non-exemptible registration requirement for an inactive certificate of registration that the member have previously been the holder of a general certificate of registration. O. Reg. 874/93, s. 9 (1).

(2) It is a condition of an inactive certificate of registration that the member not practice as a dental technologist in Ontario. O. Reg. 874/93, s. 9 (2).

10. A member who holds an inactive certificate of registration shall, upon application, be issued a general certificate of registration if the member,

(a) has been an inactive member for less than three years; or

(b) has satisfactorily completed a refresher course and examinations set or approved by the College within the fifteen months prior to the application for reinstatement as a general member. O. Reg. 874/93, s. 10.

11. It is a condition of every certificate of registration that the member shall submit all information required by the by-laws, in the form and manner provided by the by-laws, and at the times provided for in the by-laws. O. Reg. 20/12, s. 5.

12. (1) Where the Registrar suspends a member's certificate of registration pursuant to section 24 of the Health Professions Procedural Code, the Registrar may lift the suspension on payment of,

(a) the fee the member failed to pay;

(b) all outstanding fees and penalties that were required by the by-laws; and

(c) any other applicable fees required by the by-laws. O. Reg. 20/12, s. 6.

(2) If the Registrar suspends a member's certificate of registration under subsection 7 (3), the Registrar may lift the suspension on the receipt of the evidence that was requested under that subsection and the payment of the reinstatement fee required by the by-laws. O. Reg. 20/12, s. 6.

(3) Where the Registrar suspends a member's certificate of registration as mentioned in subsection (1) or (2) and the suspension is not lifted, the certificate is automatically revoked as of the second anniversary of the suspension. O. Reg. 20/12, s. 6.

(4) A member may be reinstated if the member applies for reinstatement within two years of the suspension of the certificate of registration. O. Reg. 20/12, s. 6.

13.-16. REVOKED: O. Reg. 20/12, s. 7.

17. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 874/93, s. 17.

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Dental Technology Act, 1991
Loi de 1991 sur les technologues dentaires

ONTARIO REGULATION 798/93
PROFESSIONAL MISCONDUCT

Consolidation Period: From November 19, 1998 to the e-Laws currency date.

Last amendment: 603/98.

Legislative History: 603/98.

This Regulation is made in English only.

1. The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:

1. Contravening a term, condition or limitation imposed on the member's certificate of registration.
2. Failing to maintain a standard of practice of the profession.
3. Treating or attempting to treat a condition that the member knew or ought to have known was beyond his or her expertise or competence.
4. Failing to refer a client to a qualified medical or dental practitioner where the member recognizes or ought to have recognized a condition which required medical or dental examination.
5. Using materials that are not fit for the purpose for which they are used, or that differ from those prescribed by the registered practitioner on whose order the work is being performed.
6. Knowingly subcontracting dental technological services in breach of section 32 (1) or (3) of the *Regulated Health Professions Act, 1991*.
7. Doing anything to a patient for a therapeutic, preventative, palliative, cosmetic or other health-related purpose in a situation in which a consent is required by law, without such a consent.
8. Abusing a patient verbally or physically.
9. Engaging in the practice of the profession while the member's ability to do so is impaired by any substance.
10. Discontinuing professional services that are needed unless,
    i. the patient requests the discontinuation,
    ii. alternative services are arranged, or
    iii. the patient is given a reasonable opportunity to arrange alternative services.
11. Practising the profession while the member is in a conflict of interest.
12. Breaching an agreement with a patient relating to professional services for the patient or fees for such services.
13. Failing to reveal the exact nature of a remedy or treatment used by the member following a request by a patient, a patient's representative or the College to do so.
14. Inappropriately using a term, title or designation in respect of the member's practice.
15. Using a name other than the member's name as set out in the register in the course of providing or offering to provide services within the scope of practice of dental technology.
16. Advertising or permitting advertising with respect to the member's practice in contravention of the regulations.

16.1 Appearing in, or permitting the use of the member's name in, an advertisement that implies, or could be reasonably interpreted to imply, that the professional expertise of the member is relevant to the subject matter of the advertisement. This paragraph does not apply to an advertisement of the member's own practice or to an advertisement by a non-profit organization if the member receives no consideration for his or her appearance or the use of his or her name.

17. Allowing any person to examine a patient health record or giving any information, copy or thing from a patient health record to any person except as required or allowed by law.

18. Failing to provide copies from a patient health record for which the member has primary responsibility, as required by the regulations.
19. Failing to make arrangements with a patient for the transfer of the patient's records in the care of the member,
    i. when the member retires from practice,
    ii. when the member changes office location and the patient requests that the records be transferred, or
    iii. when requested to do so by the patient.
20. Failing to pay any money owing to the College.
21. Failing to keep records as required.
22. Falsifying a record relating to the member's practice.
23. Failing, without reasonable cause, to provide a report or certificate relating to an examination or treatment performed by the member, within a reasonable time, to the patient or his or her authorized representative after a patient or his or her authorized representative has requested such a report or certificate.
24. Signing or issuing, in the member's professional capacity, a document that the member knows contains a false or misleading statement.
25. Submitting an account or charge for services that the member knows is false or misleading.
26. Charging or accepting a fee or amount that is excessive or unreasonable in relation to the services performed.
27. Charging or accepting a fee or amount under any agreement, which fee or amount is excessive or unreasonable having regard to the services to be performed or that may be performed pursuant to the agreement.
28. Failing to abide by a written undertaking given by the member to the College or to carry out an agreement entered into with the College.
29. Offering or giving a reduction for prompt payment of an account.
30. Failing to itemize an account for services, if requested to do so by the prescribing registered practitioner.
31. Contravening the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts.
32. Contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a hospital within the meaning of the *Public Hospitals Act* if,
    i. the purpose of the law, by-law or rule is to protect the public health, or
    ii. the contravention is relevant to the member's suitability to practise.
33. Failing to co-operate with a representative of the College or another regulatory body, upon production by the representative of his or her appointment under section 76 of the Health Professions Procedural Code or to provide access to and copies of all records, documents, and things that may be reasonably required for the purposes of the investigation.
34. Engaging in conduct or performing an act, in the course of practising the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. O. Reg. 798/93, s. 1; O. Reg. 603/98, s. 1.

2. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 798/93, s. 2.

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Dental Technology Act, 1991
Loi de 1991 sur les technologues dentaires

ONTARIO REGULATION 711/93
EXAMINATIONS

Consolidation Period: From December 31, 1993 to the e-Laws currency date.

No amendments.

This Regulation is made in English only.

1. In setting the examinations to be taken by applicants to the College for registration, the College shall specify the general areas of competency to be examined and shall ensure that the examinations provide a reliable and valid measure of a candidate's competency in knowledge, skills and ability for the practice of dental technology in Ontario. O. Reg. 711/93, s. 1.

2. Written and practical examinations shall be offered at least once yearly and at such other times as the Council considers necessary. O. Reg. 711/93, s. 2.

3. (1) A candidate who fails the examinations may apply for re-examination twice. O. Reg. 711/93, s. 3 (1).

(2) A candidate who fails a third attempt of the examinations must submit to the Registration Committee proof of remediation and upgrading in accordance with policy guidelines issued by the Committee before the candidate may retake the examinations. O. Reg. 711/93, s. 3 (2).

(3) A candidate who fails the examinations may retake them not more than two years after the failure, but if the candidate presents to the Registration Committee proof of remediation and upgrading in accordance with policy guidelines issued by the Committee, he or she may retake the examinations more than two years after the failure. O. Reg. 711/93, s. 3 (3).

4. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 711/93, s. 4.

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Dental Technology Act, 1991
Loi de 1991 sur les technologues dentaires

ONTARIO REGULATION 604/98
GENERAL

Consolidation Period: From January 25, 2013 to the e-Laws currency date.

Last amendment: 35/13.

Legislative History: 321/00, 18/09, 35/13.

This Regulation is made in English only.

PART I
QUALITY ASSURANCE

GENERAL

1. In this Part,

"Committee" means the Quality Assurance Committee required by subsection 10 (1) of the Health Professions Procedural Code and includes a panel of that Committee;

"program" means the quality assurance program required by section 80 of the Health Professions Procedural Code. O. Reg. 35/13, s. 1.

2. (1) The program shall include the following components:

1. Continuing education or professional development designed to,
   i. promote continuing competence and continuing quality improvement among the members,
   ii. address changes in practice environments, and
   iii. incorporate standards of practice, advances in technology, changes made to entry to practice competencies and other relevant issues in the discretion of the Council.
2. Self, peer and practice assessments.
3. A mechanism for the College to monitor members' participation in and compliance with the program. O. Reg. 35/13, s. 1.

(2) The Committee shall administer the program. O. Reg. 35/13, s. 1.

(3) The Chair of the Committee shall select members of the Committee to form a panel. O. Reg. 35/13, s. 1.

3. (1) Subject to subsection (2), each member shall comply with the requirements of the program. O. Reg. 35/13, s. 1.

(2) This Part does not apply to members who hold an inactive certificate of registration. O. Reg. 35/13, s. 1.

SELF-ASSESSMENT, CONTINUING EDUCATION AND PROFESSIONAL DEVELOPMENT

4. Using the self-assessment tool approved by the Committee, a member shall conduct an annual self-assessment of the member's knowledge, skills and judgment based on the College's standards of practice and code of ethics. O. Reg. 35/13, s. 1.

5. (1) Subject to subsection (2), beginning on September 1 following the date on which a member obtains a general certificate of registration, the member shall obtain at least 90 continuing quality improvement credits in every three-year period. O. Reg. 35/13, s. 1.

(2) If a member obtains a general certificate of registration before May 1 in a given year after having ceased to hold that class of certificate for any reason, the member shall, beginning on September 1 before the date on which the member obtains the general certificate of registration, obtain at least 90 continuing quality improvement credits in every three-year period. O. Reg. 35/13, s. 1.

(3) The College shall publish and distribute to members a list indicating,

(a) the types of continuing education and professional development activities to which the Committee will assign continuing quality improvement credits; and

(b) the number of credits the Committee will assign to each type of activity. O. Reg. 35/13, s. 1.

(4) Using the professional development record form approved by the Committee, a member shall maintain a record of the continuing education and professional development activities the member completes and shall include in the record a description of each activity listed. O. Reg. 35/13, s. 1.

(5) Upon receiving a request from the Committee, a member shall submit his or her record to the Committee for review. O. Reg. 35/13, s. 1.

(6) After reviewing a member's record, the Committee shall assign a number of continuing quality improvement credits to each activity based on the relevance and utility of the activity to the practice of the profession. O. Reg. 35/13, s. 1.

6. (1) A member shall develop and maintain a professional development profile in the form and manner specified by the Council. O. Reg. 35/13, s. 1.

(2) A professional development profile shall include,

(a) the member's full name and registration number;

(b) the member's residence and business mailing addresses, telephone numbers and, if available, email addresses and fax numbers;

(c) the member's annual self-assessment required by section 4;

(d) a statement of the member's continuing education and professional development goals for the upcoming year and an explanation of how those goals relate to the member's practice and to the College's quality assurance goals;

(e) the record required under subsection 5 (4); and

(f) the date and the results of each review of the member's professional development profile conducted by the Committee. O. Reg. 35/13, s. 1.

(3) A member shall retain his or her professional development profile and any evidence of having completed a continuing education or professional development activity described in the profile for at least six years from the date of the most recent activity described in the profile. O. Reg. 35/13, s. 1.

7. (1) A member shall provide to the Committee, by August 31 of the third year of the three-year period mentioned in subsection 5 (1) or (2), whichever applies, a declaration signed by the member attesting to the fact that the member has complied with subsection 5 (1) or (2). O. Reg. 35/13, s. 1.

(2) If a member does not provide a declaration in accordance with subsection (1), the Registrar shall refer the member to the Committee and shall notify the member of the referral and of the member's right to make written submissions to the Committee within 15 days of receiving the notice. O. Reg. 35/13, s. 1.

8. (1) Each year, the Committee shall select at random at least two and not more than five per cent of the members to undergo a review of their professional development profiles. O. Reg. 35/13, s. 1.

(2) The Committee shall review a member's professional development profile if,

(a) the member is selected under subsection (1); or

(b) the Registrar refers the member to the Committee under subsection 7 (2). O. Reg. 35/13, s. 1.

(3) The Committee shall give notice to a member selected under subsection (1) or referred under subsection 7 (2) and shall inform the member of his or her right to make written submissions to the Committee within 15 days of receiving the notice. O. Reg. 35/13, s. 1.

(4) A member who receives notice shall give his or her professional development profile to the Committee within 15 days after receiving the notice. O. Reg. 35/13, s. 1.

(5) A member who receives notice may make written submissions to the Committee at the same time that the member gives his or her professional development profile to the Committee. O. Reg. 35/13, s. 1.

(6) The Committee shall review a member's professional development profile,

(a) to ascertain whether the member has complied with subsection 5 (1) or (2) and section 6; and

(b) in accordance with any criteria stipulated by the Council. O. Reg. 35/13, s. 1.

(7) After reviewing a member's professional development profile and considering any written submissions made by the member, the Committee may,

(a) grant the member an extension for a specified period of time to correct a deficiency in the profile or in the number of continuing quality improvement credits obtained by the member;

(b) under extenuating circumstances, such as extended leaves of absence for illness or maternity leave, grant the member an exemption from the requirement to obtain some or all continuing quality improvement credits;

(c) subject to subsection (8), refer the member for a peer and practice assessment; or

(d) direct that no further action is required. O. Reg. 35/13, s. 1.

(8) The Committee shall not refer the member for a peer and practice assessment under clause (7) (c) unless the Committee,

(a) gives the member written notice of its intention to make the referral;

(b) gives the member 15 days to make a written request, supported by reasons, to the Committee that the Committee reconsider the referral; and

(c) considers the request and reasons of the member. O. Reg. 35/13, s. 1.

PEER AND PRACTICE ASSESSMENTS

9. (1) Each year, the Committee shall select at random at least two and not more than five per cent of the members to undergo a peer and practice assessment. O. Reg. 35/13, s. 1.

(2) A member shall undergo a peer and practice assessment if,

(a) the member is selected at random under subsection (1); or

(b) the member is referred under clause 8 (7) (c). O. Reg. 35/13, s. 1.

(3) The Committee shall appoint an assessor under section 81 of the Health Professions Procedural Code to conduct a peer and practice assessment. O. Reg. 35/13, s. 1.

(4) The Committee shall give written notice to a member who is selected to undergo or referred for a peer and practice assessment. O. Reg. 35/13, s. 1.

(5) An assessor shall, within 14 days of completing a peer and practice assessment, submit a written report of the assessment to the Committee and provide a copy of the report to the member. O. Reg. 35/13, s. 1.

(6) The member may make written submissions to the Committee within 15 days of receiving the assessor's report. O. Reg. 35/13, s. 1.

(7) If the assessor is of the opinion that the member has failed to meet the College's standards of practice, the assessor shall include in his or her report recommendations for remedial action to be taken by the member and the time within which such action shall be taken. O. Reg. 35/13, s. 1.

(8) If, after considering the assessor's report and any written submissions made by the member, the Committee is of the opinion that the member's knowledge, skills or judgment are not satisfactory, the Committee may take action under subsection 80.2 (1) of the Health Professions Procedural Code. O. Reg. 35/13, s. 1.

(9) If the Committee decides to take action under subsection 80.2 (1) of the Health Professions Procedural Code, the Committee may, at the time it communicates its decision to do so to the member or at any time thereafter, require the member to undergo a reassessment to determine whether the member's knowledge, skills and judgment are satisfactory. O. Reg. 35/13, s. 1.

(10) Subsections (3) through (8) apply with necessary modifications to a reassessment. O. Reg. 35/13, s. 1.

(11) A member shall not be required to undergo more than one reassessment. O. Reg. 35/13, s. 1.

10. REVOKED: O. Reg. 35/13, s. 1.

PART II
ADVERTISING

11. (1) An advertisement with respect to a member's practice must not contain,

(a) anything that is false or misleading;

(b) anything that, because of its nature, cannot be verified;

(c) an endorsement other than an endorsement by an organization that is known to have expertise relevant to the subject-matter of the endorsement; or

(d) a testimonial by a client, patient or former client or patient or by a friend or relative of a client, patient or former client or patient. O. Reg. 604/98, s. 11 (1).

(2) An advertisement must be readily comprehensible to the persons to whom it is directed. O. Reg. 604/98, s. 11 (2).

PART III
NOTICE OF MEETINGS AND HEARINGS

12. (1) The Registrar shall ensure that notice is given in accordance with this Part with respect to each of the following that is required to be open to the public under the Act:

1. A meeting of the Council.
2. A hearing of the Discipline Committee respecting allegations of a member's professional misconduct or incompetence. O. Reg. 18/09, s. 1.

(2) The notice must, where possible, be posted not less than 14 days before the date of the meeting or hearing on the website of the College. O. Reg. 18/09, s. 1.

(3) The notice must be published in English and, upon request, in French. O. Reg. 18/09, s. 1.

(4) The notice must include,

(a) the date, time and location of the meeting or hearing;

(b) a statement of the purpose of the meeting or hearing including, in the case of a hearing, the name of the member against whom the allegations have been made and the member's principal place of practice; and

(c) an address and telephone number at which further information about the meeting or hearing may be obtained. O. Reg. 18/09, s. 1.

(5) The Registrar shall give notice of a meeting or hearing that is open to the public to every person who requests it. O. Reg. 18/09, s. 1.

(6) No meeting or hearing is invalid simply because a person has not complied with a requirement of this Part. O. Reg. 18/09, s. 1.

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Français

Personal Health Information Protection Act, 2004

S.O. 2004, CHAPTER 3
Schedule A

Consolidation Period: From October 1, 2020 to the e-Laws currency date.

Last amendment: 2020, c. 13, Sched. 3, s. 8.

Legislative History: 2005, c. 25, s. 35; 2006, c. 4, s. 51; 2006, c. 17, s. 253; 2006, c. 21, Sched. C, s. 128; 2006, c. 34, Sched. C, s. 26; 2007, c. 8, s. 224; 2007, c. 10, Sched. H; 2007, c. 10, Sched. K, s. 32; 2007, c. 10, Sched. P, s. 19; 2009, c. 33, Sched. 18, s. 25; 2010, c. 11, s. 128; 2016, c. 6, Sched. 1, s. 1; 2016, c. 23, s. 64; 2016, c. 30, s. 43; 2017, c. 14, Sched. 4, s. 28; 2017, c. 25, Sched. 5, s. 69-72; 2017, c. 25, Sched. 9, s. 109; 2018, c. 6, Sched. 3, s. 11; 2019, c. 5, Sched. 3, s. 17; 2019, c. 7, Sched. 17, s. 139; 2019, c. 15, Sched. 30, s. 1-8; 2020, c. 5, Sched. 6; 2020, c. 13, Sched. 3, s. 8.

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PART I
INTERPRETATION AND APPLICATION

PURPOSES, DEFINITIONS AND INTERPRETATION

Purposes

1 The purposes of this Act are,

(a) to establish rules for the collection, use and disclosure of personal health information about individuals that protect the confidentiality of that information and the privacy of individuals with respect to that information, while facilitating the effective provision of health care;

(b) to provide individuals with a right of access to personal health information about themselves, subject to limited and specific exceptions set out in this Act;

(c) to provide individuals with a right to require the correction or amendment of personal health information about themselves, subject to limited and specific exceptions set out in this Act;

(d) to provide for independent review and resolution of complaints with respect to personal health information; and

(e) to provide effective remedies for contraventions of this Act. 2004, c. 3, Sched. A, s. 1.

Definitions

2 In this Act,

"Agency" means the corporation continued by section 3 of the *Connecting Care Act, 2019*; ("Agence")

"agent", in relation to a health information custodian, means a person that, with the authorization of the custodian, acts for or on behalf of the custodian in respect of personal health information for the purposes of the custodian, and not the agent's own purposes, whether or not the agent has the authority to bind the custodian, whether or not the agent is employed by the custodian and whether or not the agent is being remunerated; ("mandataire")

"Assistant Commissioner" means the Assistant Commissioner for Personal Health Information appointed under the *Freedom of Information and Protection of Privacy Act*; ("commissaire adjoint")

"attorney for personal care" means an attorney under a power of attorney for personal care made in accordance with the *Substitute Decisions Act, 1992*; ("procureur au soin de la personne")

"attorney for property" means an attorney under a continuing power of attorney for property made in accordance with the *Substitute Decisions Act, 1992*; ("procureur aux biens")

"Board" means the Consent and Capacity Board constituted under the *Health Care Consent Act, 1996*; ("Commission")

"capable" means mentally capable, and "capacity" has a corresponding meaning; ("capable", "capacité")

"collect", in relation to personal health information, means to gather, acquire, receive or obtain the information by any means from any source, and "collection" has a corresponding meaning; ("recueillir", "collecte")

"Commissioner" means the Information and Privacy Commissioner appointed under the *Freedom of Information and Protection of Privacy Act*; ("commissaire")

"Crown" means the Crown in right of Ontario; ("Couronne")

"de-identify", in relation to the personal health information of an individual, means to remove any information that identifies the individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify the individual, and "de-identification" has a corresponding meaning; ("anonymiser")

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "de-identify" in section 2 of the Act is amended by striking out "to remove any information" and substituting "to remove, in accordance with such requirements as may be prescribed, any information". (See: 2020, c. 5, Sched. 6, s. 1 (2))

"disclose", in relation to personal health information in the custody or under the control of a health information custodian or a person, means to make the information available or to release it to another health information custodian or to another person, but does not include to use the information, and "disclosure" has a corresponding meaning; ("divulguer", "divulgation")

"guardian of property" means a guardian of property or a statutory guardian of property under the *Substitute Decisions Act, 1992*; ("tuteur aux biens")

"guardian of the person" means a guardian of the person appointed under the *Substitute Decisions Act, 1992*; ("tuteur à la personne")

"health care" means any observation, examination, assessment, care, service or procedure that is done for a health-related purpose and that,

(a) is carried out or provided to diagnose, treat or maintain an individual's physical or mental condition,

(b) is carried out or provided to prevent disease or injury or to promote health, or

(c) is carried out or provided as part of palliative care,

and includes,

(d) the compounding, dispensing or selling of a drug, a device, equipment or any other item to an individual, or for the use of an individual, pursuant to a prescription, and

(e) a community service that is described in subsection 2 (3) of the *Home Care and Community Services Act, 1994* and provided by a service provider within the meaning of that Act; ("soins de santé")

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (e) of the definition of "health care" in section 2 of the Act is repealed. (See: 2020, c. 13, Sched. 3, s. 8 (1))

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "health care" in section 2 of the Act is amended by adding the following clause: (See: 2020, c. 13, Sched. 3, s. 8 (2))

(f) a home and community care service that is funded under section 21 of the *Connecting Care Act, 2019*,

"health care practitioner" means,

(a) a person who is a member within the meaning of the *Regulated Health Professions Act, 1991* and who provides health care,

(b) REPEALED: 2007, c. 10, Sched. P, s. 19.

(c) a person who is a member of the Ontario College of Social Workers and Social Service Workers and who provides health care, or

(d) any other person whose primary function is to provide health care for payment; ("praticien de la santé")

"health information custodian" has the meaning set out in section 3; ("dépositaire de renseignements sur la santé")

"health number" means the number, the version code or both of them assigned to an insured person within the meaning of the *Health Insurance Act* by the General Manager within the meaning of that Act; ("numéro de la carte Santé")

"incapable" means mentally incapable, and "incapacity" has a corresponding meaning; ("incapable", "incapacité")

"individual", in relation to personal health information, means the individual, whether living or deceased, with respect to whom the information was or is being collected or created; ("particulier")

"information practices", in relation to a health information custodian, means the policy of the custodian for actions in relation to personal health information, including,

(a) when, how and the purposes for which the custodian routinely collects, uses, modifies, discloses, retains or disposes of personal health information, and

(b) the administrative, technical and physical safeguards and practices that the custodian maintains with respect to the information; ("pratiques relatives aux renseignements")

"local health integration network" means a local health integration network as defined in section 2 of the *Local Health System Integration Act, 2006*; ("réseau local d'intégration des services de santé")

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "local health integration network" in section 2 of the Act is repealed. (See: 2019, c. 5, Sched. 3, s. 17 (1))

"Minister" means the Minister of Health and Long-Term Care; ("ministre")

"Ministry" means the Ministry of Health and Long-Term Care; ("ministère")

"partner" means either of two persons who have lived together for at least one year and have a close personal relationship that is of primary importance in both persons' lives; ("partenaire")

"person" includes a partnership, association or other entity; ("personne")

"personal health information" has the meaning set out in section 4; ("renseignements personnels sur la santé")

"prescribed" means prescribed by the regulations made under this Act; ("prescrit")

"prescribed organization" means the organization prescribed for the purposes of Part V.1 and, if more than one organization is prescribed, means every applicable prescribed organization; ("organisation prescrite")

"proceeding" includes a proceeding held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, a committee of a College within the meaning of the *Regulated Health Professions Act, 1991*, a committee of the Board of Regents continued under the *Drugless Practitioners Act*, a committee of the Ontario College of Social Workers and Social Service Workers under the *Social Work and Social Service Work Act, 1998*, an arbitrator or a mediator; ("instance")

"quality of care information" has the same meaning as in the *Quality of Care Information Protection Act, 2004*; ("renseignements sur la qualité des soins")

"record" means a record of information in any form or in any medium, whether in written, printed, photographic or electronic form or otherwise, but does not include a computer program or other mechanism that can produce a record; ("dossier")

"relative" means either of two persons who are related to each other, including through marriage or adoption; ("membre de la famille")

"research" means a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research; ("recherche")

"researcher" means a person who conducts research; ("chercheur")

"research ethics board" means a board of persons that is established for the purpose of approving research plans under section 44 and that meets the prescribed requirements; ("commission d'éthique de la recherche")

"spouse" means either of two persons who,

(a) are married to each other, or

(b) live together in a conjugal relationship outside marriage and,

(i) have cohabited for at least one year,

(ii) are together the parents of a child, or

(iii) have together entered into a cohabitation agreement under section 53 of the *Family Law Act*,

unless they are living separate and apart as a result of a breakdown of their relationship; ("conjoint")

"substitute decision-maker" has the meaning set out in section 5; ("mandataire spécial")

"use", in relation to personal health information in the custody or under the control of a health information custodian or a person, means to view, handle or otherwise deal with the information, subject to subsection 6 (1), but does not include to disclose the information, and "use", as a noun, has a corresponding meaning. ("utiliser", "utilisation") 2004, c. 3, Sched. A, s. 2; 2006, c. 4, s. 51 (1); 2007, c. 8, s. 224 (1); 2007, c. 10, Sched. P, s. 19; 2016, c. 6, Sched. 1, s. 1 (1, 2); 2016, c. 23, s. 64 (1); 2019, c. 5, Sched. 3, s. 17 (2); 2019, c. 15, Sched. 30, s. 1; 2020, c. 5, Sched. 6, s. 1 (1).

Section Amendments with date in force (d/m/y)

2006, c. 4, s. 51 (1) - 28/03/2006

2007, c. 8, s. 224 (1) - 01/07/2010; 2007, c. 10, Sched. P, s. 19 - 01/07/2015

2016, c. 6, Sched. 1, s. 1 (1, 2) - 03/06/2016; 2016, c. 23, s. 64 (1) - 05/12/2016

2019, c. 5, Sched. 3, s. 17 (1) - not in force; 2019, c. 5, Sched. 3, s. 17 (2) - 06/06/2019; 2019, c. 15, Sched. 30, s. 1 - 31/07/2020

2020, c. 5, Sched. 6, s. 1 (1) - 25/03/2020; 2020, c. 5, Sched. 6, s. 1 (2) - not in force; 2020, c. 13, Sched. 3, s. 8 (1, 2) - not in force

Health information custodian

3 (1) In this Act,

"health information custodian", subject to subsections (3) to (11), means a person or organization described in one of the following paragraphs who has custody or control of personal health information as a result of or in connection with performing the person's or organization's powers or duties or the work described in the paragraph, if any:

1. A health care practitioner or a person who operates a group practice of health care practitioners.
2. A service provider within the meaning of the *Home Care and Community Services Act, 1994* who provides a community service within the meaning of that Act. A service provider is a health information custodian in connection with the provision of any community service within the meaning of *Home Care and Community Services Act, 1994*, regardless of whether a particular community service is publicly funded.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 2 of the definition of "health information custodian" in subsection 3 (1) of the Act is repealed. (See: 2020, c. 13, Sched. 3, s. 8 (3))

3. REPEALED: 2016, c. 30, s. 43 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "health information custodian" in subsection 3 (1) of the Act is amended by adding the following paragraph: (See: 2020, c. 13, Sched. 3, s. 8 (4))

3. A health service provider or person or entity that is part of an Ontario Health Team and that provides a home and community care service pursuant to funding under section 21 of the *Connecting Care Act, 2019*, including a person or entity from whom the provider or Team has purchased the home and community care service.

Note: On the later of the day subsection 26 (3) of Schedule 6 to the *Economic and Fiscal Update Act, 2020* comes into force and the day subsection 8 (4) of Schedule 3 to the *Connecting People to Home and Community Care Act, 2020* comes into force, paragraph 3 of the definition of "health information custodian" in subsection 3 (1) of the Act is amended by adding "A health service provider or person or entity that is part of an Ontario Health Team is a health information custodian in connection with the provision of any home and community care service within the meaning of the Connecting Care Act, 2019, even where a particular home and community care service is not funded under that Act." at the end. (See: 2020, c. 5, Sched. 6, s. 26 (3))

4. A person who operates one of the following facilities, programs or services:
    i. A hospital within the meaning of the *Public Hospitals Act*, a private hospital within the meaning of the *Private Hospitals Act*, a psychiatric facility within the meaning of the *Mental Health Act* or an independent health facility within the meaning of the *Independent Health Facilities Act*.

Note: On a day to be named by proclamation of the Lieutenant Governor, subparagraph 4 i of subsection 3 (1) of the Act is amended by striking out "a private hospital within the meaning of the *Private Hospitals Act*". (See: 2017, c. 25, Sched. 9, s. 109 (1))

Note: On a day to be named by proclamation of the Lieutenant Governor, subparagraph 4 i of subsection 3 (1) of the Act is amended by striking out "an independent health facility within the meaning of the *Independent Health Facilities Act*" at the end and substituting "a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017*". (See: 2017, c. 25, Sched. 9, s. 109 (2))

    ii. A long-term care home within the meaning of the *Long-Term Care Homes Act, 2007*, a placement co-ordinator described in subsection 40 (1) of that Act, or a care home within the meaning of the *Residential Tenancies Act, 2006*.
    ii.1 a retirement home within the meaning of the *Retirement Homes Act, 2010*.
    iii. A pharmacy within the meaning of the *Drug and Pharmacies Regulation Act*.
    iv. A laboratory or a specimen collection centre as defined in section 5 of the *Laboratory and Specimen Collection Centre Licensing Act*.
    v. An ambulance service within the meaning of the *Ambulance Act*.
    vi. A home for special care within the meaning of the *Homes for Special Care Act*.
    vii. A centre, program or service for community health or mental health whose primary purpose is the provision of health care.
5. An evaluator within the meaning of the *Health Care Consent Act, 1996* or an assessor within the meaning of the *Substitute Decisions Act, 1992*.
6. A medical officer of health of a board of health within the meaning of the *Health Protection and Promotion Act*.
7. The Minister, together with the Ministry of the Minister if the context so requires.
8. Any other person prescribed as a health information custodian if the person has custody or control of personal health information as a result of or in connection with performing prescribed powers, duties or work or any prescribed class of such persons. 2004, c. 3, Sched. A, s. 3 (1); 2006, c. 17, s. 253; 2007, c. 8, s. 224 (2-4); 2007, c. 10, Sched. H, s. 1; 2009, c. 33, Sched. 18, s. 25 (1); 2010, c. 11, s. 128; 2016, c. 30, s. 43 (1); 2019, c. 15, Sched. 30, s. 2; 2020, c. 5, Sched. 6, s. 2.

(2) REPEALED: 2009, c. 33, Sched. 18, s. 25 (2).

Exceptions

(3) Except as is prescribed, a person described in any of the following paragraphs is not a health information custodian in respect of personal health information that the person collects, uses or discloses while performing the person's powers or duties or the work described in the paragraph, if any:

1. A person described in paragraph 1, 2 or 5 of the definition of "health information custodian" in subsection (1) who is an agent of a health information custodian.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 1 of subsection 3 (3) of the Act is amended by striking out "paragraph 1, 2 or 5" and substituting "paragraph "1, 2, 3 or 5". (See: 2020, c. 13, Sched. 3, s. 8 (5))

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 1 of subsection 3 (3) of the Act is amended by striking out "paragraph "1, 2, 3 or 5". and substituting "paragraph 1, 3 or 5". (See: 2020, c. 13, Sched. 3, s. 8 (6))

2. A person who is authorized to act for or on behalf of a person that is not a health information custodian, if the scope of duties of the authorized person does not include the provision of health care.
3. The Minister when acting on behalf of an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* that is not a health information custodian. 2004, c. 3, Sched. A, s. 3 (3).

Other exceptions

(4) A health information custodian does not include a person described in one of the following paragraphs who has custody or control of personal health information as a result of or in connection with performing the work described in the paragraph:

1. An aboriginal healer who provides traditional healing services to aboriginal persons or members of an aboriginal community.
2. An aboriginal midwife who provides traditional midwifery services to aboriginal persons or members of an aboriginal community.
3. A person who treats another person solely by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment. 2004, c. 3, Sched. A, s. 3 (4).

Multiple facilities

(5) Subject to subsection (6) or an order of the Minister under subsection (8), a health information custodian that operates more than one facility described in one of the subparagraphs of paragraph 4 of the definition of "health information custodian" in subsection (1) shall be deemed to be a separate custodian with respect to personal health information of which it has custody or control as a result of or in connection with operating each of the facilities that it operates. 2004, c. 3, Sched. A, s. 3 (5).

Single custodian

(6) Despite subsection (5), the following persons shall be deemed to be a single health information custodian with respect to all the functions described in the applicable paragraph, if any:

1. A person who operates a hospital within the meaning of the *Public Hospitals Act* and any of the facilities, programs or services described in paragraph 4 of the definition of "health information custodian" in subsection (1).
2. REPEALED: 2016, c. 30, s. 43 (2).
3. Health information custodians or facilities that are prescribed. 2004, c. 3, Sched. A, s. 3 (6); 2007, c. 8, s. 224 (5); 2016, c. 30, s. 43 (2).

Application to act as one custodian

(7) A health information custodian that operates more than one facility described in one of the subparagraphs of paragraph 4 of the definition of "health information custodian" in subsection (1) or two or more health information custodians may apply to the Minister, in a form approved by the Minister, for an order described in subsection (8). 2004, c. 3, Sched. A, s. 3 (7).

Minister's order

(8) Upon receiving an application described in subsection (7), the Minister may make an order permitting all or some of the applicants to act as a single health information custodian on behalf of those facilities, powers, duties or work that the Minister specifies, subject to the terms that the Minister considers appropriate and specifies in the order, if the Minister is of the opinion that it is appropriate to make the order in the circumstances, having regard to,

(a) the public interest;

(b) the ability of the applicants to provide individuals with reasonable access to their personal health information;

(c) the ability of the applicants to comply with the requirements of this Act; and

(d) whether permitting the applicants to act as a single health information custodian is necessary to enable them to effectively provide integrated health care. 2004, c. 3, Sched. A, s. 3 (8).

Scope of order

(9) In an order made under subsection (8), the Minister may order that any class of health information custodians that the Minister considers to be situated similarly to the applicants is permitted to act as a single health information custodian, subject to the terms that the Minister considers appropriate and specifies in the order, if the Minister is of the opinion that it is appropriate to so order, having regard to,

(a) the public interest;

(b) the ability of the custodians that are subject to the order made under this subsection to provide individuals with reasonable access to their personal health information;

(c) the ability of the custodians that are subject to the order made under this subsection to comply with the requirements of this Act; and

(d) whether permitting the custodians that are subject to the order made under this subsection to act as a single health information custodian is necessary to enable them to effectively provide integrated health care. 2004, c. 3, Sched. A, s. 3 (9).

No hearing required

(10) The Minister is not required to hold a hearing or to afford to any person an opportunity for a hearing before making an order under subsection (8). 2004, c. 3, Sched. A, s. 3 (10).

Duration

(11) Subject to subsection (12), a health information custodian does not cease to be a health information custodian with respect to a record of personal health information until complete custody and control of the record, where applicable, passes to another person who is legally authorized to hold the record. 2004, c. 3, Sched. A, s. 3 (11).

Death of custodian

(12) If a health information custodian dies, the following person shall be deemed to be the health information custodian with respect to records of personal health information held by the deceased custodian until custody and control of the records, where applicable, passes to another person who is legally authorized to hold the records:

1. The estate trustee of the deceased custodian.
2. The person who has assumed responsibility for the administration of the deceased custodian's estate, if the estate does not have an estate trustee. 2004, c. 3, Sched. A, s. 3 (12).

Section Amendments with date in force (d/m/y)

2006, c. 17, s. 253 - 31/01/2007

2007, c. 8, s. 224 (2-5) - 01/07/2010; 2007, c. 10, Sched. H, s. 1 - 04/06/2007

2009, c. 33, Sched. 18, s. 25 (1, 2) - 15/12/2009

2010, c. 11, s. 128 - 01/01/2013

2016, c. 30, s. 43 (1, 2) - 01/11/2017

2017, c. 25, Sched. 9, s. 109 (1, 2) - not in force

2019, c. 15, Sched. 30, s. 2 - 31/07/2020

2020, c. 5, Sched. 6, s. 2 - 25/03/2020; 2020, c. 5, Sched. 6, s. 26 (3) - not in force; 2020, c. 13, Sched. 3, s. 8 (3-6) - not in force

Personal health information

4 (1) In this Act,

"personal health information", subject to subsections (3) and (4), means identifying information about an individual in oral or recorded form, if the information,

(a) relates to the physical or mental health of the individual, including information that consists of the health history of the individual's family,

(b) relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual,

(c) is a plan of service within the meaning of the *Home Care and Community Services Act, 1994* for the individual,

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (c) of the definition of "personal health information" in subsection 4 (1) of the Act is repealed. (See: 2020, c. 13, Sched. 3, s. 8 (7))

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "personal health information" in subsection 4 (1) of the Act is amended by adding the following clause: (See: 2020, c. 13, Sched. 3, s. 8 (8))

(c.1) is a plan that sets out the home and community care services for the individual to be provided by a health service provider or Ontario Health Team pursuant to funding under section 21 of the *Connecting Care Act, 2019*,

(d) relates to payments or eligibility for health care, or eligibility for coverage for health care, in respect of the individual,

(e) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any such body part or bodily substance,

(f) is the individual's health number, or

(g) identifies an individual's substitute decision-maker. 2004, c. 3, Sched. A, s. 4 (1); 2007, c. 8, s. 224 (6); 2007, c. 10, Sched. H, s. 2.

Identifying information

(2) In this section,

"identifying information" means information that identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual. 2004, c. 3, Sched. A, s. 4 (2).

Mixed records

(3) Personal health information includes identifying information that is not personal health information described in subsection (1) but that is contained in a record that contains personal health information described in that subsection. 2009, c. 33, Sched. 18, s. 25 (3).

Exception

(4) Personal health information does not include identifying information contained in a record that is in the custody or under the control of a health information custodian if,

(a) the identifying information contained in the record relates primarily to one or more employees or other agents of the custodian; and

(b) the record is maintained primarily for a purpose other than the provision of health care or assistance in providing health care to the employees or other agents. 2004, c. 3, Sched. A, s. 4 (4).

Section Amendments with date in force (d/m/y)

2007, c. 8, s. 224 (6) - 01/07/2010; 2007, c. 10, Sched. H, s. 2 - 04/06/2007

2009, c. 33, Sched. 18, s. 25 (3) - 15/12/2009

2020, c. 13, Sched. 3, s. 8 (7, 8) - not in force

Substitute decision-maker

5 (1) In this Act,

"substitute decision-maker", in relation to an individual, means, unless the context requires otherwise, a person who is authorized under this Act to consent on behalf of the individual to the collection, use or disclosure of personal health information about the individual. 2004, c. 3, Sched. A, s. 5 (1).

Decision about treatment

(2) A substitute decision-maker of an individual within the meaning of section 9 of the *Health Care Consent Act, 1996* shall be deemed to be a substitute decision-maker of the individual in respect of the collection, use or disclosure of personal health information about the individual if the purpose of the collection, use or disclosure is necessary for, or ancillary to, a decision about a treatment under Part II of that Act. 2004, c. 3, Sched. A, s. 5 (2).

Admission to a care facility

(3) A substitute decision-maker of an individual within the meaning of section 39 of the *Health Care Consent Act, 1996* shall be deemed to be a substitute decision-maker of the individual in respect of the collection, use or disclosure of personal health information about the individual if the purpose of the collection, use or disclosure is necessary for, or ancillary to, a decision about admission to a care facility under Part III of that Act. 2004, c. 3, Sched. A, s. 5 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 5 of the Act is amended by adding the following subsection: (See: 2017, c. 25, Sched. 5, s. 69)

Confining in a care facility

(3.1) A substitute decision-maker of an individual within the meaning of section 54.4 of the *Health Care Consent Act, 1996* shall be deemed to be a substitute decision-maker of the individual in respect of the collection, use or disclosure of personal health information about the individual if the purpose of the collection, use or disclosure is necessary for, or ancillary to, a decision about confining in a care facility under Part III.1 of that Act. 2017, c. 25, Sched. 5, s. 69.

Personal assistance services

(4) A substitute decision-maker of an individual within the meaning of section 56 of the *Health Care Consent Act, 1996* shall be deemed to be a substitute decision-maker of the individual in respect of the collection, use or disclosure of personal health information about the individual if the purpose of the collection, use or disclosure is necessary for, or ancillary to, a decision about a personal assistance service under Part IV of that Act. 2004, c. 3, Sched. A, s. 5 (4).

Section Amendments with date in force (d/m/y)

2017, c. 25, Sched. 5, s. 69 - not in force

Interpretation

6 (1) For the purposes of this Act, the providing of personal health information between a health information custodian and an agent of the custodian is a use by the custodian, and not a disclosure by the person providing the information or a collection by the person to whom the information is provided. 2004, c. 3, Sched. A, s. 6 (1).

Provisions based on consent

(2) A provision of this Act that applies to the collection, use or disclosure of personal health information about an individual by a health information custodian with the consent of the individual, whatever the nature of the consent, does not affect the collection, use or disclosure that this Act permits or requires the health information custodian to make of the information without the consent of the individual. 2004, c. 3, Sched. A, s. 6 (2).

Permissive disclosure

(3) A provision of this Act that permits a health information custodian to disclose personal health information about an individual without the consent of the individual,

(a) does not require the custodian to disclose it unless required to do so by law;

(b) does not relieve the custodian from a legal requirement to disclose the information; and

(c) does not prevent the custodian from obtaining the individual's consent for the disclosure. 2004, c. 3, Sched. A, s. 6 (3).

APPLICATION OF ACT

Application of Act

7 (1) Except if this Act or its regulations specifically provide otherwise, this Act applies to,

(a) the collection of personal health information by a health information custodian on or after the day this section comes into force;

(b) the use or disclosure of personal health information, on or after the day this section comes into force, by,

(i) a health information custodian, even if the custodian collected the information before that day, or

(ii) a person who is not a health information custodian and to whom a health information custodian disclosed the information, even if the person received the information before that day; and

(c) the collection, use or disclosure of a health number by any person on or after the day this section comes into force. 2004, c. 3, Sched. A, s. 7 (1).

Conflict

(2) In the event of a conflict between a provision of this Act or its regulations and a provision of any other Act or its regulations, this Act and its regulations prevail unless this Act, its regulations or the other Act specifically provide otherwise. 2004, c. 3, Sched. A, s. 7 (2).

Interpretation

(3) For the purpose of this section, there is no conflict unless it is not possible to comply with both this Act and its regulations and any other Act or its regulations. 2004, c. 3, Sched. A, s. 7 (3).

Exception

(4) This Act and its regulations do not prevail in the event of a conflict between a provision of this Act or its regulations and a provision of the *Quality of Care Information Protection Act, 2004* or its regulations. 2004, c. 3, Sched. A, s. 7 (4).

Crown bound

(5) For greater certainty, this Act binds the Crown, including all ministries, agencies and employees of the Crown. 2007, c. 10, Sched. H, s. 3.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 3 - 04/06/2007

Freedom of information legislation

8 (1) Subject to subsection (2), the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* do not apply to personal health information in the custody or under the control of a health information custodian unless this Act specifies otherwise. 2007, c. 10, Sched. H, s. 4.

Exceptions

(2) Sections 11, 12, 15, 16, 17, 33 and 34, subsection 35 (2) and sections 36 and 44 of the *Freedom of Information and Protection of Privacy Act* and sections 5, 9, 10, 25, 26 and 34 of the *Municipal Freedom of Information and Protection of Privacy Act* apply in respect of records of personal health information in the custody or under the control of a health information custodian that is an institution within the meaning of either of those Acts, as the case may be, or that is acting as part of such an institution. 2007, c. 10, Sched. H, s. 4.

Same

(3) A record of personal health information prepared by or in the custody or control of an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* shall be deemed to be a record to which clause 32 (b) of the *Freedom of Information and Protection of Privacy Act* or clause 25 (1) (b) of the *Municipal Freedom of Information and Protection of Privacy Act* applies, as the case may be. 2004, c. 3, Sched. A, s. 8 (3).

Access

(4) This Act does not limit a person's right of access under section 10 of the *Freedom of Information and Protection of Privacy Act* or section 4 of the *Municipal Freedom of Information and Protection of Privacy Act* to a record of personal health information if all the types of information referred to in subsection 4 (1) are reasonably severed from the record. 2004, c. 3, Sched. A, s. 8 (4).

Transition

(5) This Act does not apply to a collection, use or disclosure of personal health information, a request for access or an appeal made under the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* before the day this section comes into force, and the applicable Act continues to apply to the collection, use, disclosure, request or appeal. 2004, c. 3, Sched. A, s. 8 (5).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 4 - 04/06/2007

Non-application of Act

9 (1) This Act does not apply to personal health information about an individual after the earlier of 120 years after a record containing the information was created and 50 years after the death of the individual. 2004, c. 3, Sched. A, s. 9 (1).

Other rights and Acts

(2) Nothing in this Act shall be construed to interfere with,

(a) anything in connection with a subrogated claim or a potential subrogated claim;

(b) any legal privilege, including solicitor-client privilege;

(c) the law of evidence or information otherwise available by law to a party or a witness in a proceeding;

(d) the power of a court or a tribunal to compel a witness to testify or to compel the production of a document;

(e) the regulatory activities of a College under the *Regulated Heath Professions Act, 1991*, the College under the *Social Work and Social Service Work Act, 1998* or the Board under the *Drugless Practitioners Act*; or

(f) any provision of any Act of Ontario or Canada or any court order, if the provision or order, as the case may be, prohibits a person from making information public or from publishing information. 2004, c. 3, Sched. A, s. 9 (2).

PART II
PRACTICES TO PROTECT PERSONAL HEALTH INFORMATION

GENERAL

Information practices

10 (1) A health information custodian that has custody or control of personal health information shall have in place information practices that comply with the requirements of this Act and its regulations. 2004, c. 3, Sched. A, s. 10 (1).

Duty to follow practices

(2) A health information custodian shall comply with its information practices. 2004, c. 3, Sched. A, s. 10 (2).

Use of electronic means

(3) A health information custodian that uses electronic means to collect, use, modify, disclose, retain or dispose of personal health information shall comply with the prescribed requirements, if any. 2004, c. 3, Sched. A, s. 10 (3).

Providers to custodians

(4) A person who provides goods or services for the purpose of enabling a health information custodian to use electronic means to collect, use, modify, disclose, retain or dispose of personal health information shall comply with the prescribed requirements, if any. 2004, c. 3, Sched. A, s. 10 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2020, c. 5, Sched. 6, s. 3)

Electronic audit log

10.1 (1) Subject to any prescribed exceptions, a health information custodian that uses electronic means to collect, use, disclose, modify, retain or dispose of personal health information shall,

(a) maintain, or require the maintenance of, an electronic audit log described in subsection (4);

(b) audit and monitor the electronic audit log as often as is required by the regulations; and

(c) comply with any requirements that may be prescribed. 2020, c. 5, Sched. 6, s. 3.

Access by Commissioner

(2) A health information custodian referred to in subsection (1) shall provide a copy of the electronic audit log to the Commissioner, upon request. 2020, c. 5, Sched. 6, s. 3.

Same

(3) Despite subsection 60 (13), the Commissioner may be provided with a copy of the electronic audit log even if it contains personal health information. 2020, c. 5, Sched. 6, s. 3.

Content of log

(4) The electronic audit log must include, for every instance in which a record or part of a record of personal health information that is accessible by electronic means is viewed, handled, modified or otherwise dealt with,

(a) the type of information that was viewed, handled, modified or otherwise dealt with;

(b) the date and time on which the information was viewed, handled, modified or otherwise dealt with;

(c) the identity of all persons who viewed, handled, modified or otherwise dealt with the personal health information;

(d) the identity of the individual to whom the personal health information relates; and

(e) any other information that may be prescribed. 2020, c. 5, Sched. 6, s. 3.

Section Amendments with date in force (d/m/y)

2020, c. 5, Sched. 6, s. 3 - not in force

Accuracy

11 (1) A health information custodian that uses personal health information about an individual shall take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes for which it uses the information. 2004, c. 3, Sched. A, s. 11 (1).

Same, disclosure

(2) A health information custodian that discloses personal health information about an individual shall,

(a) take reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes of the disclosure that are known to the custodian at the time of the disclosure; or

(b) clearly set out for the recipient of the disclosure the limitations, if any, on the accuracy, completeness or up-to-date character of the information. 2004, c. 3, Sched. A, s. 11 (2).

Steps to ensure collection

11.1 A health information custodian shall take steps that are reasonable in the circumstances to ensure that personal health information is not collected without authority. 2016, c. 6, Sched. 1, s. 1 (3).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (3) - 01/06/2016

Limits on use of de-identified information

11.2 (1) Subject to subsection (2) and to any other exceptions that may be prescribed, no person shall use or attempt to use information that has been de-identified to identify an individual, either alone or with other information, unless this Act or another Act permits the information to be used to identify the individual. 2019, c. 15, Sched. 30, s. 3.

Exceptions

(2) The limitation in subsection (1) does not prevent any of the following from using information that they de-identified, either alone or with other information, to identify an individual:

1. A health information custodian.
2. A prescribed entity mentioned in subsection 45 (1).
3. A prescribed person who compiles or maintains a registry of personal health information.
4. Any other prescribed person. 2019, c. 15, Sched. 30, s. 3.

Section Amendments with date in force (d/m/y)

2019, c. 15, Sched. 30, s. 3 - 31/07/2020

Security

12 (1) A health information custodian shall take steps that are reasonable in the circumstances to ensure that personal health information in the custodian's custody or control is protected against theft, loss and unauthorized use or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification or disposal. 2004, c. 3, Sched. A, s. 12 (1).

Notice of theft, loss, etc. to individual

(2) Subject to subsection (4) and to the exceptions and additional requirements, if any, that are prescribed, if personal health information about an individual that is in the custody or control of a health information custodian is stolen or lost or if it is used or disclosed without authority, the health information custodian shall,

(a) notify the individual at the first reasonable opportunity of the theft or loss or of the unauthorized use or disclosure; and

(b) include in the notice a statement that the individual is entitled to make a complaint to the Commissioner under Part VI. 2016, c. 6, Sched. 1, s. 1 (4).

Notice to Commissioner

(3) If the circumstances surrounding a theft, loss or unauthorized use or disclosure referred to in subsection (2) meet the prescribed requirements, the health information custodian shall notify the Commissioner of the theft or loss or of the unauthorized use or disclosure. 2016, c. 6, Sched. 1, s. 1 (4).

Exception

(4) If the health information custodian is a researcher who has received the personal health information from another health information custodian under subsection 44 (1), the researcher shall not notify the individual if the information is stolen or lost or if it is used or disclosed without authority, unless the health information custodian that disclosed the personal health information under subsection 44 (1),

(a) first obtains the individual's consent to having the researcher contact the individual; and

(b) informs the researcher that the individual has given the consent. 2016, c. 6, Sched. 1, s. 1 (4).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (4) - 03/06/2016

RECORDS

Handling of records

13 (1) A health information custodian shall ensure that the records of personal health information that it has in its custody or under its control are retained, transferred and disposed of in a secure manner and in accordance with the prescribed requirements, if any. 2004, c. 3, Sched. A, s. 13 (1).

Retention of records subject to a request

(2) Despite subsection (1), a health information custodian that has custody or control of personal health information that is the subject of a request for access under section 53 shall retain the information for as long as necessary to allow the individual to exhaust any recourse under this Act that he or she may have with respect to the request. 2004, c. 3, Sched. A, s. 13 (2).

Place where records kept

14 (1) A health information custodian may keep a record of personal health information about an individual in the individual's home in any reasonable manner to which the individual consents, subject to any restrictions set out in a regulation, by-law or published guideline under the *Regulated Health Professions Act, 1991*, an Act referred to in Schedule 1 of that Act, the *Drugless Practitioners Act* or the *Social Work and Social Service Work Act, 1998*. 2004, c. 3, Sched. A, s. 14 (1).

Records kept in other places

(2) A health care practitioner may keep a record of personal health information about an individual in a place other than the individual's home and other than a place in the control of the practitioner if,

(a) the record is kept in a reasonable manner;

(b) the individual consents;

(c) the health care practitioner is permitted to keep the record in the place in accordance with a regulation, by-law or published guideline under the *Regulated Health Professions Act, 1991*, an Act referred to in Schedule 1 to that Act, the *Drugless Practitioners Act* or the *Social Work and Social Service Work Act, 1998*, if the health care practitioner is described in any of clauses (a) to (c) of the definition of "health care practitioner" in section 2; and

(d) the prescribed conditions, if any, are satisfied. 2004, c. 3, Sched. A, s. 14 (2).

ACCOUNTABILITY AND OPENNESS

Contact person

15 (1) A health information custodian that is a natural person may designate a contact person described in subsection (3). 2004, c. 3, Sched. A, s. 15 (1).

Same

(2) A health information custodian that is not a natural person shall designate a contact person described in subsection (3). 2004, c. 3, Sched. A, s. 15 (2).

Functions of contact person

(3) A contact person is an agent of the health information custodian and is authorized on behalf of the custodian to,

(a) facilitate the custodian's compliance with this Act;

(b) ensure that all agents of the custodian are appropriately informed of their duties under this Act;

(c) respond to inquiries from the public about the custodian's information practices;

(d) respond to requests of an individual for access to or correction of a record of personal health information about the individual that is in the custody or under the control of the custodian; and

(e) receive complaints from the public about the custodian's alleged contravention of this Act or its regulations. 2004, c. 3, Sched. A, s. 15 (3).

If no contact person

(4) A health information custodian that is a natural person and that does not designate a contact person under subsection (1) shall perform on his or her own the functions described in clauses (3) (b), (c), (d) and (e). 2004, c. 3, Sched. A, s. 15 (4).

Written public statement

16 (1) A health information custodian shall, in a manner that is practical in the circumstances, make available to the public a written statement that,

(a) provides a general description of the custodian's information practices;

(b) describes how to contact,

(i) the contact person described in subsection 15 (3), if the custodian has one, or

(ii) the custodian, if the custodian does not have that contact person;

(c) describes how an individual may obtain access to or request correction of a record of personal health information about the individual that is in the custody or control of the custodian; and

(d) describes how to make a complaint to the custodian and to the Commissioner under this Act. 2004, c. 3, Sched. A, s. 16 (1).

Notification

(2) If a health information custodian uses or discloses personal health information about an individual, without the individual's consent, in a manner that is outside the scope of the custodian's description of its information practices under clause (1) (a), the custodian shall,

(a) inform the individual of the uses and disclosures at the first reasonable opportunity unless, under section 52, the individual does not have a right of access to a record of the information;

(b) make a note of the uses and disclosures; and

(c) keep the note as part of the records of personal health information about the individual that it has in its custody or under its control or in a form that is linked to those records. 2004, c. 3, Sched. A, s. 16 (2).

Agents and information

17 (1) A health information custodian is responsible for personal health information in the custody or control of the health information custodian and may permit the custodian's agents to collect, use, disclose, retain or dispose of personal health information on the custodian's behalf only if,

(a) the custodian is permitted or required to collect, use, disclose, retain or dispose of the information, as the case may be;

(b) the collection, use, disclosure, retention or disposal of the information, as the case may be, is necessary in the course of the agent's duties and is not contrary to this Act or another law; and

(c) the prescribed requirements, if any, are met. 2004, c. 3, Sched. A, s. 17 (1); 2016, c. 6, Sched. 1, s. 1 (5).

Same

(1.1) A permission granted to an agent under subsection (1) may be subject to such conditions or restrictions as the health information custodian may impose. 2016, c. 6, Sched. 1, s. 1 (6).

Restriction, collection, use, etc. by agents

(2) Subject to any exception that may be prescribed, an agent of a health information custodian may collect, use, disclose, retain or dispose of personal health information only if,

(a) the collection, use, disclosure, retention or disposal of the information, as the case may be,

(i) is permitted by the custodian in accordance with subsection (1),

(ii) is necessary for the purpose of carrying out his or her duties as agent of the custodian,

(iii) is not contrary to this Act or another law, and

(iv) complies with any conditions or restrictions that the custodian has imposed under subsection (1.1); and

(b) the prescribed requirements, if any, are met. 2016, c. 6, Sched. 1, s. 1 (7).

Responsibilities of health information custodian

(3) A health information custodian shall,

(a) take steps that are reasonable in the circumstances to ensure that no agent of the custodian collects, uses, discloses, retains or disposes of personal health information unless it is in accordance with subsection (2); and

(b) remain responsible for any personal health information that is collected, used, disclosed, retained or disposed of by the custodian's agents, regardless of whether or not the collection, use, disclosure, retention or disposal was carried out in accordance with subsection (2). 2016, c. 6, Sched. 1, s. 1 (7).

Responsibilities of the agent

(4) An agent of a health information custodian shall,

(a) comply with the conditions or restrictions imposed by the health information custodian on the agent's collection, use, disclosure, retention or disposal of personal health information under subsection (1.1); and

(b) notify the custodian at the first reasonable opportunity if personal health information that the agent collected, used, disclosed, retained or disposed of on behalf of the custodian is stolen or lost or if it is used or disclosed without authority. 2016, c. 6, Sched. 1, s. 1 (7).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (5-7) - 03/06/2016

Notice to governing College

Definition

17.1 (1) In this section,

"College" means,

(a) in the case of a member of health profession regulated under the *Regulated Health Professions Act, 1991*, a College of the health profession named in Schedule 1 to that Act, and

(b) in the case of a member of the Ontario College of Social Workers and Social Service Workers, that College. 2016, c. 6, Sched. 1, s. 1 (8).

Termination, suspension, etc. of employed members

(2) Subject to any exceptions and additional requirements, if any, that are prescribed, if a health information custodian employs a health care practitioner who is a member of a College, the health information custodian shall give written notice of any of the following events to the College within 30 days of the event occurring:

1. The employee is terminated, suspended or subject to disciplinary action as a result of the unauthorized collection, use, disclosure, retention or disposal of personal health information by the employee.

2. The employee resigns and the health information custodian has reasonable grounds to believe that the resignation is related to an investigation or other action by the custodian with respect to an alleged unauthorized collection, use, disclosure, retention or disposal of personal health information by the employee. 2016, c. 6, Sched. 1, s. 1 (8).

Same, custodian's agent

(3) Subject to any exceptions and additional requirements, if any, that are prescribed, a health information custodian shall give written notice of an event described in subsection (4) to a College if,

(a) the health information custodian is a medical officer of health of a board of health within the meaning of the *Health Protection and Promotion Act*; and

(b) a health care practitioner, who is a member of the College, is employed to provide health care for the board of health and is an agent of the custodian. 2016, c. 6, Sched. 1, s. 1 (8).

Same

(4) The health information custodian shall give written notice of any of the following events to a College within 30 days of the event occurring:

1. The agent's employment is terminated or suspended, or the agent is subject to disciplinary action with respect to his or her employment, as a result of his or her unauthorized collection, use, disclosure, retention or disposal of personal health information.

2. The agent resigns from his or her employment and the health information custodian has reasonable grounds to believe that the resignation is related to an investigation or other action by the custodian with respect to an alleged unauthorized collection, use, disclosure, retention or disposal of personal health information by the agent. 2016, c. 6, Sched. 1, s. 1 (8).

Member's privileges revoked, etc.

(5) Subject to any exceptions and additional requirements, if any, that are prescribed, if a health information custodian extends privileges to, or is otherwise affiliated with, a health care practitioner who is a member of a College, the custodian shall give written notice of any of the following events to the College within 30 days of the event occurring:

1. The member's privileges are revoked, suspended or restricted, or his or her affiliation is revoked, suspended or restricted, as a result of the unauthorized collection, use, disclosure, retention or disposal of personal health information by the member.

2. The member relinquishes or voluntarily restricts his or her privileges or his or her affiliation and the health information custodian has reasonable grounds to believe that the relinquishment or restriction is related to an investigation or other action by the custodian with respect to an alleged unauthorized collection, use, disclosure, retention or disposal of personal health information by the member. 2016, c. 6, Sched. 1, s. 1 (8).

Contents of notice

(6) A notice made under this section shall meet the prescribed requirements, if any. 2016, c. 6, Sched. 1, s. 1 (8).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (8) - 03/06/2016

PART III
CONSENT CONCERNING PERSONAL HEALTH INFORMATION

GENERAL

Elements of consent

18 (1) If this Act or any other Act requires the consent of an individual for the collection, use or disclosure of personal health information by a health information custodian, the consent,

(a) must be a consent of the individual;

(b) must be knowledgeable;

(c) must relate to the information; and

(d) must not be obtained through deception or coercion. 2004, c. 3, Sched. A, s. 18 (1).

Implied consent

(2) Subject to subsection (3), a consent to the collection, use or disclosure of personal health information about an individual may be express or implied. 2004, c. 3, Sched. A, s. 18 (2).

Exception

(3) A consent to the disclosure of personal health information about an individual must be express, and not implied, if,

(a) a health information custodian makes the disclosure to a person that is not a health information custodian; or

(b) a health information custodian makes the disclosure to another health information custodian and the disclosure is not for the purposes of providing health care or assisting in providing health care. 2004, c. 3, Sched. A, s. 18 (3).

Same

(4) Subsection (3) does not apply to,

(a) a disclosure pursuant to an implied consent described in subsection 20 (4);

(b) a disclosure pursuant to clause 32 (1) (b); or

(c) a prescribed type of disclosure that does not include information about an individual's state of health. 2004, c. 3, Sched. A, s. 18 (4).

Knowledgeable consent

(5) A consent to the collection, use or disclosure of personal health information about an individual is knowledgeable if it is reasonable in the circumstances to believe that the individual knows,

(a) the purposes of the collection, use or disclosure, as the case may be; and

(b) that the individual may give or withhold consent. 2004, c. 3, Sched. A, s. 18 (5).

Notice of purposes

(6) Unless it is not reasonable in the circumstances, it is reasonable to believe that an individual knows the purposes of the collection, use or disclosure of personal health information about the individual by a health information custodian if the custodian posts or makes readily available a notice describing the purposes where it is likely to come to the individual's attention or provides the individual with such a notice. 2004, c. 3, Sched. A, s. 18 (6).

Transition

(7) A consent that an individual gives, before the day that subsection (1) comes into force, to a collection, use or disclosure of information that is personal health information is a valid consent if it meets the requirements of this Act for consent. 2004, c. 3, Sched. A, s. 18 (7).

Withdrawal of consent

19 (1) If an individual consents to have a health information custodian collect, use or disclose personal health information about the individual, the individual may withdraw the consent, whether the consent is express or implied, by providing notice to the health information custodian, but the withdrawal of the consent shall not have retroactive effect. 2004, c. 3, Sched. A, s. 19 (1).

Conditional consent

(2) If an individual places a condition on his or her consent to have a health information custodian collect, use or disclose personal health information about the individual, the condition is not effective to the extent that it purports to prohibit or restrict any recording of personal health information by a health information custodian that is required by law or by established standards of professional practice or institutional practice. 2004, c. 3, Sched. A, s. 19 (2).

Assumption of validity

20 (1) A health information custodian who has obtained an individual's consent to a collection, use or disclosure of personal health information about the individual or who has received a copy of a document purporting to record the individual's consent to the collection, use or disclosure is entitled to assume that the consent fulfils the requirements of this Act and the individual has not withdrawn it, unless it is not reasonable to assume so. 2004, c. 3, Sched. A, s. 20 (1).

Implied consent

(2) A health information custodian described in paragraph 1, 2 or 4 of the definition of "health information custodian" in subsection 3 (1), that receives personal health information about an individual from the individual, the individual's substitute decision-maker or another health information custodian for the purpose of providing health care or assisting in the provision of health care to the individual, is entitled to assume that it has the individual's implied consent to collect, use or disclose the information for the purposes of providing health care or assisting in providing health care to the individual, unless the custodian that receives the information is aware that the individual has expressly withheld or withdrawn the consent. 2004, c. 3, Sched. A, s. 20 (2); 2016, c. 30, s. 43 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 20 (2) of the Act is amended by striking out "paragraph 1, 2 or 4" and substituting "paragraph 1, 2, 3 or 4". (See: 2020, c. 13, Sched. 3, s. 8 (9))

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 20 (2) of the Act is amended by striking out "paragraph 1, 2, 3 or 4" and substituting "paragraph 1, 3 or 4". (See: 2020, c. 13, Sched. 3, s. 8 (10))

Limited consent

(3) If a health information custodian discloses, with the consent of an individual, personal health information about the individual to a health information custodian described in paragraph 1, 2 or 4 of the definition of "health information custodian" in subsection 3 (1) for the purpose of the provision of health care to the individual and if the disclosing custodian does not have the consent of the individual to disclose all the personal health information about the individual that it considers reasonably necessary for that purpose, the disclosing custodian shall notify the custodian to whom it disclosed the information of that fact. 2004, c. 3, Sched. A, s. 20 (3); 2016, c. 30, s. 43 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 20 (3) of the Act is amended by striking out "paragraph 1, 2 or 4" and substituting "paragraph 1, 2, 3 or 4". (See: 2020, c. 13, Sched. 3, s. 8 (11))

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 20 (3) of the Act is amended by striking out "paragraph 1, 2, 3 or 4" and substituting "paragraph 1, 3 or 4". (See: 2020, c. 13, Sched. 3, s. 8 (12))

Implied consent, affiliation

(4) If an individual who is a resident or patient in a facility that is a health information custodian provides to the custodian information about his or her religious or other organizational affiliation, the facility may assume that it has the individual's implied consent to provide his or her name and location in the facility to a representative of the religious or other organization, where the custodian has offered the individual the opportunity to withhold or withdraw the consent and the individual has not done so. 2004, c. 3, Sched. A, s. 20 (4).

Section Amendments with date in force (d/m/y)

2016, c. 30, s. 43 (3) - 01/11/2017

2020, c. 13, Sched. 3, s. 8 (9-12) - not in force

CAPACITY AND SUBSTITUTE DECISION-MAKING

Capacity to consent

21 (1) An individual is capable of consenting to the collection, use or disclosure of personal health information if the individual is able,

(a) to understand the information that is relevant to deciding whether to consent to the collection, use or disclosure, as the case may be; and

(b) to appreciate the reasonably foreseeable consequences of giving, not giving, withholding or withdrawing the consent. 2004, c. 3, Sched. A, s. 21 (1).

Different information

(2) An individual may be capable of consenting to the collection, use or disclosure of some parts of personal health information, but incapable of consenting with respect to other parts. 2004, c. 3, Sched. A, s. 21 (2).

Different times

(3) An individual may be capable of consenting to the collection, use or disclosure of personal health information at one time, but incapable of consenting at another time. 2004, c. 3, Sched. A, s. 21 (3).

Presumption of capacity

(4) An individual is presumed to be capable of consenting to the collection, use or disclosure of personal health information. 2004, c. 3, Sched. A, s. 21 (4).

Non-application

(5) A health information custodian may rely on the presumption described in subsection (4) unless the custodian has reasonable grounds to believe that the individual is incapable of consenting to the collection, use or disclosure of personal health information. 2004, c. 3, Sched. A, s. 21 (5).

Determination of incapacity

22 (1) A health information custodian that determines the incapacity of an individual to consent to the collection, use or disclosure of personal health information under this Act shall do so in accordance with the requirements and restrictions, if any, that are prescribed. 2004, c. 3, Sched. A, s. 22 (1).

Information about determination

(2) If it is reasonable in the circumstances, a health information custodian shall provide, to an individual determined incapable of consenting to the collection, use or disclosure of his or her personal health information by the custodian, information about the consequences of the determination of incapacity, including the information, if any, that is prescribed. 2004, c. 3, Sched. A, s. 22 (2).

Review of determination

(3) An individual whom a health information custodian determines is incapable of consenting to the collection, use or disclosure of his or her personal health information by a health information custodian may apply to the Board for a review of the determination unless there is a person who is entitled to act as the substitute decision-maker of the individual under subsection 5 (2), (3) or (4). 2004, c. 3, Sched. A, s. 22 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 22 (3) of the Act is amended by striking out "(3) or (4)" at the end and substituting "(3), (3.1) or (4)". (See: 2017, c. 25, Sched. 5, s. 70)

Parties

(4) The parties to the application are:

1. The individual applying for the review of the determination.
2. The health information custodian that has custody or control of the personal health information.
3. All other persons whom the Board specifies. 2004, c. 3, Sched. A, s. 22 (4).

Powers of Board

(5) The Board may confirm the determination of incapacity or may determine that the individual is capable of consenting to the collection, use or disclosure of personal health information. 2004, c. 3, Sched. A, s. 22 (5).

Restriction on repeated applications

(6) If a determination that an individual is incapable with respect to consenting to the collection, use or disclosure of personal health information is confirmed on the final disposition of an application under this section, the individual shall not make a new application under this section for a determination with respect to the same or a similar issue within six months after the final disposition of the earlier application, unless the Board gives leave in advance. 2004, c. 3, Sched. A, s. 22 (6).

Grounds for leave

(7) The Board may give leave for the new application to be made if it is satisfied that there has been a material change in circumstances that justifies reconsideration of the individual's capacity. 2004, c. 3, Sched. A, s. 22 (7).

Procedure

(8) Sections 73 to 81 of the *Health Care Consent Act, 1996* apply with necessary modifications to an application under this section. 2004, c. 3, Sched. A, s. 22 (8).

Section Amendments with date in force (d/m/y)

2017, c. 25, Sched. 5, s. 70 - not in force

Persons who may consent

23 (1) If this Act or any other Act refers to a consent required of an individual to a collection, use or disclosure by a health information custodian of personal health information about the individual, a person described in one of the following paragraphs may give, withhold or withdraw the consent:

1. If the individual is capable of consenting to the collection, use or disclosure of the information,
   i. the individual, or
   ii. if the individual is at least 16 years of age, any person who is capable of consenting, whom the individual has authorized in writing to act on his or her behalf and who, if a natural person, is at least 16 years of age.
2. If the individual is a child who is less than 16 years of age, a parent of the child or a children's aid society or other person who is lawfully entitled to give or refuse consent in the place of the parent unless the information relates to,
   i. treatment within the meaning of the *Health Care Consent Act, 1996*, about which the child has made a decision on his or her own in accordance with that Act, or
   ii. counselling in which the child has participated on his or her own under the *Child, Youth and Family Services Act, 2017*.
3. If the individual is incapable of consenting to the collection, use or disclosure of the information, a person who is authorized under subsection 5 (2), (3) or (4) or section 26 to consent on behalf of the individual.

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 3 of subsection 23 (1) of the Act is amended by striking out "(3) or (4)" and substituting "(3), (3.1) or (4)". (See: 2017, c. 25, Sched. 5, s. 71)

4. If the individual is deceased, the deceased's estate trustee or the person who has assumed responsibility for the administration of the deceased's estate, if the estate does not have an estate trustee.
5. A person whom an Act of Ontario or Canada authorizes or requires to act on behalf of the individual. 2004, c. 3, Sched. A, s. 23 (1); 2007, c. 10, Sched. H, s. 5; 2017, c. 14, Sched. 4, s. 28 (1).

Definition

(2) In subsection (1),

"parent" does not include a parent who has only a right of access to the child. 2004, c. 3, Sched. A, s. 23 (2).

Conflict if child capable

(3) If the individual is a child who is less than 16 years of age and who is capable of consenting to the collection, use or disclosure of the information and if there is a person who is entitled to act as the substitute decision-maker of the child under paragraph 2 of subsection (1), a decision of the child to give, withhold or withdraw the consent or to provide the information prevails over a conflicting decision of that person. 2004, c. 3, Sched. A, s. 23 (3).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 5 - 04/06/2007

2017, c. 14, Sched. 4, s. 28 (1) - 30/04/2018; 2017, c. 25, Sched. 5, s. 71 - not in force

Factors to consider for consent

24 (1) A person who consents under this Act or any other Act on behalf of or in the place of an individual to a collection, use or disclosure of personal health information by a health information custodian, who withholds or withdraws such a consent or who provides an express instruction under clause 37 (1) (a), 38 (1) (a) or 50 (1) (e) shall take into consideration,

(a) the wishes, values and beliefs that,
   (i) if the individual is capable, the person knows the individual holds and believes the individual would want reflected in decisions made concerning the individual's personal health information, or
   (ii) if the individual is incapable or deceased, the person knows the individual held when capable or alive and believes the individual would have wanted reflected in decisions made concerning the individual's personal health information;

(b) whether the benefits that the person expects from the collection, use or disclosure of the information outweigh the risk of negative consequences occurring as a result of the collection, use or disclosure;

(c) whether the purpose for which the collection, use or disclosure is sought can be accomplished without the collection, use or disclosure; and

(d) whether the collection, use or disclosure is necessary to satisfy any legal obligation. 2004, c. 3, Sched. A, s. 24 (1).

Determination of compliance

(2) If a substitute decision-maker, on behalf of an incapable individual, gives, withholds or withdraws a consent to a collection, use or disclosure of personal health information about the individual by a health information custodian or provides an express instruction under clause 37 (1) (a), 38 (1) (a) or 50 (1) (e) and if the custodian is of the opinion that the substitute decision-maker has not complied with subsection (1), the custodian may apply to the Board for a determination as to whether the substitute decision-maker complied with that subsection. 2004, c. 3, Sched. A, s. 24 (2).

Deemed application concerning capacity

(2.1) An application to the Board under subsection (2) shall be deemed to include an application to the Board under subsection 22 (3) with respect to the individual's capacity to consent to the collection, use or disclosure of his or her personal health information, unless the individual's capacity has been determined by the Board within the previous six months. 2007, c. 10, Sched. H, s. 6.

Parties

(3) The parties to the application are:

1. The health information custodian.
2. The incapable individual.
3. The substitute decision-maker.
4. Any other person whom the Board specifies. 2004, c. 3, Sched. A, s. 24 (3).

Power of Board

(4) In determining whether the substitute decision-maker complied with subsection (1), the Board may substitute its opinion for that of the substitute decision-maker. 2004, c. 3, Sched. A, s. 24 (4).

Directions

(5) If the Board determines that the substitute decision-maker did not comply with subsection (1), it may give him or her directions and, in doing so, shall take into consideration the matters set out in clauses (1) (a) to (d). 2004, c. 3, Sched. A, s. 24 (5).

Time for compliance

(6) The Board shall specify the time within which the substitute decision-maker must comply with its directions. 2004, c. 3, Sched. A, s. 24 (6).

Deemed not authorized

(7) If the substitute decision-maker does not comply with the Board's directions within the time specified by the Board, he or she shall be deemed not to meet the requirements of subsection 26 (2). 2004, c. 3, Sched. A, s. 24 (7).

Public Guardian and Trustee

(8) If the substitute decision-maker who is given directions is the Public Guardian and Trustee, he or she is required to comply with the directions and subsection (6) does not apply to him or her. 2004, c. 3, Sched. A, s. 24 (8).

Procedure

(9) Sections 73 to 81 of the *Health Care Consent Act, 1996* apply with necessary modifications to an application under this section. 2004, c. 3, Sched. A, s. 24 (9).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 6 - 04/06/2007

Authority of substitute decision-maker

25 (1) If this Act permits or requires an individual to make a request, give an instruction or take a step and a substitute decision-maker is authorized to consent on behalf of the individual to the collection, use or disclosure of personal health information about the individual, the substitute decision-maker may make the request, give the instruction or take the step on behalf of the individual. 2004, c. 3, Sched. A, s. 25 (1).

Same

(2) If a substitute decision-maker makes a request, gives an instruction or takes a step under subsection (1) on behalf of an individual, references in this Act to the individual with respect to the request made, the instruction given or the step taken by the substitute decision-maker shall be read as references to the substitute decision-maker, and not to the individual. 2004, c. 3, Sched. A, s. 25 (2).

Incapable individual: persons who may consent

26 (1) If an individual is determined to be incapable of consenting to the collection, use or disclosure of personal health information by a health information custodian, a person described in one of the following paragraphs may, on the individual's behalf and in the place of the individual, give, withhold or withdraw the consent:

1. The individual's guardian of the person or guardian of property, if the consent relates to the guardian's authority to make a decision on behalf of the individual.
2. The individual's attorney for personal care or attorney for property, if the consent relates to the attorney's authority to make a decision on behalf of the individual.
3. The individual's representative appointed by the Board under section 27, if the representative has authority to give the consent.
4. The individual's spouse or partner.
5. A child or parent of the individual, or a children's aid society or other person who is lawfully entitled to give or refuse consent in the place of the parent. This paragraph does not include a parent who has only a right of access to the individual. If a children's aid society or other person is lawfully entitled to consent in the place of the parent, this paragraph does not include the parent.
6. A parent of the individual with only a right of access to the individual.
7. A brother or sister of the individual.
8. Any other relative of the individual. 2004, c. 3, Sched. A, s. 26 (1); 2016, c. 23, s. 64 (2).

Requirements

(2) A person described in subsection (1) may consent only if the person,

(a) is capable of consenting to the collection, use or disclosure of personal health information by a health information custodian;

(b) in the case of an individual, is at least 16 years old or is the parent of the individual to whom the personal health information relates;

(c) is not prohibited by court order or separation agreement from having access to the individual to whom the personal health information relates or from giving or refusing consent on the individual's behalf;

(d) is available; and

(e) is willing to assume the responsibility of making a decision on whether or not to consent. 2004, c. 3, Sched. A, s. 26 (2).

Meaning of "available"

(3) For the purpose of clause (2) (d), a person is available if it is possible, within a time that is reasonable in the circumstances, to communicate with the person and obtain a consent. 2004, c. 3, Sched. A, s. 26 (3).

Ranking

(4) A person described in a paragraph of subsection (1) may consent only if no person described in an earlier paragraph meets the requirements of subsection (2). 2004, c. 3, Sched. A, s. 26 (4).

Same

(5) Despite subsection (4), a person described in a paragraph of subsection (1) who is present or has otherwise been contacted may consent if the person believes that,

(a) no other person described in an earlier paragraph or the same paragraph exists; or

(b) although such other person exists, the other person is not a person described in paragraph 1, 2 or 3 of subsection (1) and would not object to the person who is present or has otherwise been contacted making the decision. 2004, c. 3, Sched. A, s. 26 (5); 2007, c. 10, Sched. H, s. 7.

Public Guardian and Trustee

(6) If no person described in subsection (1) meets the requirements of subsection (2), the Public Guardian and Trustee may make the decision to consent. 2004, c. 3, Sched. A, s. 26 (6).

Conflict between persons in same paragraph

(7) If two or more persons who are described in the same paragraph of subsection (1) and who meet the requirements of subsection (2) disagree about whether to consent, and if their claims rank ahead of all others, the Public Guardian and Trustee may make the decision in their stead. 2004, c. 3, Sched. A, s. 26 (7).

Transition, representative appointed by individual

(8) Where an individual, to whom personal health information relates, appointed a representative under section 36.1 of the *Mental Health Act* before the day this section comes into force, the representative shall be deemed to have the same authority as a person mentioned in paragraph 2 of subsection (1). 2004, c. 3, Sched. A, s. 26 (8).

Limited authority

(9) The authority conferred on the representative by subsection (8) is limited to the purposes for which the representative was appointed. 2004, c. 3, Sched. A, s. 26 (9).

Revocation

(10) An individual who is capable of consenting with respect to personal health information may revoke the appointment mentioned in subsection (8) in writing. 2004, c. 3, Sched. A, s. 26 (10).

Ranking

(11) A person who is entitled to be the substitute decision-maker of the individual under this section may act as the substitute decision-maker only in circumstances where there is no person who may act as the substitute decision-maker of the individual under subsection 5 (2), (3) or (4). 2004, c. 3, Sched. A, s. 26 (11).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 26 (11) of the Act is amended by striking out "(3) or (4)" at the end and substituting "(3), (3.1) or (4)". (See: 2017, c. 25, Sched. 5, s. 72)

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 7 - 04/06/2007

2016, c. 23, s. 64 (2) - 05/12/2016

2017, c. 25, Sched. 5, s. 72 - not in force

Appointment of representative

27 (1) An individual who is 16 years old or older and who is determined to be incapable of consenting to the collection, use or disclosure of personal health information may apply to the Board for appointment of a representative to consent on the individual's behalf to a collection, use or disclosure of the information by a health information custodian. 2004, c. 3, Sched. A, s. 27 (1).

Application by proposed representative

(2) If an individual is incapable of consenting to the collection, use or disclosure of personal health information, another individual who is 16 years old or older may apply to the Board to be appointed as a representative to consent on behalf of the incapable individual to a collection, use or disclosure of the information. 2004, c. 3, Sched. A, s. 27 (2).

Deemed application concerning capacity

(2.1) An application to the Board under subsection (1) or (2) shall be deemed to include an application to the Board under subsection 22 (3) with respect to the individual's capacity to consent to the collection, use or disclosure of his or her personal health information, unless the individual's capacity has been determined by the Board within the previous six months. 2007, c. 10, Sched. H, s. 8.

Exception

(3) Subsections (1) and (2) do not apply if the individual to whom the personal health information relates has a guardian of the person, a guardian of property, an attorney for personal care, or an attorney for property, who has authority to give or refuse consent to the collection, use or disclosure. 2004, c. 3, Sched. A, s. 27 (3).

Parties

(4) The parties to the application are:

1. The individual to whom the personal health information relates.
2. The proposed representative named in the application.
3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 26 (1).
4. All other persons whom the Board specifies. 2004, c. 3, Sched. A, s. 27 (4).

Appointment

(5) In an appointment under this section, the Board may authorize the representative to consent, on behalf of the individual to whom the personal health information relates, to,

(a) a particular collection, use or disclosure at a particular time;

(b) a collection, use or disclosure of the type specified by the Board in circumstances specified by the Board, if the individual is determined to be incapable of consenting to the collection, use or disclosure of personal health information at the time the consent is sought; or

(c) any collection, use or disclosure at any time, if the individual is determined to be incapable of consenting to the collection, use or disclosure of personal health information at the time the consent is sought. 2004, c. 3, Sched. A, s. 27 (5).

Criteria for appointment

(6) The Board may make an appointment under this section if it is satisfied that the following requirements are met:

1. The individual to whom the personal health information relates does not object to the appointment.
2. The representative consents to the appointment, is at least 16 years old and is capable of consenting to the collection, use or disclosure of personal health information.
3. The appointment is in the best interests of the individual to whom the personal health information relates. 2004, c. 3, Sched. A, s. 27 (6).

Powers of Board

(7) Unless the individual to whom the personal health information relates objects, the Board may,

(a) appoint as representative a different individual than the one named in the application;

(b) limit the duration of the appointment;

(c) impose any other condition on the appointment; or

(d) on any person's application, remove, vary or suspend a condition imposed on the appointment or impose an additional condition on the appointment. 2004, c. 3, Sched. A, s. 27 (7).

Termination

(8) The Board may, on any person's application, terminate an appointment made under this section if,

(a) the individual to whom the personal health information relates or the representative requests the termination;

(b) the representative is no longer capable of consenting to the collection, use or disclosure of personal health information;

(c) the appointment is no longer in the best interests of the individual to whom the personal health information relates; or

(d) the individual to whom the personal health information relates has a guardian of the person, a guardian of property, an attorney for personal care, or an attorney for property, who has authority to give or refuse consent to the types of collections, uses and disclosures for which the appointment was made and in the circumstances to which the appointment applies. 2004, c. 3, Sched. A, s. 27 (8).

Procedure

(9) Sections 73 to 81 of the *Health Care Consent Act, 1996* apply with necessary modifications to an application under this section. 2004, c. 3, Sched. A, s. 27 (9).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 8 - 04/06/2007

Transition, representative appointed by Board

28 (1) This Act applies to a representative whom the Board appointed under section 36.2 of the *Mental Health Act* or who was deemed to be appointed under that section before the day this section comes into force for an individual with respect to the individual's personal health information, as if the representative were the individual's representative appointed by the Board under section 27. 2004, c. 3, Sched. A, s. 28 (1).

Limited authority

(2) The authority conferred on the representative by subsection (1) is limited to the purposes for which the representative was appointed. 2004, c. 3, Sched. A, s. 28 (2).

PART IV
COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION

General Limitations and Requirements

Requirement for consent

29 A health information custodian shall not collect, use or disclose personal health information about an individual unless,

(a) it has the individual's consent under this Act and the collection, use or disclosure, as the case may be, to the best of the custodian's knowledge, is necessary for a lawful purpose; or

(b) the collection, use or disclosure, as the case may be, is permitted or required by this Act. 2004, c. 3, Sched. A, s. 29.

Other information

30 (1) A health information custodian shall not collect, use or disclose personal health information if other information will serve the purpose of the collection, use or disclosure. 2004, c. 3, Sched. A, s. 30 (1).

Extent of information

(2) A health information custodian shall not collect, use or disclose more personal health information than is reasonably necessary to meet the purpose of the collection, use or disclosure, as the case may be. 2004, c. 3, Sched. A, s. 30 (2).

Exception

(3) This section does not apply to personal health information that a health information custodian is required by law to collect, use or disclose. 2004, c. 3, Sched. A, s. 30 (3).

Use and disclosure of personal health information

31 (1) A health information custodian that collects personal health information in contravention of this Act shall not use it or disclose it unless required by law to do so. 2004, c. 3, Sched. A, s. 31 (1).

(2) REPEALED: 2004, c. 3, Sched. A, s. 31 (4).

(3) REPEALED: 2004, c. 3, Sched. A, s. 31 (4).

(4) SPENT: 2004, c. 3, Sched. A, s. 31 (4).

Section Amendments with date in force (d/m/y)

2004, c. 3, Sched. A, s. 31 (4) - 01/11/2005

Fundraising

32 (1) Subject to subsection (2), a health information custodian may collect, use or disclose personal health information about an individual for the purpose of fundraising activities only where,

(a) the individual expressly consents; or

(b) the individual consents by way of an implied consent and the information consists only of the individual's name and the prescribed types of contact information. 2004, c. 3, Sched. A, s. 32 (1); 2007, c. 10, Sched. H, s. 9.

Requirements and restrictions

(2) The manner in which consent is obtained under subsection (1) and the resulting collection, use or disclosure of personal health information for the purpose of fundraising activities shall comply with the requirements and restrictions that are prescribed, if any. 2004, c. 3, Sched. A, s. 32 (2).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 9 - 04/06/2007

Marketing

33 A health information custodian shall not collect, use or disclose personal health information about an individual for the purpose of marketing anything or for the purpose of market research unless the individual expressly consents and the custodian collects, uses or discloses the information, as the case may be, subject to the prescribed requirements and restrictions, if any. 2004, c. 3, Sched. A, s. 33.

Health cards and health numbers

34 (1) In this section,

"health card" means a card provided to an insured person within the meaning of the *Health Insurance Act* by the General Manager of the Ontario Health Insurance Plan; ("carte Santé")

"provincially funded health resource" means a service, thing, subsidy or other benefit funded, in whole or in part, directly or indirectly by the Government of Ontario, if it is health related or prescribed. ("ressource en matière de santé subventionnée par la province") 2004, c. 3, Sched. A, s. 34 (1).

Collection or use

(2) Despite subsection 49 (1), a person who is neither a health information custodian nor acting as an agent of a health information custodian shall not collect or use another person's health number except,

(a) for purposes related to the provision of provincially funded health resources to that other person;

(b) for the purposes for which a health information custodian has disclosed the number to the person;

(b.1) if the person is prescribed and is collecting or using the health number, as the case may be, with the express consent of the other person, for the purpose of accurately identifying the other person's records of personal health information, verifying their identity or linking their records of personal health information, subject to the additional requirements, if any, that are prescribed;

(c) if the person is the governing body of health care practitioners who provide provincially funded health resources and is collecting or using health numbers for purposes related to its duties or powers;

(d) if the person is prescribed and is collecting or using the health number, as the case may be, for purposes related to health administration, health planning, health research or epidemiological studies; or

(e) if the person is prescribed and is collecting or using the health number, as the case may be, for purposes related to the electronic health record developed and maintained by the prescribed organization. 2007, c. 10, Sched. H, s. 10; 2016, c. 6, Sched. 1, s. 1 (9); 2020, c. 5, Sched. 6, s. 4 (1).

Disclosure

(3) Despite subsection 49 (1) and subject to the exceptions and additional requirements, if any, that are prescribed, a person who is neither a health information custodian nor acting as an agent of a health information custodian shall not disclose a health number except as required by law. 2007, c. 10, Sched. H, s. 10.

Confidentiality of health cards

(4) No person shall require the production of another person's health card, but a person who provides a provincially funded health resource to a person who has a health card may require the production of the health card. 2004, c. 3, Sched. A, s. 34 (4).

Exceptions

(5) Subsections (2) and (3) do not apply to,

(a) a person who collects, uses or discloses a health number for the purposes of a proceeding;

(b) a prescribed entity mentioned in subsection 45 (1) that collects, uses or discloses the health number in the course of carrying out its functions under section 45; or

(c) a health data institute that the Minister approves under subsection 47 (9) and that collects, uses or discloses the health number in the course of carrying out its functions under sections 47 and 48. 2004, c. 3, Sched. A, s. 34 (5).

Collection, use and disclosure, non-provincially funded health resource

(6) Subject to the additional requirements, if any, that are prescribed, a health information custodian that is providing health care to a person may collect, use or disclose the person's health number with the consent of the person for the purpose of accurately identifying the person's records of personal health information, verifying their identity or linking their records of personal health information, even where the health information custodian is not providing a provincially funded health resource. 2020, c. 5, Sched. 6, s. 4 (2).

Same, provincially funded health resource

(7) Subject to the additional requirements, if any, that are prescribed, a health information custodian that has collected a health number for purposes related to the provision of a provincially funded health resource to a person may use the health number for the purpose of accurately identifying the person's records of personal health information, verifying their identity or linking their records of personal health information. 2020, c. 5, Sched. 6, s. 4 (2).

Other permitted collection, etc. not affected

(8) Nothing in subsection (6) or (7) limits a health information custodian's authority to collect, use or disclose a health number as otherwise permitted or required by this Act. 2020, c. 5, Sched. 6, s. 4 (2).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 10 - 04/06/2007

2016, c. 6, Sched. 1, s. 1 (9) - 01/10/2020

2020, c. 5, Sched. 6, s. 4 (1, 2) - 25/03/2020

Fees for personal health information

35 (1) A health information custodian shall not charge a person a fee for collecting or using personal health information except as authorized by the regulations made under this Act. 2004, c. 3, Sched. A, s. 35 (1).

Same, for disclosure

(2) When disclosing personal health information, a health information custodian shall not charge fees to a person that exceed the prescribed amount or the amount of reasonable cost recovery, if no amount is prescribed. 2004, c. 3, Sched. A, s. 35 (2).

COLLECTION

Indirect collection

36 (1) A health information custodian may collect personal health information about an individual indirectly if,

(a) the individual consents to the collection being made indirectly;

(b) the information to be collected is reasonably necessary for providing health care or assisting in providing health care to the individual and it is not reasonably possible to collect, directly from the individual,

(i) personal health information that can reasonably be relied on as accurate and complete, or

(ii) personal health information in a timely manner;

(c) the custodian is an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*, or is acting as part of such an institution, and the custodian is collecting the information for a purpose related to,

(i) investigating a breach of an agreement or a contravention or an alleged contravention of the laws of Ontario or Canada,

(ii) the conduct of a proceeding or a possible proceeding, or

(iii) the statutory function of the custodian;

(d) the custodian collects the information from a person who is not a health information custodian for the purpose of carrying out research conducted in accordance with subsection 37 (3) or research that a research ethics board has approved under section 44 or that meets the criteria set out in clauses 44 (10) (a) to (c), except if the person is prohibited by law from disclosing the information to the custodian;

(e) the custodian is a prescribed entity mentioned in subsection 45 (1) and the custodian is collecting personal health information from a person who is not a health information custodian for the purpose of that subsection;

(f) the Commissioner authorizes that the collection be made in a manner other than directly from the individual;

(g) the custodian collects the information from a person who is permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada to disclose it to the custodian; or

(h) subject to the requirements and restrictions, if any, that are prescribed, the health information custodian is permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada to collect the information indirectly. 2004, c. 3, Sched. A, s. 36 (1); 2007, c. 10, Sched. H, s. 11.

Direct collection without consent

(2) A health information custodian may collect personal health information about an individual directly from the individual, even if the individual is incapable of consenting, if the collection is reasonably necessary for the provision of health care and it is not reasonably possible to obtain consent in a timely manner. 2004, c. 3, Sched. A, s. 36 (2).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 11 - 04/06/2007

USE

Permitted use

37 (1) A health information custodian may use personal health information about an individual,

(a) for the purpose for which the information was collected or created and for all the functions reasonably necessary for carrying out that purpose, but not if the information was collected with the consent of the individual or under clause 36 (1) (b) and the individual expressly instructs otherwise;

(b) for a purpose for which this Act, another Act or an Act of Canada permits or requires a person to disclose it to the custodian;

(c) for planning or delivering programs or services that the custodian provides or that the custodian funds in whole or in part, allocating resources to any of them, evaluating or monitoring any of them or detecting, monitoring or preventing fraud or any unauthorized receipt of services or benefits related to any of them;

(d) for the purpose of risk management, error management or for the purpose of activities to improve or maintain the quality of care or to improve or maintain the quality of any related programs or services of the custodian;

(e) for educating agents to provide health care;

(f) in a manner consistent with Part II, for the purpose of disposing of the information or modifying the information in order to conceal the identity of the individual;

(g) for the purpose of seeking the individual's consent, or the consent of the individual's substitute decision-maker, when the personal health information used by the custodian for this purpose is limited to the name and contact information of the individual and the name and contact information of the substitute decision-maker, where applicable;

(h) for the purpose of a proceeding or contemplated proceeding in which the custodian or the agent or former agent of the custodian is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;

(i) for the purpose of obtaining payment or processing, monitoring, verifying or reimbursing claims for payment for the provision of health care or related goods and services;

(j) for research conducted by the custodian, subject to subsection (3), unless another clause of this subsection applies; or

(k) subject to the requirements and restrictions, if any, that are prescribed, if permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada. 2004, c. 3, Sched. A, s. 37 (1); 2007, c. 10, Sched. H, s. 12.

Agents

(2) If subsection (1) authorizes a health information custodian to use personal health information for a purpose, the custodian may provide the information to an agent of the custodian who may use it for that purpose on behalf of the custodian. 2004, c. 3, Sched. A, s. 37 (2).

Research

(3) Under clause (1) (j), a health information custodian may use personal health information about an individual only if the custodian prepares a research plan and has a research ethics board approve it and for that purpose subsections 44 (2) to (4) and clauses 44 (6) (a) to (f) apply to the use as if it were a disclosure. 2004, c. 3, Sched. A, s. 37 (3).

Mixed uses

(4) If a research plan mentioned in subsection (3) proposes that a health information custodian that is an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* or that is acting as part of such an institution use personal health information, together with personal information within the meaning of those two Acts that is not personal health information, those two Acts do not apply to the use and this section applies to the use. 2004, c. 3, Sched. A, s. 37 (4).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 12 - 04/06/2007

DISCLOSURE

Disclosures related to providing health care

38 (1) A health information custodian may disclose personal health information about an individual,

(a) to a health information custodian described in paragraph 1, 2 or 4 of the definition of "health information custodian" in subsection 3 (1), if the disclosure is reasonably necessary for the provision of health care and it is not reasonably possible to obtain the individual's consent in a timely manner, but not if the individual has expressly instructed the custodian not to make the disclosure;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 38 (1) (a) of the Act is amended by striking out "paragraph 1, 2 or 4" and substituting "paragraph 1, 2, 3 or 4". (See: 2020, c. 13, Sched. 3, s. 8 (13))

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 38 (1) (a) of the Act is amended by striking out "paragraph 1, 2, 3 or 4" and substituting "paragraph 1, 3 or 4". (See: 2020, c. 13, Sched. 3, s. 8 (14))

(b) in order for the Minister, another health information custodian, a local health integration network or the Agency to determine or provide funding or payment to the custodian for the provision of health care; or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 38 (1) (b) of the Act is amended by striking out "a local health integration network". (See: 2019, c. 5, Sched. 3, s. 17 (4))

(c) for the purpose of contacting a relative, friend or potential substitute decision-maker of the individual, if the individual is injured, incapacitated or ill and unable to give consent personally. 2004, c. 3, Sched. A, s. 38 (1); 2006, c. 4, s. 51 (2); 2007, c. 10, Sched. H, s. 13; 2016, c. 23, s. 64 (2); 2016, c. 30, s. 43 (3); 2019, c. 5, Sched. 3, s. 17 (3).

Notice of instruction

(2) If a health information custodian discloses personal health information about an individual under clause (1) (a) and if an instruction of the individual made under that clause prevents the custodian from disclosing all the personal health information that the custodian considers reasonably necessary to disclose for the provision of health care or assisting in the provision of health care to the individual, the custodian shall notify the person to whom it makes the disclosure of that fact. 2004, c. 3, Sched. A, s. 38 (2).

Facility that provides health care

(3) A health information custodian that is a facility that provides health care may disclose to a person the following personal health information relating to an individual who is a patient or a resident in the facility if the custodian offers the individual the option, at the first reasonable opportunity after admission to the facility, to object to such disclosures and if the individual does not do so:

1. The fact that the individual is a patient or resident in the facility.
2. The individual's general health status described as critical, poor, fair, stable or satisfactory, or in similar terms.
3. The location of the individual in the facility. 2004, c. 3, Sched. A, s. 38 (3).

Deceased individual

(4) A health information custodian may disclose personal health information about an individual who is deceased, or is reasonably suspected to be deceased,

(a) for the purpose of identifying the individual;

(b) for the purpose of informing any person whom it is reasonable to inform in the circumstances of,

(i) the fact that the individual is deceased or reasonably suspected to be deceased, and

(ii) the circumstances of death, where appropriate; or

(c) to the spouse, partner, sibling or child of the individual if the recipients of the information reasonably require the information to make decisions about their own health care or their children's health care. 2004, c. 3, Sched. A, s. 38 (4).

Section Amendments with date in force (d/m/y)

2006, c. 4, s. 51 (2) - 28/03/2006

2007, c. 10, Sched. H, s. 13 - 04/06/2007

2016, c. 23, s. 64 (2) - 05/12/2016; 2016, c. 30, s. 43 (3) - 01/11/2017

2019, c. 5, Sched. 3, s. 17 (3) - 06/06/2019; 2019, c. 5, Sched. 3, s. 17 (4) - not in force

2020, c. 13, Sched. 3, s. 8 (13, 14) - not in force

Disclosures for health or other programs

39 (1) Subject to the requirements and restrictions, if any, that are prescribed, a health information custodian may disclose personal health information about an individual,

(a) for the purpose of determining or verifying the eligibility of the individual to receive health care or related goods, services or benefits provided under an Act of Ontario or Canada and funded in whole or in part by the Government of Ontario or Canada, by a local health integration network by a municipality or by the Agency, or to receive coverage with respect to such health care, goods, services or benefits;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 39 (1) (a) of the Act is amended by striking out "by a local health integration network,". (See: 2019, c. 5, Sched. 3, s. 17 (6))

(b) to a person conducting an audit or reviewing an application for accreditation or reviewing an accreditation, if the audit or review relates to services provided by the custodian and the person does not remove any records of personal health information from the custodian's premises;

(c) to a prescribed person who compiles or maintains a registry of personal health information for purposes of facilitating or improving the provision of health care or that relates to the storage or donation of body parts or bodily substances; or

(d) where,

(i) the disclosure is to another custodian described in paragraph 1, 2 or 4 of the definition of "health information custodian" in subsection 3 (1),

Note: On a day to be named by proclamation of the Lieutenant Governor, subclause 39 (1) (d) (i) of the Act is amended by striking out "paragraph 1, 2 or 4" and substituting "paragraph 1, 2, 3 or 4". (See: 2020, c. 13, Sched. 3, s. 8 (15))

Note: On a day to be named by proclamation of the Lieutenant Governor, subclause 39 (1) (d) (i) of the Act is amended by striking out "paragraph 1, 2, 3 or 4" and substituting "paragraph 1, 3 or 4". (See: 2020, c. 13, Sched. 3, s. 8 (16))

(ii) the individual to whom the information relates is one to whom both the disclosing custodian and recipient custodian provide health care or assist in the provision of health care or have previously provided health care or assisted in the provision of health care, and

(iii) the disclosure is for the purpose of activities to improve or maintain the quality of care provided by the receiving custodian to the individual to whom the information relates or individuals provided with similar health care. 2004, c. 3, Sched. A, s. 39 (1); 2006, c. 4, s. 51 (3); 2007, c. 10, Sched. H, s. 14; 2009, c. 33, Sched. 18, s. 25 (4); 2016, c. 30, s. 43 (3); 2019, c. 5, Sched. 3, s. 17 (5).

Same

(2) A health information custodian may disclose personal health information about an individual,

(a) to the Chief Medical Officer of Health or a medical officer of health within the meaning of the *Health Protection and Promotion Act* if the disclosure is made for a purpose of that Act or the *Immunization of School Pupils Act*;

(a.1) to the Ontario Agency for Health Protection and Promotion if the disclosure is made for a purpose of the *Ontario Agency for Health Protection and Promotion Act, 2007*; or

(b) to a public health authority that is similar to the persons described in clause (a) and that is established under the laws of Canada, another province or a territory of Canada or other jurisdiction, if the disclosure is made for a purpose that is substantially similar to a purpose of the *Health Protection and Promotion Act* or the *Immunization of School Pupils Act*. 2004, c. 3, Sched. A, s. 39 (2); 2007, c. 10, Sched. K, s. 32; 2020, c. 5, Sched. 6, s. 5.

Removal allowed

(3) Despite clause (1) (b), the person described in that clause may remove records of personal health information from the custodian's premises if,

(a) the removal is authorized by or under an Act of Ontario or Canada; or

(b) an agreement between the custodian and the person authorizes the removal and provides that the records will be held in a secure and confidential manner and will be returned when the audit or review is completed. 2004, c. 3, Sched. A, s. 39 (3).

Authorization to collect

(4) A person who is not a health information custodian is authorized to collect the personal health information that a health information custodian may disclose to the person under clause (1) (c). 2004, c. 3, Sched. A, s. 39 (4).

Section Amendments with date in force (d/m/y)

2006, c. 4, s. 51 (3) - 28/03/2006

2007, c. 10, Sched. H, s. 14 - 04/06/2007; 2007, c. 10, Sched. K, s. 32 - 04/06/2007

2009, c. 33, Sched. 18, s. 25 (4) - 15/12/2009

2016, c. 30, s. 43 (3) - 01/11/2017

2019, c. 5, Sched. 3, s. 17 (5) - 06/06/2019; 2019, c. 5, Sched. 3, s. 17 (6) - not in force

2020, c. 5, Sched. 6, s. 5 - 25/03/2020; 2020, c. 13, Sched. 3, s. 8 (15, 16) - not in force

Disclosures related to risks

40 (1) A health information custodian may disclose personal health information about an individual if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons. 2004, c. 3, Sched. A, s. 40 (1).

Disclosures related to care or custody

(2) A health information custodian may disclose personal health information about an individual to the head of a penal or other custodial institution in which the individual is being lawfully detained or to the officer in charge of a psychiatric facility within the meaning of the *Mental Health Act* in which the individual is being lawfully detained for the purposes described in subsection (3). 2004, c. 3, Sched. A, s. 40 (2).

Same

(3) A health information custodian may disclose personal health information about an individual under subsection (2) to assist an institution or a facility in making a decision concerning,

(a) arrangements for the provision of health care to the individual; or

(b) the placement of the individual into custody, detention, release, conditional release, discharge or conditional discharge under Part VI of the *Child, Youth and Family Services Act, 2017*, the *Mental Health Act*, the *Ministry of Correctional Services Act*, the *Corrections and Conditional Release Act* (Canada), Part XX.1 of the *Criminal Code* (Canada), the *Prisons and Reformatories Act* (Canada) or the *Youth Criminal Justice Act* (Canada). 2004, c. 3, Sched. A, s. 40 (3); 2017, c. 14, Sched. 4, s. 28 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 40 (3) (b) of the Act is amended by striking out "the *Mental Health Act*, the *Ministry of Correctional Services Act*" and substituting "the *Correctional Services and Reintegration Act, 2018*, the *Mental Health Act*". (See: 2018, c. 6, Sched. 3, s. 11)

Section Amendments with date in force (d/m/y)

2017, c. 14, Sched. 4, s. 28 (2) - 30/04/2018

2018, c. 6, Sched. 3, s. 11 - not in force

Disclosures for proceedings

41 (1) A health information custodian may disclose personal health information about an individual,

(a) subject to the requirements and restrictions, if any, that are prescribed, for the purpose of a proceeding or contemplated proceeding in which the custodian or the agent or former agent of the custodian is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding;

(b) to a proposed litigation guardian or legal representative of the individual for the purpose of having the person appointed as such;

(c) to a litigation guardian or legal representative who is authorized under the Rules of Civil Procedure, or by a court order, to commence, defend or continue a proceeding on behalf of the individual or to represent the individual in a proceeding; or

(d) for the purpose of complying with,

(i) a summons, order or similar requirement issued in a proceeding by a person having jurisdiction to compel the production of information, or

(ii) a procedural rule that relates to the production of information in a proceeding. 2004, c. 3, Sched. A, s. 41 (1).

Disclosure by agent or former agent

(2) An agent or former agent who receives personal health information under subsection (1) or under subsection 37 (2) for purposes of a proceeding or contemplated proceeding may disclose the information to the agent's or former agent's professional advisor for the purpose of providing advice or representation to the agent or former agent, if the advisor is under a professional duty of confidentiality. 2004, c. 3, Sched. A, s. 41 (2).

Disclosure to successor

42 (1) A health information custodian may disclose personal health information about an individual to a potential successor of the custodian, for the purpose of allowing the potential successor to assess and evaluate the operations of the custodian, if the potential successor first enters into an agreement with the custodian to keep the information confidential and secure and not to retain any of the information longer than is necessary for the purpose of the assessment or evaluation. 2004, c. 3, Sched. A, s. 42 (1).

Transfer to successor

(2) A health information custodian may transfer records of personal health information about an individual to the custodian's successor if the custodian makes reasonable efforts to give notice to the individual before transferring the records or, if that is not reasonably possible, as soon as possible after transferring the records. 2004, c. 3, Sched. A, s. 42 (2).

Transfer to archives

(3) Subject to the agreement of the person who is to receive the transfer, a health information custodian may transfer records of personal health information about an individual to,

(a) the Archives of Ontario; or

(b) in the prescribed circumstances, a prescribed person whose functions include the collection and preservation of records of historical or archival importance, if the disclosure is made for the purpose of that function. 2004, c. 3, Sched. A, s. 42 (3).

Disclosures related to this or other Acts

43 (1) A health information custodian may disclose personal health information about an individual,

(a) for the purpose of determining, assessing or confirming capacity under the *Health Care Consent Act, 1996*, the *Substitute Decisions Act, 1992* or this Act;

(b) to a College within the meaning of the *Regulated Health Professions Act, 1991* for the purpose of the administration or enforcement of the *Drug and Pharmacies Regulation Act*, the *Regulated Health Professions Act, 1991* or an Act named in Schedule 1 to that Act;

(c) to the Board of Regents continued under the *Drugless Practitioners Act* for the purpose of the administration or enforcement of that Act;

(d) to the Ontario College of Social Workers and Social Service Workers for the purpose of the administration or enforcement of the *Social Work and Social Service Work Act, 1998*;

(e) to the Public Guardian and Trustee, the Children's Lawyer, a children's aid society, a residential placement advisory committee established under subsection 63 (1) of the *Child, Youth and Family Services Act, 2017* or a designated custodian under section 223 of that Act so that they can carry out their statutory functions;

(f) in the circumstances described in clause 42 (1) (c), (g) or (n) of the *Freedom of Information and Protection of Privacy Act* or clause 32 (c), (g) or (l) of the *Municipal Freedom of Information and Protection of Privacy Act*, if the custodian is an institution within the meaning of whichever of those Acts applies, or is acting as part of such an institution;

(g) subject to the requirements and restrictions, if any, that are prescribed, to a person carrying out an inspection, investigation or similar procedure that is authorized by a warrant or by or under this Act or any other Act of Ontario or an Act of Canada for the purpose of complying with the warrant or for the purpose of facilitating the inspection, investigation or similar procedure;

(h) subject to the requirements and restrictions, if any, that are prescribed, if permitted or required by law or by a treaty, agreement or arrangement made under an Act or an Act of Canada. 2004, c. 3, Sched. A, s. 43 (1); 2005, c. 25, s. 35; 2006, c. 34, Sched. C, s. 26; 2007, c. 10, Sched. H, s. 15; 2017, c. 14, Sched. 4, s. 28 (3).

Interpretation

(2) For the purposes of clause (1) (h) and subject to the regulations made under this Act, if an Act, an Act of Canada or a regulation made under any of those Acts specifically provides that information is exempt, under stated circumstances, from a confidentiality or secrecy requirement, that provision shall be deemed to permit the disclosure of the information in the stated circumstances. 2004, c. 3, Sched. A, s. 43 (2).

Section Amendments with date in force (d/m/y)

2005, c. 25, s. 35 - 17/09/2007

2006, c. 34, Sched. C, s. 26 - 01/04/2007

2007, c. 10, Sched. H, s. 15 - 04/06/2007

2017, c. 14, Sched. 4, s. 28 (3) - 30/04/2018

Disclosure for research

44 (1) A health information custodian may disclose personal health information about an individual to a researcher if the researcher,

(a) submits to the custodian,

(i) an application in writing,

(ii) a research plan that meets the requirements of subsection (2), and

(iii) a copy of the decision of a research ethics board that approves the research plan; and

(b) enters into the agreement required by subsection (5). 2004, c. 3, Sched. A, s. 44 (1).

Same

(1.1) For greater certainty, the decision of only one research ethics board is sufficient for the purposes of subclause (1) (a) (iii). 2020, c. 5, Sched. 6, s. 6.

Research plan

(2) A research plan must be in writing and must set out,

(a) the affiliation of each person involved in the research;

(b) the nature and objectives of the research and the public or scientific benefit of the research that the researcher anticipates; and

(c) all other prescribed matters related to the research. 2004, c. 3, Sched. A, s. 44 (2).

Consideration by board

(3) When deciding whether to approve a research plan that a researcher submits to it, a research ethics board shall consider the matters that it considers relevant, including,

(a) whether the objectives of the research can reasonably be accomplished without using the personal health information that is to be disclosed;

(b) whether, at the time the research is conducted, adequate safeguards will be in place to protect the privacy of the individuals whose personal health information is being disclosed and to preserve the confidentiality of the information;

(c) the public interest in conducting the research and the public interest in protecting the privacy of the individuals whose personal health information is being disclosed; and

(d) whether obtaining the consent of the individuals whose personal health information is being disclosed would be impractical. 2004, c. 3, Sched. A, s. 44 (3).

Decision of board

(4) After reviewing a research plan that a researcher has submitted to it, the research ethics board shall provide to the researcher a decision in writing, with reasons, setting out whether the board approves the plan, and whether the approval is subject to any conditions, which must be specified in the decision. 2004, c. 3, Sched. A, s. 44 (4).

Agreement respecting disclosure

(5) Before a health information custodian discloses personal health information to a researcher under subsection (1), the researcher shall enter into an agreement with the custodian in which the researcher agrees to comply with the conditions and restrictions, if any, that the custodian imposes relating to the use, security, disclosure, return or disposal of the information. 2004, c. 3, Sched. A, s. 44 (5).

Compliance by researcher

(6) A researcher who receives personal health information about an individual from a health information custodian under subsection (1) shall,

(a) comply with the conditions, if any, specified by the research ethics board in respect of the research plan;

(b) use the information only for the purposes set out in the research plan as approved by the research ethics board;

(c) not publish the information in a form that could reasonably enable a person to ascertain the identity of the individual;

(d) despite subsection 49 (1), not disclose the information except as required by law and subject to the exceptions and additional requirements, if any, that are prescribed;

(e) not make contact or attempt to make contact with the individual, directly or indirectly, unless the custodian first obtains the individual's consent to being contacted;

(f) notify the custodian immediately in writing if the researcher becomes aware of any breach of this subsection or the agreement described in subsection (5); and

(g) comply with the agreement described in subsection (5). 2004, c. 3, Sched. A, s. 44 (6).

Mixed disclosures

(7) If a researcher submits a research plan under subsection (1) that proposes that a health information custodian that is an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* or that is acting as part of such an institution disclose to the researcher personal health information, together with personal information within the meaning of those two Acts that is not personal health information, those two Acts do not apply to the disclosure and this section applies to the disclosure. 2004, c. 3, Sched. A, s. 44 (7).

Transition

(8) Despite subsection (7), nothing in this section prevents a health information custodian that is an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* or that is acting as part of such an institution from disclosing to a researcher personal health information, that is personal information within the meaning of those two Acts, if, before November 1, 2004, the researcher entered into an agreement with the custodian under subclause 21 (1) (e) (iii) of the *Freedom of Information and Protection of Privacy Act* or subclause 14 (1) (e) (iii) of the *Municipal Freedom of Information and Protection of Privacy Act* and the disclosure is within the scope of the agreement. 2007, c. 10, Sched. H, s. 16.

Disclosure under other Acts

(9) Despite any other Act that permits a health information custodian to disclose personal health information to a researcher for the purpose of conducting research, this section applies to the disclosure as if it were a disclosure for research under this section unless the regulations made under this Act provide otherwise. 2004, c. 3, Sched. A, s. 44 (9).

Research approved outside Ontario

(10) Subject to subsection (11), a health information custodian may disclose personal health information to a researcher or may use the information to conduct research if,

(a) the research involves the use of personal health information originating wholly or in part outside Ontario;

(b) the research has received the prescribed approval from a body outside Ontario that has the function of approving research; and

(c) the prescribed requirements are met. 2004, c. 3, Sched. A, s. 44 (10).

Same

(11) Subsections (1) to (4) and clauses (6) (a) and (b) do not apply to a disclosure or use made under subsection (10) and references in the rest of this section to subsection (1) shall be read as references to this subsection with respect to that disclosure or use. 2004, c. 3, Sched. A, s. 44 (11).

(12), (13) REPEALED: 2004, c. 3, Sched. A, s. 44 (14).

(14) SPENT: 2004, c. 3, Sched. A, s. 44 (14).

Section Amendments with date in force (d/m/y)

2004, c. 3, Sched. A, s. 44 (14) - 01/11/2007

2007, c. 10, Sched. H, s. 16 - 04/06/2007

2020, c. 5, Sched. 6, s. 6 - 25/03/2020

Disclosure for planning and management of health system

45 (1) A health information custodian may disclose to a prescribed entity personal health information for the purpose of analysis or compiling statistical information with respect to the management of, evaluation or monitoring of, the allocation of resources to or planning for all or part of the health system, including the delivery of services, if the entity meets the requirements under subsection (3). 2004, c. 3, Sched. A, s. 45 (1).

Exception

(2) Subsection (1) does not apply to,

(a) notes of personal health information about an individual that are recorded by a health information custodian and that document the contents of conversations during a private counselling session or a group, joint or family counselling session; or

(b) prescribed information in circumstances that are prescribed. 2004, c. 3, Sched. A, s. 45 (2).

Approval

(3) A health information custodian may disclose personal health information to a prescribed entity under subsection (1) if,

(a) the entity has in place practices and procedures to protect the privacy of the individuals whose personal health information it receives and to maintain the confidentiality of the information; and

(b) the Commissioner has approved the practices and procedures, if the custodian makes the disclosure on or after the first anniversary of the day this section comes into force. 2004, c. 3, Sched. A, s. 45 (3).

Review by Commissioner

(4) The Commissioner shall review the practices and procedures of each prescribed entity every three years from the date of its approval and advise the health information custodian whether the entity continues to meet the requirements of subsection (3). 2004, c. 3, Sched. A, s. 45 (4).

Authorization to collect

(5) An entity that is not a health information custodian is authorized to collect the personal health information that a health information custodian may disclose to the entity under subsection (1). 2004, c. 3, Sched. A, s. 45 (5).

Use and disclosure

(6) Subject to the exceptions and additional requirements, if any, that are prescribed and despite subsection 49 (1), an entity that receives personal health information under subsection (1) shall not use the information except for the purposes for which it received the information and shall not disclose the information except as required by law. 2004, c. 3, Sched. A, s. 45 (6).

Additional uses, extra-ministerial data integration unit

(7) Despite subsection (6), if an entity that receives personal health information under subsection (1) is an extra-ministerial data integration unit within the meaning of Part III.1 of the *Freedom of Information and Protection of Privacy Act*, or if such an extra-ministerial data integration unit is located within the entity, the entity may also use the personal health information for a purpose set out in section 49.2 of that Act if the entity complies with Part III.1 of that Act as if it were initially collecting the personal health information. 2020, c. 5, Sched. 6, s. 7.

Section Amendments with date in force (d/m/y)

2020, c. 5, Sched. 6, s. 7 - 25/03/2020

Health care payments

46 (1) If requested by the Minister or the minister of a prescribed ministry, a health information custodian shall disclose personal health information to the minister who made the request for the purpose of determining, providing, monitoring or verifying payment or funding for health care funded wholly or in part by the Ministry, the prescribed ministry, a local health integration network or the Agency or for goods used for health care funded wholly or in part by one or more of them. 2020, c. 5, Sched. 6, s. 8 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 46 (1) of the Act is amended by striking out "a local health integration network". (See: 2020, c. 5, Sched. 6, s. 8 (2))

Disclosure by minister

(2) The Minister or a minister of a prescribed ministry may disclose information collected under subsection (1) to any person for a purpose set out in that subsection if the disclosure is reasonably necessary for that purpose. 2020, c. 5, Sched. 6, s. 8 (1).

Other information

(3) The Minister or minister of a prescribed ministry, as the case may be, who makes a request under subsection (1) shall not collect, use or disclose personal health information if other information will serve the purpose of the collection, use or disclosure. 2020, c. 5, Sched. 6, s. 8 (1).

Extent of information

(4) The Minister or minister of a prescribed ministry, as the case may be, who makes a request under subsection (1) shall not collect, use or disclose more personal health information than is reasonably necessary to meet the purpose of the collection, use or disclosure, as the case may be. 2020, c. 5, Sched. 6, s. 8 (1).

Section Amendments with date in force (d/m/y)

2006, c. 4, s. 51 (4) - 28/03/2006

2019, c. 5, Sched. 3, s. 17 (7) - 06/06/2019; 2019, c. 5, Sched. 3, s. 17 (8) - no effect - see 2020, c. 5, Sched. 6, s. 25 - 25/03/2020

2020, c. 5, Sched. 6, s. 8 (1) - 25/03/2020; 2020, c. 5, Sched. 6, s. 8 (2) - not in force

Disclosure for analysis of health system

47 (1) REPEALED: 2019, c. 15, Sched. 30, s. 4.

Same

(2) Subject to the restrictions, if any, that are prescribed, a health information custodian shall, upon the request of the Minister, disclose personal health information to a health data institute that the Minister approves under subsection (9) for analysis with respect to the management of, evaluation or monitoring of, the allocation of resources to or planning for all or part of the health system, including the delivery of services, if the requirements of this section are met. 2004, c. 3, Sched. A, s. 47 (2).

Form, manner and time of disclosure

(3) The Minister may specify the form and manner in which and the time at which the health information custodian is required to disclose the personal health information under subsection (2). 2004, c. 3, Sched. A, s. 47 (3).

Requirements for Minister

(4) Before requesting the disclosure of personal health information under subsection (2), the Minister shall submit a proposal to the Commissioner and, in accordance with this section, allow the Commissioner to review and comment on the proposal. 2004, c. 3, Sched. A, s. 47 (4).

Contents of proposal

(5) The proposal must identify a health data institute to which the personal health information would be disclosed under this section and must set out the prescribed matters. 2004, c. 3, Sched. A, s. 47 (5).

Review by Commissioner

(6) Within 30 days after the Commissioner receives the proposal, the Commissioner shall review the proposal and may comment in writing on the proposal. 2004, c. 3, Sched. A, s. 47 (6).

Consideration by Commissioner

(7) In reviewing the proposal, the Commissioner shall consider the public interest in conducting the analysis and the privacy interest of the individuals to whom the personal health information relates in the circumstances. 2004, c. 3, Sched. A, s. 47 (7).

Consideration by Minister

(8) The Minister shall consider the comments, if any, made by the Commissioner within the time specified in subsection (6), and may amend the proposal if the Minister considers it appropriate. 2004, c. 3, Sched. A, s. 47 (8).

Approval of health data institute

(9) The Minister may approve a health data institute for the purposes of a disclosure made under this section if,

(a) the corporate objects of the institute include performing data analysis of personal health information, linking the information with other information and de-identifying the information for the Minister; and

(b) the institute has in place practices and procedures to protect the privacy of the individuals whose personal health information it receives and to maintain the confidentiality of the information and the Commissioner has approved those practices and procedures. 2004, c. 3, Sched. A, s. 47 (9).

Review by Commissioner

(10) The Commissioner shall review the practices and procedures of each health data institute every three years from the date of its approval and advise the Minister whether the institute continues to meet the requirements of clauses (9) (a) and (b). 2004, c. 3, Sched. A, s. 47 (10).

Withdrawal of approval

(11) The Minister shall withdraw the approval of a health data institute that ceases to meet the requirements of clauses (9) (a) and (b) or to carry out its objects mentioned in clause (9) (a), unless the Minister requires the institute to take immediate steps to satisfy the Minister that it will meet the requirements or that it will carry out the objects. 2004, c. 3, Sched. A, s. 47 (11).

Effect of withdrawal of approval

(12) If the Minister withdraws the approval of a health data institute, the institute shall,

(a) make no further use or disclosure of any personal health information that a health information custodian has disclosed to it under subsection (2) or any information derived from that personal health information; and

(b) comply with the written directions of the Minister that the Commissioner has approved in writing with respect to information described in clause (a). 2004, c. 3, Sched. A, s. 47 (12).

If institute ceases to exist

(13) If a health data institute ceases to exist, the persons holding the personal health information that the institute received under subsection (2) and held when it ceased to exist shall comply with the written directions of the Minister that the Commissioner has approved in writing with respect to the information. 2004, c. 3, Sched. A, s. 47 (13).

Disclosure by Minister

(14) The Minister may disclose to the health data institute that receives personal health information under subsection (2) other personal health information for the purposes of the analysis and linking that the Minister requires if the disclosure is included in the Minister's proposal, as amended under subsection (8), if applicable. 2004, c. 3, Sched. A, s. 47 (14).

Duties of health data institute

(15) A health data institute that receives personal health information under subsection (2) or (14) shall,

(a) follow the practices and procedures described in clause (9) (b) that the Commissioner has approved;

(b) perform the analysis and linking with other data that the Minister requires;

(c) de-identify the information;

(d) provide the results of the analysis and linking, using only de-identified information, to the Minister or to the persons that the Minister approves;

(e) not disclose the information to the Minister or to the persons that the Minister approves except in a de-identified form; and

(f) subject to clauses (d) and (e), not disclose to any persons the information, even in a de-identified form, or any information derived from the information. 2004, c. 3, Sched. A, s. 47 (15).

Transition

(16) If the Minister has lawfully required the disclosure of personal health information for a purpose described in subsection (2) in the 18 months before this section comes into force, this section does not apply with respect to a disclosure the Minister requires for a substantially similar purpose after this section comes into force until the first anniversary of the coming into force of this section. 2004, c. 3, Sched. A, s. 47 (16).

Notification

(17) If the Minister requires a disclosure for a substantially similar purpose under subsection (16) after this section comes into force, the Minister shall notify the Commissioner within the later of the time of requiring the disclosure and 90 days after this section comes into force. 2004, c. 3, Sched. A, s. 47 (17).

No hearing required

(18) The Minister is not required to hold a hearing or to afford to any person an opportunity for a hearing before making a decision under this section. 2004, c. 3, Sched. A, s. 47 (18).

Section Amendments with date in force (d/m/y)

2019, c. 15, Sched. 30, s. 4 - 31/07/2020

Disclosure with Commissioner's approval

48 (1) A health data institute to which a health information custodian has disclosed personal health information under section 47, shall, upon the request of the Minister and in accordance with the Commissioner's approval given under this section, disclose the information to the Minister or another person approved by the Minister if the Minister is of the opinion that it is in the public interest to request the disclosure and the requirements of this section have been met. 2004, c. 3, Sched. A, s. 48 (1).

Non-application of section

(2) The personal health information mentioned in subsection (1) is not,

(a) notes of personal health information about an individual that are recorded by a health information custodian and that document the contents of conversations during a private counselling session or a group, joint or family counselling session; or

(b) information that is prescribed. 2004, c. 3, Sched. A, s. 48 (2).

Commissioner's approval required

(3) The Minister shall not request the disclosure of personal health information under subsection (1) unless the Minister has submitted to the Commissioner a proposal for the disclosure and the Commissioner has approved the proposal. 2004, c. 3, Sched. A, s. 48 (3).

Contents of proposal

(4) The proposal must include,

(a) a statement as to why the disclosure is reasonably required in the public interest and why the disclosure under section 47 was insufficient to meet the public interest;

(b) the extent of the identifiers that the Minister proposes be part of the information disclosed and a statement as to why the use of those identifiers is reasonably required for the purpose of the disclosure;

(c) a copy of all proposals and comments previously made or received under section 47 in respect of the information, if any; and

(d) all other information that the Commissioner requires. 2004, c. 3, Sched. A, s. 48 (4).

Terms of approval

(5) If the Commissioner approves the proposal, the Commissioner may specify terms, conditions or limitations for the disclosure. 2004, c. 3, Sched. A, s. 48 (5).

Restrictions on recipients

49 (1) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a health information custodian and to whom a health information custodian discloses personal health information, shall not use or disclose the information for any purpose other than,

(a) the purpose for which the custodian was authorized to disclose the information under this Act; or

(b) the purpose of carrying out a statutory or legal duty. 2004, c. 3, Sched. A, s. 49 (1).

Extent of use or disclosure

(2) Subject to the exceptions and additional requirements, if any, that are prescribed, a person who is not a health information custodian, and to whom a health information custodian discloses personal health information, shall not use or disclose more of the information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may be, unless the use or disclosure is required by law. 2004, c. 3, Sched. A, s. 49 (2).

Employee or agent information

(3) Except as permitted or required by law and subject to the exceptions and additional requirements, if any, that are prescribed, if a health information custodian discloses information to another health information custodian and the information is identifying information of the type described in subsection 4 (4) in the custody or under the control of the receiving custodian, the receiving custodian shall not,

(a) use or disclose the information for any purpose other than,

(i) the purpose for which the disclosing custodian was authorized to disclose the information under this Act, or

(ii) the purpose of carrying out a statutory or legal duty; or

(b) use or disclose more of the information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may be. 2004, c. 3, Sched. A, s. 49 (3).

Same

(4) The restrictions set out in clauses (3) (a) and (b) apply to a health information custodian that receives the identifying information described in subsection (3) even if the custodian receives the information before the day that subsection comes into force. 2004, c. 3, Sched. A, s. 49 (4).

Freedom of information legislation

(5) Except as prescribed, subsections (1) to (4) do not apply to an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* that is not a health information custodian or to a person employed by or acting for such an institution when the person is acting in that capacity. 2007, c. 10, Sched. H, s. 17.

Same

(6) Where this Act permits or requires a health information custodian to disclose personal health information to an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* that is not a health information custodian, the institution may collect the information from the custodian. 2007, c. 10, Sched. H, s. 17.

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 17 - 04/06/2007

Disclosure outside Ontario

50 (1) A health information custodian may disclose personal health information about an individual collected in Ontario to a person outside Ontario only if,

(a) the individual consents to the disclosure;

(b) this Act permits the disclosure;

(c) the person receiving the information performs functions comparable to the functions performed by a person to whom this Act would permit the custodian to disclose the information in Ontario under subsection 40 (2) or clause 43 (1) (b), (c), (d) or (e);

(d) the following conditions are met:

(i) the custodian is a prescribed entity mentioned in subsection 45 (1) and is prescribed for the purpose of this clause,

(ii) the disclosure is for the purpose of health planning or health administration,

(iii) the information relates to health care provided in Ontario to a person who is resident of another province or territory of Canada, and

(iv) the disclosure is made to the government of that province or territory;

(e) the disclosure is reasonably necessary for the provision of health care to the individual, but not if the individual has expressly instructed the custodian not to make the disclosure; or

(f) the disclosure is reasonably necessary for the administration of payments in connection with the provision of health care to the individual or for contractual or legal requirements in that connection. 2004, c. 3, Sched. A, s. 50 (1).

Notice of instruction

(2) If a health information custodian discloses personal health information about an individual under clause (1) (e) and if an instruction of the individual made under that clause prevents the custodian from disclosing all the personal health information that the custodian considers reasonably necessary to disclose for the provision of health care to the individual, the custodian shall notify the person to whom it makes the disclosure of that fact. 2004, c. 3, Sched. A, s. 50 (2).

PART V
ACCESS TO RECORDS OF PERSONAL HEALTH INFORMATION AND CORRECTION

ACCESS

Application of Part

51 (1) This Part does not apply to a record that contains,

(a) quality of care information;

(b) personal health information collected or created for the purpose of complying with the requirements of a quality assurance program within the meaning of the Health Professions Procedural Code that is Schedule 2 to the *Regulated Health Professions Act, 1991*;

(c) raw data from standardized psychological tests or assessments; or

(d) personal health information of the prescribed type in the custody or under the control of a prescribed class or classes of health information custodians. 2004, c. 3, Sched. A, s. 51 (1).

Severable record

(2) Despite subsection (1), this Part applies to that part of a record of personal health information that can reasonably be severed from the part of the record that contains the information described in clauses (1) (a) to (d). 2004, c. 3, Sched. A, s. 51 (2).

Health care practitioner acting for an institution

(3) This Part does not apply to a record in the custody or under the control of a health care practitioner who is employed by or acting for an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* that is not a health information custodian if the individual has the right to request access to the record under one of those Acts. 2007, c. 10, Sched. H, s. 18.

Permission to disclose

(4) When subsection (3) applies to a record, the health care practitioner may disclose the record to the institution to enable the institution to process the individual's request under the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*, as the case may be, for access to the record. 2007, c. 10, Sched. H, s. 18.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 51 of the Act is amended by adding the following subsections: (See: 2016, c. 6, Sched. 1, s. 1 (10))

Application to prescribed organization

(5) Subject to any exceptions and additional requirements, if any, that are prescribed, this Part applies to the prescribed organization as if it were a health information custodian with respect to the following records and as if the prescribed organization has custody or control of the records:

1. A record of personal health information that is accessible to health information custodians by means of the electronic health record developed and maintained by the prescribed organization.
2. The electronic records kept by the prescribed organization under paragraphs 4, 5 and 6 of section 55.3. 2016, c. 6, Sched. 1, s. 1 (10).

Application to record of a custodian

(6) Subject to any exceptions and additional requirements, if any, that are prescribed, this Part applies to a record in the custody or control of a health information custodian respecting all instances where all or part of the personal health information of the individual that is accessible by means of the electronic health record developed and maintained by the prescribed organization is viewed, handled or otherwise dealt with by the custodian. 2016, c. 6, Sched. 1, s. 1 (10).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 18 - 04/06/2007

2016, c. 6, Sched. 1, s. 1 (10) - not in force

Individual's right of access

52 (1) Subject to this Part, an individual has a right of access to a record of personal health information about the individual that is in the custody or under the control of a health information custodian unless,

(a) the record or the information in the record is subject to a legal privilege that restricts disclosure of the record or the information, as the case may be, to the individual;

(b) another Act, an Act of Canada or a court order prohibits disclosure to the individual of the record or the information in the record in the circumstances;

(c) the information in the record was collected or created primarily in anticipation of or for use in a proceeding, and the proceeding, together with all appeals or processes resulting from it, have not been concluded;

(d) the following conditions are met:

(i) the information was collected or created in the course of an inspection, investigation or similar procedure authorized by law, or undertaken for the purpose of the detection, monitoring or prevention of a person's receiving or attempting to receive a service or benefit, to which the person is not entitled under an Act or a program operated by the Minister, or a payment for such a service or benefit, and

(ii) the inspection, investigation, or similar procedure, together with all proceedings, appeals or processes resulting from them, have not been concluded;

(e) granting the access could reasonably be expected to,

(i) result in a risk of serious harm to the treatment or recovery of the individual or a risk of serious bodily harm to the individual or another person,

(ii) lead to the identification of a person who was required by law to provide information in the record to the custodian, or

(iii) lead to the identification of a person who provided information in the record to the custodian explicitly or implicitly in confidence if the custodian considers it appropriate in the circumstances that the identity of the person be kept confidential; or

(f) the following conditions are met:

(i) the custodian is an institution within the meaning of the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* or is acting as part of such an institution, and

(ii) the custodian would refuse to grant access to the part of the record,

(A) under clause 49 (a), (c) or (e) of the *Freedom of Information and Protection of Privacy Act*, if the request were made under that Act and that Act applied to the record, or

(B) under clause 38 (a) or (c) of the *Municipal Freedom of Information and Protection of Privacy Act*, if the request were made under that Act and that Act applied to the record. 2004, c. 3, Sched. A, s. 52 (1); 2007, c. 10, Sched. H, s. 19; 2009, c. 33, Sched. 18, s. 25 (5).

Format of records

(1.1) The right to access a record of personal health information includes the right to access the record in an electronic format that meets the prescribed requirements, subject to any restrictions, additional requirements or exceptions that may be prescribed. 2020, c. 5, Sched. 6, s. 9.

Severable record

(2) Despite subsection (1), an individual has a right of access to that part of a record of personal health information about the individual that can reasonably be severed from the part of the record to which the individual does not have a right of access as a result of clauses (1) (a) to (f). 2004, c. 3, Sched. A, s. 52 (2).

Same

(3) Despite subsection (1), if a record is not a record dedicated primarily to personal health information about the individual requesting access, the individual has a right of access only to the portion of personal health information about the individual in the record that can reasonably be severed from the record for the purpose of providing access. 2004, c. 3, Sched. A, s. 52 (3).

Individual's plan of service

(4) Despite subsection (1), a health information custodian shall not refuse to grant the individual access to his or her plan of service within the meaning of the *Home Care and Community Services Act, 1994*. 2004, c. 3, Sched. A, s. 52 (4); 2007, c. 8, s. 224 (7).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 52 (4) of the Act is repealed and the following substituted: (See: 2020, c. 13, Sched. 3, s. 8 (17))

Home and community care service information

(4) Despite subsection (1), a health information custodian shall not refuse to grant the individual access to his or her plan of service within the meaning of the *Home Care and Community Services Act, 1994* or to the individual's personal health information that is described in clause (c.1) of the definition of "personal health information" in subsection 4 (1) of this Act. 2020, c. 13, Sched. 3, s. 8 (17).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 52 (4) of the Act is repealed and the following substituted: (See: 2020, c. 13, Sched. 3, s. 8 (18))

Home and community care service information

(4) Despite subsection (1), a health information custodian shall not refuse to grant the individual access to the individual's personal health information that is described in clause (c.1) of the definition of "personal health information" in subsection 4 (1). 2020, c. 13, Sched. 3, s. 8 (18).

Consultation regarding harm

(5) Before deciding to refuse to grant an individual access to a record of personal health information under subclause (1) (e) (i), a health information custodian may consult with a member of the College of Physicians and Surgeons of Ontario or a member of the College of Psychologists of Ontario. 2004, c. 3, Sched. A, s. 52 (5).

Informal access

(6) Nothing in this Act prevents a health information custodian from,

(a) granting an individual access to a record of personal health information, to which the individual has a right of access, if the individual makes an oral request for access or does not make any request for access under section 53; or

(b) with respect to a record of personal health information to which an individual has a right of access, communicating with the individual or his or her substitute decision-maker who is authorized to consent on behalf of the individual to the collection, use or disclosure of personal health information about the individual. 2004, c. 3, Sched. A, s. 52 (6).

Duty of health information custodian

(7) Nothing in this Part relieves a health information custodian from a legal duty to provide, in a manner that is not inconsistent with this Act, personal health information as expeditiously as is necessary for the provision of health care to the individual. 2004, c. 3, Sched. A, s. 52 (7).

Section Amendments with date in force (d/m/y)

2007, c. 8, s. 224 (7) - 01/07/2010; 2007, c. 10, Sched. H, s. 19 - 04/06/2007

2009, c. 33, Sched. 18, s. 25 (5) - 15/12/2009

2020, c. 5, Sched. 6, s. 9 - 25/03/2020; 2020, c. 13, Sched. 3, s. 8 (17, 18) - not in force

Request for access

53 (1) An individual may exercise a right of access to a record of personal health information by making a written request for access to the health information custodian that has custody or control of the information. 2004, c. 3, Sched. A, s. 53 (1).

Detail in request

(2) The request must contain sufficient detail to enable the health information custodian to identify and locate the record with reasonable efforts. 2004, c. 3, Sched. A, s. 53 (2).

Assistance

(3) If the request does not contain sufficient detail to enable the health information custodian to identify and locate the record with reasonable efforts, the custodian shall offer assistance to the person requesting access in reformulating the request to comply with subsection (2). 2004, c. 3, Sched. A, s. 53 (3).

Response of health information custodian

54 (1) A health information custodian that receives a request from an individual for access to a record of personal health information shall,

(a) make the record available to the individual for examination and, at the request of the individual, provide a copy of the record to the individual and if reasonably practical, an explanation of any term, code or abbreviation used in the record;

(b) give a written notice to the individual stating that, after a reasonable search, the custodian has concluded that the record does not exist, cannot be found, or is not a record to which this Part applies, if that is the case;

(c) if the custodian is entitled to refuse the request, in whole or in part, under any provision of this Part other than clause 52 (1) (c), (d) or (e), give a written notice to the individual stating that the custodian is refusing the request, in whole or in part, providing a reason for the refusal and stating that the individual is entitled to make a complaint about the refusal to the Commissioner under Part VI; or

(d) subject to subsection (1.1), if the custodian is entitled to refuse the request, in whole or in part, under clause 52 (1) (c), (d) or (e), give a written notice to the individual stating that the individual is entitled to make a complaint about the refusal to the Commissioner under Part VI, and that the custodian is refusing,

(i) the request, in whole or in part, while citing which of clauses 52 (1) (c), (d) and (e) apply,

(ii) the request, in whole or in part, under one or more of clauses 52 (1) (c), (d) and (e), while not citing which of those provisions apply, or

(iii) to confirm or deny the existence of any record subject to clauses 52 (1) (c), (d) and (e). 2004, c. 3, Sched. A, s. 54 (1); 2007, c. 10, Sched. H, s. 20 (1, 2).

Providing reasons

(1.1) A custodian acting under clause (1) (d) shall not act under subclause (1) (d) (i) where doing so would reasonably be expected in the circumstances known to the person making the decision on behalf of the custodian to reveal to the individual, directly or indirectly, information to which the individual does not have a right of access. 2007, c. 10, Sched. H, s. 20 (3).

Time for response

(2) Subject to subsection (3), the health information custodian shall give the response required by clause (1) (a), (b), (c) or (d) as soon as possible in the circumstances but no later than 30 days after receiving the request. 2004, c. 3, Sched. A, s. 54 (2).

Extension of time for response

(3) Within 30 days after receiving the request for access, the health information custodian may extend the time limit set out in subsection (2) for a further period of time of not more than 30 days if,

(a) meeting the time limit would unreasonably interfere with the operations of the custodian because the information consists of numerous pieces of information or locating the information would necessitate a lengthy search; or

(b) the time required to undertake the consultations necessary to reply to the request within 30 days after receiving it would make it not reasonably practical to reply within that time. 2004, c. 3, Sched. A, s. 54 (3).

Notice of extension

(4) Upon extending the time limit under subsection (3), the health information custodian shall give the individual written notice of the extension setting out the length of the extension and the reason for the extension. 2004, c. 3, Sched. A, s. 54 (4).

Expedited access

(5) Despite subsection (2), the health information custodian shall give the response required by clause (1) (a), (b), (c) or (d) within the time period that the individual specifies if,

(a) the individual provides the custodian with evidence satisfactory to the custodian, acting on a reasonable basis, that the individual requires access to the requested record of personal health information on an urgent basis within that time period; and

(b) the custodian is reasonably able to give the required response within that time period. 2004, c. 3, Sched. A, s. 54 (5).

Frivolous or vexatious requests

(6) A health information custodian that believes on reasonable grounds that a request for access to a record of personal health information is frivolous or vexatious or is made in bad faith may refuse to grant the individual access to the requested record. 2004, c. 3, Sched. A, s. 54 (6).

Effect of non-compliance

(7) If the health information custodian does not respond to the request within the time limit or before the extension, if any, expires, the custodian shall be deemed to have refused the individual's request for access. 2004, c. 3, Sched. A, s. 54 (7).

Right to complain

(8) If the health information custodian refuses or is deemed to have refused the request, in whole or in part,

(a) the individual is entitled to make a complaint about the refusal to the Commissioner under Part VI; and

(b) in the complaint, the burden of proof in respect of the refusal lies on the health information custodian. 2004, c. 3, Sched. A, s. 54 (8).

Identity of individual

(9) A health information custodian shall not make a record of personal health information or a part of it available to an individual under this Part or provide a copy of it to an individual under clause (1) (a) without first taking reasonable steps to be satisfied as to the individual's identity. 2004, c. 3, Sched. A, s. 54 (9).

Fee for access

(10) A health information custodian that makes a record of personal health information or a part of it available to an individual under this Part or provides a copy of it to an individual under clause (1) (a) may charge the individual a fee for that purpose if the custodian first gives the individual an estimate of the fee. 2004, c. 3, Sched. A, s. 54 (10).

Amount of fee

(11) The amount of the fee shall not exceed the prescribed amount or the amount of reasonable cost recovery, if no amount is prescribed. 2004, c. 3, Sched. A, s. 54 (11).

Waiver of fee

(12) A health information custodian mentioned in subsection (10) may waive the payment of all or any part of the fee that an individual is required to pay under that subsection if, in the custodian's opinion, it is fair and equitable to do so. 2004, c. 3, Sched. A, s. 54 (12).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 20 (1-3) - 04/06/2007

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section: (See: 2020, c. 5, Sched. 6, s. 10)

Consumer electronic service providers

54.1 (1) In this section,

"consumer electronic service provider" means a person who provides electronic services to individuals at their request, primarily for,

(a) the purpose of allowing those individuals to access, use, disclose, modify, maintain or otherwise manage their records of personal health information, or

(b) such other purposes as may be prescribed. 2020, c. 5, Sched. 6, s. 10.

Prescribed requirements

(2) In providing electronic services to an individual, a consumer electronic service provider shall comply with the prescribed requirements. 2020, c. 5, Sched. 6, s. 10.

Health number

(3) Despite section 34, a consumer electronic service provider may, if authorized by the individual who requested the provider's services, collect and use health numbers in accordance with any prescribed rules in order to verify the identity of an individual or for any other prescribed purpose. 2020, c. 5, Sched. 6, s. 10.

Health information custodians

(4) A health information custodian that provides personal health information to a consumer electronic service provider shall comply with any prescribed requirements or procedures. 2020, c. 5, Sched. 6, s. 10.

Not required to respond through consumer electronic service provider

(5) For greater certainty, a health information custodian that receives an individual's request for access to their records of personal health information from a consumer electronic service provider is not required to provide the personal health information to the consumer electronic service provider in responding to the request. 2020, c. 5, Sched. 6, s. 10.

Section Amendments with date in force (d/m/y)

2020, c. 5, Sched. 6, s. 10 - not in force

CORRECTION

Correction

55 (1) If a health information custodian has granted an individual access to a record of his or her personal health information and if the individual believes that the record is inaccurate or incomplete for the purposes for which the custodian has collected, uses or has used the information, the individual may request in writing that the custodian correct the record. 2004, c. 3, Sched. A, s. 55 (1); 2007, c. 10, Sched. H, s. 21.

Informal request

(2) If the individual makes an oral request that the health information custodian correct the record, nothing in this Part prevents the custodian from making the requested correction. 2004, c. 3, Sched. A, s. 55 (2).

Reply

(3) As soon as possible in the circumstances but no later than 30 days after receiving a request for a correction under subsection (1), the health information custodian shall, by written notice to the individual, grant or refuse the individual's request or extend the deadline for replying for a period of not more than 30 days if,

(a) replying to the request within 30 days would unreasonably interfere with the activities of the custodian; or

(b) the time required to undertake the consultations necessary to reply to the request within 30 days would make it not reasonably practical to reply within that time. 2004, c. 3, Sched. A, s. 55 (3).

Extension of time for reply

(4) A health information custodian that extends the time limit under subsection (3) shall,

(a) give the individual written notice of the extension setting out the length of the extension and the reason for the extension; and

(b) grant or refuse the individual's request as soon as possible in the circumstances but no later than the expiry of the time limit as extended. 2004, c. 3, Sched. A, s. 55 (4).

Deemed refusal

(5) A health information custodian that does not grant a request for a correction under subsection (1) within the time required shall be deemed to have refused the request. 2004, c. 3, Sched. A, s. 55 (5).

Frivolous or vexatious requests

(6) A health information custodian that believes on reasonable grounds that a request for a correction under subsection (1) is frivolous or vexatious or is made in bad faith may refuse to grant the request and, in that case, shall provide the individual with a notice that sets out the reasons for the refusal and that states that the individual is entitled to make a complaint about the refusal to the Commissioner under Part VI. 2004, c. 3, Sched. A, s. 55 (6).

Right to complain

(7) The individual is entitled to make a complaint to the Commissioner under Part VI about a refusal made under subsection (6). 2004, c. 3, Sched. A, s. 55 (7).

Duty to correct

(8) The health information custodian shall grant a request for a correction under subsection (1) if the individual demonstrates, to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information and gives the custodian the information necessary to enable the custodian to correct the record. 2004, c. 3, Sched. A, s. 55 (8).

Exceptions

(9) Despite subsection (8), a health information custodian is not required to correct a record of personal health information if,

(a) it consists of a record that was not originally created by the custodian and the custodian does not have sufficient knowledge, expertise and authority to correct the record; or

(b) it consists of a professional opinion or observation that a custodian has made in good faith about the individual. 2004, c. 3, Sched. A, s. 55 (9).

Duties upon correction

(10) Upon granting a request for a correction under subsection (1), the health information custodian shall,

(a) make the requested correction by,

(i) recording the correct information in the record and,

(A) striking out the incorrect information in a manner that does not obliterate the record, or

(B) if that is not possible, labelling the information as incorrect, severing the incorrect information from the record, storing it separately from the record and maintaining a link in the record that enables a person to trace the incorrect information, or

(ii) if it is not possible to record the correct information in the record, ensuring that there is a practical system in place to inform a person who accesses the record that the information in the record is incorrect and to direct the person to the correct information;

(b) give notice to the individual of what it has done under clause (a);

(c) at the request of the individual, give written notice of the requested correction, to the extent reasonably possible, to the persons to whom the custodian has disclosed the information with respect to which the individual requested the correction of the record, except if the correction cannot reasonably be expected to have an effect on the ongoing provision of health care or other benefits to the individual. 2004, c. 3, Sched. A, s. 55 (10).

Notice of refusal

(11) A notice of refusal under subsection (3) or (4) must give the reasons for the refusal and inform the individual that the individual is entitled to,

(a) prepare a concise statement of disagreement that sets out the correction that the health information custodian has refused to make;

(b) require that the health information custodian attach the statement of disagreement as part of the records that it holds of the individual's personal health information and disclose the statement of disagreement whenever the custodian discloses information to which the statement relates;

(c) require that the health information custodian make all reasonable efforts to disclose the statement of disagreement to any person who would have been notified under clause (10) (c) if the custodian had granted the requested correction; and

(d) make a complaint about the refusal to the Commissioner under Part VI. 2004, c. 3, Sched. A, s. 55 (11).

Rights of individual

(12) If a health information custodian, under subsection (3) or (4), refuses a request for a correction under subsection (1), in whole or in part, or is deemed to have refused the request, the individual is entitled to take the actions described in any of clauses (11) (a), (b), (c) and (d). 2004, c. 3, Sched. A, s. 55 (12).

Custodian's duty

(13) If the individual takes an action described in clause (11) (b) or (c), the health information custodian shall comply with the requirements described in the applicable clause. 2004, c. 3, Sched. A, s. 55 (13).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 21 - 04/06/2007

PART V.1
ELECTRONIC HEALTH RECORD

Interpretation

55.1 (1) In this Part,

"advisory committee" means the advisory committee established by the Minister under section 55.11; ("comité consultatif")

"consent directive" means a directive under section 55.6 and includes a directive to modify or withdraw a directive that has already been made; ("directive en matière de consentement")

"electronic health record" means the electronic systems that are developed and maintained by the prescribed organization for the purpose of enabling health information custodians to collect, use and disclose personal health information by means of the systems in accordance with this Part and the regulations made under this Part; ("dossier de santé électronique")

"identifying information" has the same meaning as in subsection 4 (2). ("renseignements identificatoires") 2016, c. 6, Sched. 1, s. 1 (11); 2019, c. 15, Sched. 30, s. 5.

What constitutes collection, use, disclosure re: electronic health record

(2) Despite anything in section 2, for the purposes of this Part, a health information custodian is considered to be collecting, using or disclosing personal health information in the following circumstances:

1. When a health information custodian views, handles or otherwise deals with all or part of an individual's personal health information by means of the electronic health record and that information was provided to the prescribed organization by another health information custodian,

   i. the health information custodian is considered to be collecting the personal health information if it is viewing, handling or otherwise dealing with the information for the first time, and

   ii. the health information custodian is considered to be using the personal health information each time it subsequently views, handles or otherwise deals with the information.

2. Whenever a health information custodian views, handles or otherwise deals with all or part of an individual's personal health information by means of the electronic health record and that information was provided to the prescribed organization by the custodian, the custodian is considered to be using the personal health information.

3. A health information custodian who provides personal health information to the prescribed organization is considered to be disclosing the information only when another health information custodian collects the information by means of the electronic health record. 2016, c. 6, Sched. 1, s. 1 (11).

Same, where information provided to prescribed organization

(3) Despite anything in section 2, when a health information custodian provides personal health information to the prescribed organization,

(a) the custodian is considered not to be disclosing the information to the prescribed organization; and

(b) the prescribed organization is considered not to be collecting the information from the custodian. 2016, c. 6, Sched. 1, s. 1 (11).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (11) - 01/10/2020

2019, c. 15, Sched. 30, s. 5 - 01/10/2020

Electronic health record

55.2 (1) The prescribed organization has the power and the duty to develop and maintain the electronic health record in accordance with this Part and the regulations made under this Part. 2016, c. 6, Sched. 1, s. 1 (12).

Functions of prescribed organization

(2) The prescribed organization shall perform the following functions:

1. Manage and integrate personal health information it receives from health information custodians.

2. Ensure the proper functioning of the electronic health record by servicing the electronic systems that support the electronic health record.

3. Ensure the accuracy and quality of the personal health information that is accessible by means of the electronic health record by conducting data quality assurance activities on the personal health information it receives from health information custodians.

4. Conduct analyses of the personal health information that is accessible by means of the electronic health record in order to provide alerts and reminders to health information custodians for their use in the provision of health care to individuals. 2016, c. 6, Sched. 1, s. 1 (12).

Other powers and duties

(3) In addition to carrying out the powers, duties and functions described in this Part and in Part V, the prescribed organization shall carry out any prescribed powers, duties or functions. 2016, c. 6, Sched. 1, s. 1 (12).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (12) - 01/10/2020

Requirements for electronic health record

55.3 The prescribed organization shall comply with the following requirements in developing and maintaining the electronic health record:

1. It shall take reasonable steps to limit the personal health information it receives to that which is reasonably necessary for developing and maintaining the electronic health record.

2. It shall not permit its employees or any other person acting on its behalf to view, handle or otherwise deal with the personal health information received from health information custodians, unless the employee or person acting on behalf of the prescribed organization agrees to comply with the restrictions that apply to the prescribed organization.

3. It shall make available to the public and to each health information custodian that provides personal health information to it,

    i. a plain language description of the electronic health record, including a general description of the administrative, technical and physical safeguards in place to,

        A. protect against theft, loss and unauthorized collection, use or disclosure of the personal health information that is accessible by means of the electronic health record,

B. protect the personal health information that is accessible by means of the electronic health record against unauthorized copying, modification or disposal, and

C. protect the integrity, security and confidentiality of the personal health information that is accessible by means of the electronic health record, and

ii. any directives, guidelines and policies of the prescribed organization that apply to the personal health information that is accessible by means of the electronic health record, to the extent that these do not reveal a trade secret or confidential scientific, technical, commercial or labour relations information.

4. It shall,

i. keep an electronic record of all instances where all or part of the personal health information that is accessible by means of the electronic health record is viewed, handled or otherwise dealt with, and ensure that the record identifies the individual to whom the information relates, the type of information that is viewed, handled or otherwise dealt with, all persons who have viewed, handled or otherwise dealt with the information, and the date, time and location of the viewing, handling, or dealing with, and

ii. in the event that a health information custodian has requested that the prescribed organization transmit to the custodian personal health information that is accessible by means of the electronic health record, keep an electronic record of all instances where personal health information is transmitted to the custodian by means of the electronic health record, and ensure that the record identifies the individual to whom the information relates, the type of information that is transmitted, the custodian requesting the information, the date and time that the information was transmitted, and the location to which the information was transmitted.

5. It shall keep an electronic record of all instances where a consent directive is made, withdrawn or modified, and shall ensure that the record identifies the individual who made, withdrew or modified the consent directive, the instructions that the individual provided regarding the consent directive, the health information custodian, agent or other person to whom the directive is made, withdrawn or modified, and the date and time that the consent directive was made, withdrawn or modified.

6. It shall keep an electronic record of all instances where all or part of the personal health information that is accessible by means of the electronic health record is disclosed under section 55.7 and shall ensure that the record identifies the health information custodian that disclosed the information, the health information custodian that collected the information, any agent of the health information custodian who collected the information, the individual to whom the information relates, the type of information that was disclosed, the date and time of the disclosure and the purpose of the disclosure.

7. It shall audit and monitor the electronic records that it is required to keep under paragraphs 4, 5 and 6.

8. It shall, upon the request of the Commissioner provide to the Commissioner, for the purposes of Part VI, the electronic records kept under paragraphs 4, 5 and 6.

9. It shall, upon request of a health information custodian that requires the records to audit and monitor its compliance with this Act, provide to the custodian or an agent acting on the custodian's behalf, the records kept under paragraphs 4, 5 and 6.

10. It shall perform, for each system that retrieves, processes or integrates personal health information that is accessible by means of the electronic health record, an assessment with respect to,

i. threats, vulnerabilities and risks to the security and integrity of the personal health information, and

ii. how each of those systems may affect the privacy of the individuals to whom the information relates.

11. It shall notify, at the first reasonable opportunity, each health information custodian that provided personal health information to the prescribed organization if the personal health information that the health information custodian provided is stolen or lost or if it is collected, used or disclosed without authority.

12. It shall,

i. make available to each health information custodian that provided personal health information to the prescribed organization a written copy of the results of the assessments carried out under paragraph 10 that relates to the personal health information the custodian provided, and

ii. make available to the public a summary of the results of the assessments carried out under paragraph 10.

13. It shall ensure that any third party it retains to assist in providing services for the purpose of developing or maintaining the electronic health record agrees to comply with the restrictions and conditions that are necessary to enable the prescribed organization to comply with all these requirements.

14. On and after the first anniversary of the day this section comes into force, it shall have in place and comply with practices and procedures,

i. that are for the purpose of protecting the privacy of the individuals whose personal health information it receives and for maintaining the confidentiality of the information, and

ii. that are approved by the Commissioner.

15. It shall notify the Commissioner, in writing, immediately after becoming aware that personal health information that is accessible by means of the electronic health record,

i. has been viewed, handled or otherwise dealt with by the prescribed organization or a third party retained by the prescribed organization, other than in accordance with this Act or its regulations, or

ii. has been made available or released by the prescribed organization or a third party retained by the prescribed organization, other than in accordance with this Act or its regulations.

16. It shall submit to the Commissioner, at least annually, a report in the form and manner specified by the Commissioner, and based on or containing any information, other than personal health information, that is kept in the electronic record required under paragraph 6 that the Commissioner may specify, respecting every instance in which personal health information was disclosed under section 55.7 since the time of the last report.

17. It shall comply with the practices and procedures prescribed in the regulations when managing consent directives.

18. It shall have in place and comply with practices and procedures that have been approved by the Minister for responding to or facilitating a response to a request made by an individual under Part V in respect of the individual's record of personal health information that is accessible by means of the electronic health record.

19. It shall comply with such other requirements as may be prescribed in the regulations. 2016, c. 6, Sched. 1, s. 1 (13).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (13) - 01/10/2020

Minister's directives

55.4 (1) The Minister may make directives to the prescribed organization with respect to the carrying out of its powers, duties and functions under this Part, and the prescribed organization shall comply with the directives of the Minister. 2016, c. 6, Sched. 1, s. 1 (14).

Consultation

(2) Before making a directive under subsection (1), the Minister shall,

(a) submit a draft of the directive to the Commissioner and the advisory committee for the purpose of reviewing and making recommendations on the draft directive; and

(b) consider the recommendations, if any, made by the Commissioner and the advisory committee and amend the directive if the Minister considers it appropriate to do so. 2016, c. 6, Sched. 1, s. 1 (14).

Timing

(3) The Minister shall allow the Commissioner and the advisory committee a period of at least 30 days for the purposes of review and recommendation under subsection (2), unless the Minister believes that there are urgent circumstances involving a significant risk to privacy or the confidentiality of personal health information, in which case the Minister may abridge the review period for both the Commissioner and the advisory committee to not less than five business days. 2016, c. 6, Sched. 1, s. 1 (14).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (14) - 01/10/2020

Collection, use, disclosure by custodians

Restrictions on collection

55.5 (1) A health information custodian shall not collect personal health information by means of the electronic health record except for the purpose of,

(a) providing or assisting in the provision of health care to the individual to whom the information relates; or

(b) eliminating or reducing a significant risk of serious bodily harm to a person or group of persons, where the health information custodian believes on reasonable grounds that the collection is necessary for this purpose. 2016, c. 6, Sched. 1, s. 1 (15).

Unique identification

(2) A health information custodian may collect, use and disclose prescribed data elements for the purpose of uniquely identifying an individual in order to collect personal health information under subsection (1). 2016, c. 6, Sched. 1, s. 1 (15).

Where consent directive exists

(3) Despite subsection (1), where personal health information that is accessible by means of the electronic health record is subject to a consent directive made by an individual under subsection 55.6 (1), a health information custodian may only collect the personal health information in the circumstances permitted under subsection 55.7 (1), (2) or (3). 2016, c. 6, Sched. 1, s. 1 (15).

Use or disclosure

(4) A health information custodian that collects personal health information under clause (1) (a) may use or disclose the information for any purpose for which this Act permits or requires a custodian to use or disclose personal health information. 2016, c. 6, Sched. 1, s. 1 (15).

Same

(5) Despite any other provision in this Act or the regulations, a health information custodian that collects personal health information under clause (1) (b) may only use or disclose the information for the purpose for which the information was collected. 2016, c. 6, Sched. 1, s. 1 (15).

Section 12 obligations

(6) If a health information custodian requests that the prescribed organization transmit personal health information to the custodian by means of the electronic health record and the prescribed organization transmits the information as requested, the custodian shall comply with the obligations referred to in subsection 12 (1) with respect to the transmitted information, regardless of whether the custodian has viewed, handled or otherwise dealt with the information. 2016, c. 6, Sched. 1, s. 1 (15).

Same, notice of unauthorized collection

(7) Subject to the exceptions and additional requirements, if any, that are prescribed, and in addition to any notice that is required to be given in the case of an unauthorized use or disclosure under subsections 12 (2) and (3), if personal health information about an individual is collected without authority by means of the electronic health record, the health information custodian who is responsible for the unauthorized collection shall,

(a) notify the individual at the first reasonable opportunity of the unauthorized collection, and include in the notice a statement that the individual is entitled to make a complaint to the Commissioner under Part VI; and

(b) if the circumstances surrounding the unauthorized collection meet the prescribed requirements, notify the Commissioner of the unauthorized collection. 2016, c. 6, Sched. 1, s. 1 (15).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (15) - 01/10/2020

Consent directives

55.6 (1) Subject to the limitations prescribed in the regulations, if any, an individual may at any time make a directive that withholds or withdraws, in whole or in part, the individual's consent to the collection, use and disclosure of his or her personal health information by means of the electronic health record by a health information custodian for the purposes of providing or assisting in the provision of health care to the individual. 2016, c. 6, Sched. 1, s. 1 (16).

Compliance

(2) Where the prescribed organization receives a directive made under subsection (1), it shall, in accordance with the requirements prescribed in the regulations, if any, implement the directive. 2016, c. 6, Sched. 1, s. 1 (16).

Withdrawal or modifications

(3) Subject to the limitations prescribed in the regulations, if any, an individual who has made a directive under subsection (1) may withdraw or modify the directive. 2016, c. 6, Sched. 1, s. 1 (16).

How to make directive

(4) An individual may make a directive under subsection (1) or withdraw or modify a directive under subsection (3) by submitting the directive to the prescribed organization. 2016, c. 6, Sched. 1, s. 1 (16).

Must contain sufficient detail

(5) The directive must contain sufficient detail to enable the prescribed organization to implement the directive. 2016, c. 6, Sched. 1, s. 1 (16).

Assistance

(6) If the directive does not contain sufficient detail to enable the prescribed organization to implement the directive with reasonable efforts, the prescribed organization shall offer assistance to the person in reformulating the directive to comply with subsection (5). 2016, c. 6, Sched. 1, s. 1 (16).

Information re directives

(7) If a health information custodian seeks to collect personal health information that is subject to a consent directive, the prescribed organization shall notify the custodian that an individual has made a directive under subsection (1) and shall ensure that no personal health information that is subject to the directive is provided. 2016, c. 6, Sched. 1, s. 1 (16).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (16) - 01/10/2020

Consent overrides

55.7 (1) Despite the contents of a consent directive, a health information custodian may disclose personal health information that is subject to the directive by means of the electronic health record if the custodian that is seeking to collect the information obtains the express consent of the individual to whom the information relates. 2016, c. 6, Sched. 1, s. 1 (17).

Same, protection of individual

(2) Despite the contents of a consent directive, a health information custodian may disclose personal health information that is subject to the directive by means of the electronic health record if,

(a) the custodian that is seeking to collect the personal health information believes, on reasonable grounds, that the collection is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to the individual to whom the information relates; and

(b) it is not reasonably possible for the health information custodian that is seeking to collect the personal health information to obtain the individual's consent in a timely manner. 2016, c. 6, Sched. 1, s. 1 (17).

Same, protection of others

(3) Despite the contents of a consent directive, a health information custodian may disclose personal health information that is subject to the directive by means of the electronic health record, if the health information custodian that is seeking to collect the personal health information believes on reasonable grounds that the collection is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person other than the individual to whom the information relates or to a group of persons. 2016, c. 6, Sched. 1, s. 1 (17).

Use or disclosure

(4) Despite any other provision in this Act or its regulations, a health information custodian that collects personal health information under subsection (1), (2) or (3) may only use or disclose the information for the purpose for which the information was collected. 2016, c. 6, Sched. 1, s. 1 (17).

Audit, etc.

(5) The prescribed organization shall audit and monitor every instance where personal health information is collected in the circumstances described in subsection (1), (2) or (3). 2016, c. 6, Sched. 1, s. 1 (17).

Notice re consent overrides

(6) Where personal health information has been collected in the circumstances described in subsection (1), (2) or (3), the prescribed organization shall immediately provide written notice, in accordance with the requirements in the regulations, to the health information custodian that collected the personal health information. 2016, c. 6, Sched. 1, s. 1 (17).

Same

(7) Upon receiving notice under subsection (6), the custodian that collected the personal health information in the circumstances described in subsection (1), (2) or (3) shall, at the first reasonable opportunity,

(a) notify the individual to whom the information relates, in accordance with the requirements in the regulations; and

(b) if the personal health information has been collected in the circumstances described in subsection (3), give written notice to the Commissioner, in accordance with the regulations, in a manner that does not provide identifying information about the individual to whom the information relates or the person or group of persons at significant risk of serious bodily harm. 2016, c. 6, Sched. 1, s. 1 (17).

No identifying information

(8) Where personal health information has been collected in the circumstances described in subsection (3), in notifying the individual to whom the information relates, the custodian shall not provide identifying information about the person or group of persons at significant risk of serious bodily harm. 2016, c. 6, Sched. 1, s. 1 (17).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (17) - 01/10/2020

Medication interaction checks

55.8 Despite the contents of a consent directive, personal health information may be utilized by a system that is maintained by the prescribed organization and that retrieves, processes or integrates personal health information that is accessible by means of the electronic health record to provide alerts to health information custodians about potentially harmful medication interactions, as long as the alerts do not reveal personal health information that is subject to the consent directive. 2016, c. 6, Sched. 1, s. 1 (18).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (18) - 01/10/2020

Collection of information by Ministry

55.9 (1) Despite section 55.5, members of a ministry data integration unit located within the Ministry may collect personal health information by means of the electronic health record for the purposes set out in section 49.2 of the *Freedom of Information and Protection of Privacy Act* in accordance with the requirements set out in Part III.1 (Data Integration) of that Act. 2020, c. 5, Sched. 6, s. 11.

No other uses and disclosures permitted

(2) Despite any other provision in this Act or the regulations, members of a ministry data integration unit shall not use or disclose the personal health information collected under subsection (1) except as authorized by this section or by Part III.1 of the *Freedom of Information and Protection of Privacy Act*. 2020, c. 5, Sched. 6, s. 11.

Direction to prescribed organization

(3) A member of a ministry data integration unit located within the Ministry may issue a direction requiring the prescribed organization to provide members of the ministry data integration unit with the information that the members are authorized to collect under subsection (1), and the prescribed organization must comply with the direction. 2020, c. 5, Sched. 6, s. 11.

Terms and conditions

(4) A direction made under subsection (3) may specify the form, manner and timeframe in which the information that is the subject of the direction is to be provided to the ministry data integration unit. 2020, c. 5, Sched. 6, s. 11.

Disclosure

(5) If members of a ministry data integration unit collect personal health information by means of the electronic health record under subsection (1), the disclosure of the personal health information to the members of the ministry data integration unit by the health information custodian who provided it to the prescribed organization is permitted under this Act. 2020, c. 5, Sched. 6, s. 11.

Definitions

(6) In this section,

"member" and "ministry data integration unit" have the same meanings as in Part III.1 of the *Freedom of Information and Protection of Privacy Act*. 2020, c. 5, Sched. 6, s. 11.

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (19) - 01/10/2020

2020, c. 5, Sched. 6, s. 11 - 01/10/2020

Provision of personal health information to, and collection by, coroners and medical officers of health

Provision to coroner

55.9.1 (1) Where the prescribed requirements, if any, are met, the prescribed organization may provide personal health information that is accessible by means of the electronic health record to a coroner in relation to an investigation conducted under the *Coroners Act*. 2020, c. 5, Sched. 6, s. 12.

Collection by medical officer of health

(2) The Chief Medical Officer of Health or a medical officer of health within the meaning of the *Health Protection and Promotion Act* may collect personal health information by means of the electronic health record for purposes related to their duties under that Act or the *Immunization of School Pupils Act*. 2020, c. 5, Sched. 6, s. 12.

Disclosure

(3) Personal health information may be provided or collected in accordance with subsection (1) or (2) despite any provision of sections 55.5, 55.6 and 55.7. 2020, c. 5, Sched. 6, s. 12.

Section Amendments with date in force (d/m/y)

2020, c. 5, Sched. 6, s. 12 - 01/10/2020

Provision of information for purposes other than health care

55.10 (1) Despite any other provision in this Act or the regulations, the Minister may direct the disclosure of personal health information that is accessible by means of the electronic health record to a person, as if the Minister had custody or control of the information, if,

(a) a person has requested that the Minister disclose the personal health information in accordance with clause 39 (1) (c), subsection 39 (2), section 44 or 45 of this Act;

(b) the personal health information requested by the person was provided to the prescribed organization under this Part by more than one health information custodian;

(c) the Minister has,

(i) submitted the request to the advisory committee,

(ii) provided the advisory committee with 30 days to review the request and make recommendations to the Minister, and

(iii) considered the recommendations, if any, made by the advisory committee; and

(d) the Minister has determined that the disclosure of the personal health information would be in accordance with clause 39 (1) (c), subsection 39 (2) or section 44 or 45. 2016, c. 6, Sched. 1, s. 1 (20).

Shorter time period

(2) The Minister may shorten the time period in subclause (1) (c) (ii) if,

(a) in the Minister's opinion, the urgency of the situation requires it; and

(b) the request is for the disclosure of personal health information in accordance with subsection 39 (2). 2016, c. 6, Sched. 1, s. 1 (20).

Must comply

(3) The prescribed organization must comply with a direction under this section. 2016, c. 6, Sched. 1, s. 1 (20).

Terms and conditions

(4) A direction under this section may specify the form, manner and timeframe in which the information that is the subject of the direction is to be disclosed. 2016, c. 6, Sched. 1, s. 1 (20).

Disclosure only if necessary

(5) The Minister shall not direct the disclosure of personal health information under this section if other information will serve the purpose of the disclosure. 2016, c. 6, Sched. 1, s. 1 (20).

Only necessary disclosure

(6) The Minister shall not direct the disclosure of more personal health information than is reasonably necessary to meet the purpose of the disclosure. 2016, c. 6, Sched. 1, s. 1 (20).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (20) - 01/10/2020

Advisory committee

55.11 (1) The Minister shall establish an advisory committee for the purpose of making recommendations to the Minister concerning,

(a) practices and procedures that the prescribed organization must have in place to protect the privacy of the individuals whose personal health information it receives and to maintain the confidentiality of the information;

(b) practices and procedures that the prescribed organization must have in place for responding or facilitating a response to a request made by an individual under Part V for a record of personal health information relating to the individual that is accessible by means of the electronic health record;

(c) the administrative, technical and physical safeguards the prescribed organization should have in place to protect the privacy of the individuals whose personal health information it receives and to maintain the confidentiality of the information;

(d) the role of the prescribed organization in assisting a health information custodian to fulfil its obligations to give notice to individuals under subsections 12 (2) and 55.5 (7) in the event that personal health information that is accessible by means of the electronic health record is stolen or lost or is collected, used or disclosed without authority;

(e) the provision of notice in the event that personal health information that is accessible by means of the electronic health record is stolen or lost or is collected, used or disclosed without authority;

(f) anything that is referred to in this Part or in the regulations as capable of being the subject of a recommendation of the advisory committee; and

(g) any other matter referred to the advisory committee by the Minister. 2016, c. 6, Sched. 1, s. 1 (21).

Terms of reference

(2) Subject to the other provisions of this Part, the Minister shall determine the terms of reference of the advisory committee, including terms of reference with respect to conflicts of interest, the membership of the committee and the organization and governance of the committee. 2016, c. 6, Sched. 1, s. 1 (21).

Appointments

(3) The Minister shall appoint the members of the advisory committee in accordance with the requirements, if any, prescribed in the regulations. 2016, c. 6, Sched. 1, s. 1 (21).

Support by Ministry

(4) The Ministry,

(a) shall provide administrative support for the advisory committee;

(b) shall have custody and control of the records of the advisory committee for the purposes of the *Freedom of Information and Protection of Privacy Act*; and

(c) is responsible for compliance with the *Archives and Recordkeeping Act, 2006*, in connection with records created by or supplied to the advisory committee. 2016, c. 6, Sched. 1, s. 1 (21).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (21) - 01/10/2020

Practices and procedures review

55.12 (1) The Commissioner shall review the practices and procedures of the prescribed organization referred to in paragraph 14 of section 55.3 every three years after they are first approved or reviewed, as the case may be, to determine if the practices and procedures continue to meet the requirements of subparagraph 14 i of section 55.3 and, after the review, the Commissioner may renew the approval. 2020, c. 5, Sched. 6, s. 13.

Notice by Commissioner

(2) The Commissioner shall advise health information custodians of the results of a review conducted under subsection (1). 2016, c. 6, Sched. 1, s. 1 (22).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (22) - 01/10/2020

2020, c. 5, Sched. 6, s. 13 - 01/10/2020

Protection from liability for health information custodian

55.13 A health information custodian who, acting in good faith, provides personal health information to the prescribed organization by means of the electronic health record is not liable for damages resulting from,

(a) any unauthorized viewing or handling of the provided information, or any unauthorized dealing with the provided information, by the prescribed organization, its employees or any other person acting on its behalf; or

(b) any unauthorized collection of the provided information by another health information custodian. 2016, c. 6, Sched. 1, s. 1 (23).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (23) - 01/10/2020

Regulations

55.14 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Part. 2016, c. 6, Sched. 1, s. 1 (24).

Same

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

(a) prescribing an organization as the prescribed organization for the purposes of this Part and respecting the purposes for which the organization is prescribed, subject to subsection (3);

(b) prescribing additional powers, duties and functions of the prescribed organization;

(c) prescribing additional requirements with which the prescribed organization must comply in developing or maintaining the electronic health record;

(d) specifying data elements collected, used or disclosed by a health information custodian under subsection 55.5 (2) that may not be made subject to a consent directive provided by an individual under subsection 55.6 (1);

(e) governing the notices that are required under section 55.7 and requiring notices under other circumstances and governing such notices;

(f) prescribing the level of specificity at which personal health information may be made subject to a consent directive, including whose collection, use and disclosure of the information may be restricted;

(g) REPEALED: 2020, c. 5, Sched. 6, s. 14.

(h) requiring classes of health information custodians or specific health information custodians to provide personal health information to the prescribed organization under this Part and specifying what personal health information they are required to provide;

(i) respecting the provision of services related to the electronic health record by the prescribed organization directly to individuals;

(j) providing for anything that under this Part may or must be provided for or prescribed by the regulations. 2016, c. 6, Sched. 1, s. 1 (24); 2020, c. 5, Sched. 6, s. 14.

Same, two or more organizations prescribed

(3) A regulation made under clause (2) (a) may prescribe more than one organization to act as the prescribed organization for the purposes of this Part and may provide for the respective powers, duties and functions of each organization under this Part. 2016, c. 6, Sched. 1, s. 1 (24).

Review

(4) The Minister shall review every regulation made under the authority of clause (2) (f) at least once in every three-year period. 2016, c. 6, Sched. 1, s. 1 (24).

Public consultation

(5) Section 74 applies, with necessary modification, to the making of a regulation under this section. 2016, c. 6, Sched. 1, s. 1 (24).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (24) - 03/06/2016

2020, c. 5, Sched. 6, s. 14 - 25/03/2020

PART VI
ADMINISTRATION AND ENFORCEMENT

COMPLAINTS, REVIEWS AND INSPECTIONS

Complaint to Commissioner

56 (1) A person who has reasonable grounds to believe that another person has contravened or is about to contravene a provision of this Act or its regulations may make a complaint to the Commissioner. 2004, c. 3, Sched. A, s. 56 (1).

Time for complaint

(2) A complaint that a person makes under subsection (1) must be in writing and must be filed within,

(a) one year after the subject-matter of the complaint first came to the attention of the complainant or should reasonably have come to the attention of the complainant, whichever is the shorter; or

(b) whatever longer period of time that the Commissioner permits if the Commissioner is satisfied that it does not result in any prejudice to any person. 2004, c. 3, Sched. A, s. 56 (2); 2009, c. 33, Sched. 18, s. 25 (6).

Same, refusal of request

(3) A complaint that an individual makes under subsection 54 (8) or 55 (7) or (12) shall be in writing and shall be filed within six months from the time at which the health information custodian refuses or is deemed to have refused the individual's request mentioned in the applicable subsection. 2004, c. 3, Sched. A, s. 56 (3).

Non-application

(4) The *Ombudsman Act* does not apply to any matter in respect of which a complaint may be made to the Commissioner under this Act or to the Commissioner or his or her employees or delegates acting under this Act. 2004, c. 3, Sched. A, s. 56 (4).

Section Amendments with date in force (d/m/y)

2009, c. 33, Sched. 18, s. 25 (6) - 15/12/2009

Response of Commissioner

57 (1) Upon receiving a complaint made under this Act, the Commissioner may inform the person about whom the complaint is made of the nature of the complaint and,

(a) inquire as to what means, other than the complaint, that the complainant is using or has used to resolve the subject-matter of the complaint;

(b) require the complainant to try to effect a settlement, within the time period that the Commissioner specifies, with the person about which the complaint is made; or

(c) authorize a mediator to review the complaint and to try to effect a settlement, within the time period that the Commissioner specifies, between the complainant and the person about which the complaint is made. 2004, c. 3, Sched. A, s. 57 (1).

Dealings without prejudice

(2) If the Commissioner takes an action described in clause (1) (b) or (c) but no settlement is effected within the time period specified,

(a) none of the dealings between the parties to the attempted settlement shall prejudice the rights and duties of the parties under this Act;

(b) none of the information disclosed in the course of trying to effect a settlement shall prejudice the rights and duties of the parties under this Act; and

(c) none of the information disclosed in the course of trying to effect a settlement and that is subject to mediation privilege shall be used or disclosed outside the attempted settlement, including in a review of a complaint under this section or in an inspection under section 60, unless all parties expressly consent. 2004, c. 3, Sched. A, s. 57 (2).

Commissioner's review

(3) If the Commissioner does not take an action described in clause (1) (b) or (c) or if the Commissioner takes an action described in one of those clauses but no settlement is effected within the time period specified, the Commissioner may review the subject-matter of a complaint made under this Act if satisfied that there are reasonable grounds to do so. 2004, c. 3, Sched. A, s. 57 (3).

No review

(4) The Commissioner may decide not to review the subject-matter of the complaint for whatever reason the Commissioner considers proper, including if satisfied that,

(a) the person about which the complaint is made has responded adequately to the complaint;

(b) the complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure, other than a complaint under this Act;

(c) the length of time that has elapsed between the date when the subject-matter of the complaint arose and the date the complaint was made is such that a review under this section would likely result in undue prejudice to any person;

(d) the complainant does not have a sufficient personal interest in the subject-matter of the complaint; or

(e) the complaint is frivolous or vexatious or is made in bad faith. 2004, c. 3, Sched. A, s. 57 (4).

Notice

(5) Upon deciding not to review the subject-matter of a complaint, the Commissioner shall give notice of the decision to the complainant and shall specify in the notice the reason for the decision. 2004, c. 3, Sched. A, s. 57 (5).

Same

(6) Upon deciding to review the subject-matter of a complaint, the Commissioner shall give notice of the decision to the person about whom the complaint is made. 2004, c. 3, Sched. A, s. 57 (6).

Commissioner's self-initiated review

58 (1) The Commissioner may, on his or her own initiative, conduct a review of any matter if the Commissioner has reasonable grounds to believe that a person has contravened or is about to contravene a provision of this Act or its regulations and that the subject-matter of the review relates to the contravention. 2004, c. 3, Sched. A, s. 58 (1).

Notice

(2) Upon deciding to conduct a review under this section, the Commissioner shall give notice of the decision to every person whose activities are being reviewed. 2004, c. 3, Sched. A, s. 58 (2).

Conduct of Commissioner's review

59 (1) In conducting a review under section 57 or 58, the Commissioner may make the rules of procedure that the Commissioner considers necessary and the *Statutory Powers Procedure Act* does not apply to the review. 2004, c. 3, Sched. A, s. 59 (1).

Evidence

(2) In conducting a review under section 57 or 58, the Commissioner may receive and accept any evidence and other information that the Commissioner sees fit, whether on oath or by affidavit or otherwise and whether or not it is or would be admissible in a court of law. 2004, c. 3, Sched. A, s. 59 (2).

Inspection powers

60 (1) In conducting a review under section 57 or 58, the Commissioner may, without a warrant or court order, enter and inspect any premises in accordance with this section if,

(a) the Commissioner has reasonable grounds to believe that,

(i) the person about whom the complaint was made or the person whose activities are being reviewed is using the premises for a purpose related to the subject-matter of the complaint or the review, as the case may be, and

(ii) the premises contains books, records or other documents relevant to the subject-matter of the complaint or the review, as the case may be; and

(b) the Commissioner is conducting the inspection for the purpose of determining whether the person has contravened or is about to contravene a provision of this Act or its regulations.

(c) REVOKED : 2016, c. 6, Sched. 1, s. 1 (25).

2004, c. 3, Sched. A, s. 60 (1); 2016, c. 6, Sched. 1, s. 1 (25).

Review powers

(2) In conducting a review under section 57 or 58, the Commissioner may,

(a) demand the production of any books, records or other documents relevant to the subject-matter of the review or copies of extracts from the books, records or other documents;

(b) inquire into all information, records, information practices of a health information custodian and other matters that are relevant to the subject-matter of the review;

(c) demand the production for inspection of anything described in clause (b);

(d) use any data storage, processing or retrieval device or system belonging to the person being investigated in order to produce a record in readable form of any books, records or other documents relevant to the subject-matter of the review; or

(e) on the premises that the Commissioner has entered, review or copy any books, records or documents that a person produces to the Commissioner, if the Commissioner pays the reasonable cost recovery fee that the health information custodian or person being reviewed may charge. 2004, c. 3, Sched. A, s. 60 (2).

Entry to dwellings

(3) The Commissioner shall not, without the consent of the occupier, exercise a power to enter a place that is being used as a dwelling, except under the authority of a search warrant issued under subsection (4). 2004, c. 3, Sched. A, s. 60 (3).

Search warrants

(4) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary to enter a place that is being used as a dwelling to investigate a complaint that is the subject of a review under section 57, he or she may issue a warrant authorizing the entry by a person named in the warrant. 2004, c. 3, Sched. A, s. 60 (4).

Time and manner for entry

(5) The Commissioner shall exercise the power to enter premises under this section only during reasonable hours for the premises and only in such a manner so as not to interfere with health care that is being provided to any person on the premises at the time of entry. 2004, c. 3, Sched. A, s. 60 (5).

No obstruction

(6) No person shall obstruct the Commissioner who is exercising powers under this section or provide the Commissioner with false or misleading information. 2004, c. 3, Sched. A, s. 60 (6).

Written demand

(7) A demand for books, records or documents or copies of extracts from them under subsection (2) must be in writing and must include a statement of the nature of the things that are required to be produced. 2004, c. 3, Sched. A, s. 60 (7).

Obligation to assist

(8) If the Commissioner makes a demand for any thing under subsection (2), the person having custody of the thing shall produce it to the Commissioner and, at the request of the Commissioner, shall provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce a record in readable form, if the demand is for a document. 2004, c. 3, Sched. A, s. 60 (8).

Removal of documents

(9) If a person produces books, records and other documents to the Commissioner, other than those needed for the current health care of any person, the Commissioner may, on issuing a written receipt, remove them and may review or copy any of them if the Commissioner is not able to review and copy them on the premises that the Commissioner has entered. 2004, c. 3, Sched. A, s. 60 (9).

Return of documents

(10) The Commissioner shall carry out any reviewing or copying of documents with reasonable dispatch, and shall forthwith after the reviewing or copying return the documents to the person who produced them. 2004, c. 3, Sched. A, s. 60 (10).

Admissibility of copies

(11) A copy certified by the Commissioner as a copy is admissible in evidence to the same extent, and has the same evidentiary value, as the thing copied. 2004, c. 3, Sched. A, s. 60 (11).

Answers under oath

(12) In conducting a review under section 57 or 58, the Commissioner may, by summons, in the same manner and to the same extent as a superior court of record, require the appearance of any person before the Commissioner and compel them to give oral or written evidence on oath or affirmation. 2004, c. 3, Sched. A, s. 60 (12).

Inspection of record without consent

(12.1) Despite subsections (2) and (12), the Commissioner shall not inspect a record of, require evidence of, or inquire into personal health information without the consent of the individual to whom it relates except in the circumstances referred to in subsections (13) and (14.1). 2020, c. 5, Sched. 6, s. 15 (1).

Same, public interest

(13) The Commissioner may inspect a record of, require evidence of, or inquire into personal health information without the consent of the individual to whom it relates if,

(a) the Commissioner first determines that it is reasonably necessary to do so, subject to any conditions or restrictions that the Commissioner specifies, which shall include a time limitation, in order to carry out the review and that the public interest in carrying out the review justifies dispensing with obtaining the individual's consent in the circumstances; and

(b) the Commissioner provides a statement to the person who has custody or control of the record to be inspected, or the evidence or information to be inquired into, setting out the Commissioner's determination under clause (a) together with brief written reasons and any restrictions and conditions that the Commissioner has specified. 2004, c. 3, Sched. A, s. 60 (13); 2020, c. 5, Sched. 6, s. 15 (2).

Limitation on delegation

(14) Despite subsection 67 (1), the power to make a determination under clause (13) (a) and to approve the brief written reasons under clause (13) (b) may not be delegated except to the Assistant Commissioner. 2004, c. 3, Sched. A, s. 60 (14).

Inspection of record without consent, abandoned records

(14.1) The Commissioner may inspect a record of, require evidence of, or inquire into personal health information without the consent of the individual to whom it relates if the Commissioner determines or has reasonable grounds to suspect that the record of personal health information has been abandoned. 2020, c. 5, Sched. 6, s. 15 (3).

Document privileged

(15) A document or thing produced by a person in the course of a review is privileged in the same manner as if the review were a proceeding in a court. 2007, c. 10, Sched. H, s. 22.

Protection

(16) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of a review by the Commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person. 2004, c. 3, Sched. A, s. 60 (16).

Protection under federal Act

(17) The Commissioner shall inform a person giving a statement or answer in the course of a review by the Commissioner of the person's right to object to answer any question under section 5 of the *Canada Evidence Act*. 2004, c. 3, Sched. A, s. 60 (17).

Representations

(18) The Commissioner shall give the person who made the complaint, the person about whom the complaint is made and any other affected person an opportunity to make representations to the Commissioner. 2004, c. 3, Sched. A, s. 60 (18).

Representative

(19) A person who is given an opportunity to make representations to the Commissioner may be represented by counsel or another person. 2004, c. 3, Sched. A, s. 60 (19).

Access to representations

(20) The Commissioner may permit a person to be present during the representations that another person makes to the Commissioner or to have access to them unless doing so would reveal,

(a) the substance of a record of personal health information, for which a health information custodian claims to be entitled to refuse a request for access made under section 53; or

(b) personal health information to which an individual is not entitled to request access under section 53. 2004, c. 3, Sched. A, s. 60 (20).

Proof of appointment

(21) If the Commissioner or Assistant Commissioner has delegated his or her powers under this section to an officer or employee of the Commissioner, the officer or employee who exercises the powers shall, upon request, produce the certificate of delegation signed by the Commissioner or Assistant Commissioner, as the case may be. 2004, c. 3, Sched. A, s. 60 (21).

Section Amendments with date in force (d/m/y)

2007, c. 10, Sched. H, s. 22 - 04/06/2007

2016, c. 6, Sched. 1, s. 1 (25) - 03/06/2016

2020, c. 5, Sched. 6, s. 15 (1-3) - 25/03/2020

Powers of Commissioner

61 (1) After conducting a review under section 57 or 58, the Commissioner may,

(a) if the review relates to a complaint into a request by an individual under subsection 53 (1) for access to a record of personal health information, make an order directing the health information custodian about whom the complaint was made to grant the individual access to the requested record;

(b) if the review relates to a complaint into a request by an individual under subsection 55 (1) for correction of a record of personal health information, make an order directing the health information custodian about whom a complaint was made to make the requested correction;

(c) make an order directing any person whose activities the Commissioner reviewed to perform a duty imposed by this Act or its regulations;

(d) make an order directing any person whose activities the Commissioner reviewed to cease collecting, using or disclosing personal health information if the Commissioner determines that the person is collecting, using or disclosing the information, as the case may be, or is about to do so in contravention of this Act, its regulations or an agreement entered into under this Act;

(e) make an order directing any person whose activities the Commissioner reviewed to return, transfer or dispose of records of personal health information that the Commissioner determines the person collected, used or disclosed in contravention of this Act, its regulations, or an agreement entered into under this Act but only if the return, transfer or disposal of the records is not reasonably expected to adversely affect the provision of health care to an individual.

(f) make an order directing any health information custodian whose activities the Commissioner reviewed to change, cease or not commence an information practice specified by the Commissioner, if the Commissioner determines that the information practice contravenes this Act or its regulations;

(f.1) make an order requiring a health information custodian or a class of health information custodians to cease providing personal health information to a consumer electronic service provider;

(g) make an order directing any health information custodian whose activities the Commissioner reviewed to implement an information practice specified by the Commissioner, if the Commissioner determines that the information practice is reasonably necessary in order to achieve compliance with this Act and its regulations;

(h) make an order directing any person who is an agent of a health information custodian, whose activities the Commissioner reviewed and that an order made under any of clauses (a) to (g) directs to take any action or to refrain from taking any action, to take the action or to refrain from taking the action if the Commissioner considers that it is necessary to make the order against the agent to ensure that the custodian will comply with the order made against the custodian; or

(h.1) make an order in accordance with section 61.1 requiring any person whose activities the Commissioner reviewed to pay an administrative penalty in the amount set out in the order if the Commissioner is of the opinion that the person has contravened this Act or its regulations;

(i) make comments and recommendations on the privacy implications of any matter that is the subject of the review. 2004, c. 3, Sched. A, s. 61 (1); 2019, c. 15, Sched. 30, s. 6; 2020, c. 5, Sched. 6, s. 16.

Terms of order

(2) An order that the Commissioner makes under subsection (1) may contain the terms that the Commissioner considers appropriate. 2004, c. 3, Sched. A, s. 61 (2).

Copy of order, etc.

(3) Upon making comments, recommendations or an order under subsection (1), the Commissioner shall provide a copy of them, including reasons for any order made, to,

(a) the complainant and the person about whom the complaint was made, if the Commissioner made the comments, recommendations or order after conducting a review under section 57 of a complaint;

(b) the person whose activities the Commissioner reviewed, if the Commissioner made the comments, recommendations or order after conducting a review under section 58;

(c) all other persons to whom the order is directed;

(d) the body or bodies that are legally entitled to regulate or review the activities of a health information custodian directed in the order or to whom the comments or recommendations relate; and

(e) any other person whom the Commissioner considers appropriate. 2004, c. 3, Sched. A, s. 61 (3).

No order

(4) If, after conducting a review under section 57 or 58, the Commissioner does not make an order under subsection (1), the Commissioner shall give the complainant, if any, and the person whose activities the Commissioner reviewed a notice that sets out the Commissioner's reasons for not making an order. 2004, c. 3, Sched. A, s. 61 (4).

Section Amendments with date in force (d/m/y)

2019, c. 15, Sched. 30, s. 6 - 31/07/2020

2020, c. 5, Sched. 6, s. 16 (1, 2) - 25/03/2020

Administrative penalties

61.1 (1) An order requiring a person to pay an administrative penalty may be issued under clause 61 (1) (h.1) for the purposes of,

(a) encouraging compliance with this Act and its regulations; or

(b) preventing a person from deriving, directly or indirectly, any economic benefit as a result of a contravention of this Act or its regulations. 2020, c. 5, Sched. 6, s. 17.

Amount of administrative penalty

(2) The amount of an administrative penalty for a contravention shall,

(a) reflect the purposes referred to in subsection (1); and

(b) be determined by the Commissioner in accordance with the regulations made under this Act. 2020, c. 5, Sched. 6, s. 17.

Two-year limitation

(3) An order requiring a person to pay an administrative penalty shall not be issued under this section more than two years after the day the most recent contravention on which the order is based first came to the knowledge of the Commissioner. 2020, c. 5, Sched. 6, s. 17.

Content of order of administrative penalty

(4) An order requiring a person to pay an administrative penalty shall,

(a) contain or be accompanied by a description of the contravention; and

(b) set out the amount of the penalty to be paid and specify the time and manner of the payment. 2020, c. 5, Sched. 6, s. 17.

Payment to Minister of Finance

(5) A person who is required to pay an administrative penalty shall pay the penalty to the Minister of Finance. 2020, c. 5, Sched. 6, s. 17.

Section Amendments with date in force (d/m/y)

2020, c. 5, Sched. 6, s. 17 - 25/03/2020

Appeal of order

62 (1) A person affected by an order of the Commissioner made under any of clauses 61 (1) (c) to (h.1) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order. 2004, c. 3, Sched. A, s. 62 (1); 2020, c. 5, Sched. 6, s. 18.

Certificate of Commissioner

(2) In an appeal under this section, the Commissioner shall certify to the Divisional Court,

(a) the order and a statement of the Commissioner's reasons for making the order;

(b) the record of all hearings that the Commissioner has held in conducting the review on which the order is based;

(c) all written representations that the Commissioner received before making the order; and

(d) all other material that the Commissioner considers is relevant to the appeal. 2004, c. 3, Sched. A, s. 62 (2).

Confidentiality of information

(3) In an appeal under this section, the court may take precautions to avoid the disclosure by the court or any person of any personal health information about an individual, including, where appropriate, receiving representations without notice, conducting hearings in private or sealing the court files. 2004, c. 3, Sched. A, s. 62 (3).

Court order

(4) On hearing an appeal under this section, the court may, by order,

(a) direct the Commissioner to make the decisions and to do the acts that the Commissioner is authorized to do under this Act and that the court considers proper; and

(b) if necessary, vary or set aside the Commissioner's order. 2004, c. 3, Sched. A, s. 62 (4).

Compliance by Commissioner

(5) The Commissioner shall comply with the court's order. 2004, c. 3, Sched. A, s. 62 (5).

Section Amendments with date in force (d/m/y)

2020, c. 5, Sched. 6, s. 18 - 25/03/2020

Enforcement of order

63 (1) An order made by the Commissioner under this Act that has become final as a result of there being no further right of appeal may be filed with the Superior Court of Justice and on filing becomes and is enforceable as a judgment or order of the Superior Court of Justice to the same effect. 2004, c. 3, Sched. A, s. 63.

Interest

(2) Section 129 of the *Courts of Justice Act* applies in respect of an order requiring a person to pay an administrative penalty under clause 61 (1) (h.1) and, for the purpose, the date on which the order is filed under subsection (1) is deemed to be the date of the order that is referred to in section 129 of the *Courts of Justice Act*. 2020, c. 5, Sched. 6, s. 19.

Debt due to the Crown

(3) An administrative penalty imposed under clause 61 (1) (h.1) that is not paid in accordance with the terms of the order is a debt due to the Crown, and the Crown may recover the debt by action or by any other remedy or procedure available by law to the Crown for the collection of debts owed to the Crown. 2020, c. 5, Sched. 6, s. 19.

Section Amendments with date in force (d/m/y)

2020, c. 5, Sched. 6, s. 19 - 25/03/2020

Further order of Commissioner

64 (1) After conducting a review under section 57 or 58 and making an order under subsection 61 (1), the Commissioner may rescind or vary the order or may make a further order under that subsection if new facts relating to the subject-matter of the review come to the Commissioner's attention or if there is a material change in the circumstances relating to the subject-matter of the review. 2004, c. 3, Sched. A, s. 64 (1).

Circumstances

(2) The Commissioner may exercise the powers described in subsection (1) even if the order that the Commissioner rescinds or varies has been filed with the Superior Court of Justice under section 63. 2004, c. 3, Sched. A, s. 64 (2).

Copy of order, etc.

(3) Upon making a further order under subsection (1), the Commissioner shall provide a copy of it to the persons described in clauses 61 (3) (a) to (e) and shall include with the copy a notice setting out,

(a) the Commissioner's reasons for making the order; and

(b) if the order was made under any of clauses 61 (1) (c) to (h.1), a statement that the persons affected by the order have the right to appeal described in subsection (4). 2004, c. 3, Sched. A, s. 64 (3); 2020, c. 5, Sched. 6, s. 20 (1).

Appeal

(4) A person affected by an order that the Commissioner rescinds, varies or makes under any of clauses 61 (1) (c) to (h.1) may appeal the order to the Divisional Court on a question of law in accordance with the rules of court by filing a notice of appeal within 30 days after receiving the copy of the order and subsections 62 (2) to (5) apply to the appeal. 2004, c. 3, Sched. A, s. 64 (4); 2020, c. 5, Sched. 6, s. 20 (2).

Section Amendments with date in force (d/m/y)

2020, c. 5, Sched. 6, s. 20 (1, 2) - 25/03/2020

Damages for breach of privacy

65 (1) If the Commissioner has made an order under this Act that has become final as the result of there being no further right of appeal, a person affected by the order may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of a contravention of this Act or its regulations. 2004, c. 3, Sched. A, s. 65 (1).

Same

(2) If a person has been convicted of an offence under this Act and the conviction has become final as a result of there being no further right of appeal, a person affected by the conduct that gave rise to the offence may commence a proceeding in the Superior Court of Justice for damages for actual harm that the person has suffered as a result of the conduct. 2004, c. 3, Sched. A, s. 65 (2).

Damages for mental anguish

(3) If, in a proceeding described in subsection (1) or (2), the Superior Court of Justice determines that the harm suffered by the plaintiff was caused by a contravention or offence, as the case may be, that the defendants engaged in wilfully or recklessly, the court may include in its award of damages an award, not exceeding $10,000, for mental anguish. 2004, c. 3, Sched. A, s. 65 (3).

Enforcement measures

65.1 The use of an enforcement measure provided for in this Act in respect of a contravention of this Act or its regulations does not prohibit the use, at the same time or different times, of any other enforcement measure or remedy provided for in this Act or otherwise available in law in respect of the same contravention. 2020, c. 5, Sched. 6, s. 21.

Section Amendments with date in force (d/m/y)

2020, c. 5, Sched. 6, s. 21 - 25/03/2020

General powers

66 The Commissioner may,

(a) engage in or commission research into matters affecting the carrying out of the purposes of this Act;

(b) conduct public education programs and provide information concerning this Act and the Commissioner's role and activities;

(c) receive representations from the public concerning the operation of this Act;

(d) on the request of a health information custodian, offer comments on the custodian's actual or proposed information practices;

(e) assist in investigations and similar procedures conducted by a person who performs similar functions to the Commissioner under the laws of Canada, except that in providing assistance, the Commissioner shall not use or disclose information collected by or for the Commissioner under this Act;

(f) in appropriate circumstances, authorize the collection of personal health information about an individual in a manner other than directly from the individual. 2004, c. 3, Sched. A, s. 66.

Delegation

67 (1) The Commissioner may in writing delegate any of the Commissioner's powers, duties or functions under this Act, including the power to make orders, to the Assistant Commissioner or to an officer or employee of the Commissioner. 2004, c. 3, Sched. A, s. 67 (1).

Subdelegation by Assistant Commissioner

(2) The Assistant Commissioner may in writing delegate any of the powers, duties or functions delegated to him or her under subsection (1) to any other officers or employees of the Commissioner, subject to the conditions and restrictions that the Assistant Commissioner specifies in the delegation. 2004, c. 3, Sched. A, s. 67 (2).

Limitations re personal health information

68 (1) The Commissioner and any person acting under his or her authority may collect, use or retain personal health information in the course of carrying out any functions under this Part solely if no other information will serve the purpose of the collection, use or retention of the personal health information and in no other circumstances. 2004, c. 3, Sched. A, s. 68 (1).

Extent of information

(2) The Commissioner and any person acting under his or her authority shall not in the course of carrying out any functions under this Part collect, use or retain more personal health information than is reasonably necessary to enable the Commissioner to perform his or her functions relating to the administration of this Act or for a proceeding under it. 2004, c. 3, Sched. A, s. 68 (2).

Confidentiality

(3) The Commissioner, the Assistant Commissioner and persons acting on behalf of or under the direction of either of them shall not disclose any information that comes to their knowledge in the course of exercising their functions under this Act unless,

(a) the disclosure is required for the purpose of exercising those functions;

(b) the information relates to a health information custodian, the disclosure is made to a body that is legally entitled to regulate or review the activities of the custodian and the Commissioner or the Assistant Commissioner is of the opinion that the disclosure is justified;

(c) the Commissioner obtained the information under subsection 60 (12) and the disclosure is required in a prosecution for an offence under section 131 of the *Criminal Code* (Canada) in respect of sworn testimony; or

(d) the disclosure is made to the Attorney General, the information relates to the commission of an offence against an Act or an Act of Canada and the Commissioner is of the view that there is evidence of such an offence. 2004, c. 3, Sched. A, s. 68 (3).

Same

(4) Despite anything in subsection (3), the Commissioner, the Assistant Commissioner and persons acting on behalf of or under the direction of either of them shall not disclose,

(a) any quality of care information that comes to their knowledge in the course of exercising their functions under this Act; or

(b) the identity of a person, other than a complainant under subsection 56 (1), who has provided information to the Commissioner and who has requested the Commissioner to keep the person's identity confidential. 2004, c. 3, Sched. A, s. 68 (4).

Information in review or proceeding

(5) The Commissioner in a review under section 57 or 58 and a court, tribunal or other person, including the Commissioner, in a proceeding mentioned in section 65 or this section shall take every reasonable precaution, including, when appropriate, receiving representations without notice and conducting hearings that are closed to the public, to avoid the disclosure of any information for which a health information custodian is entitled to refuse a request for access made under section 53. 2004, c. 3, Sched. A, s. 68 (5).

Not compellable witness

(6) The Commissioner, the Assistant Commissioner and persons acting on behalf of or under the direction of either of them shall not be required to give evidence in a court or in a proceeding of a judicial nature concerning anything coming to their knowledge in the exercise of their functions under this Act that they are prohibited from disclosing under subsection (3) or (4). 2004, c. 3, Sched. A, s. 68 (6).

Immunity

69 No action or other proceeding for damages may be instituted against the Commissioner, the Assistant Commissioner or any person acting on behalf of or under the direction of either of them for,

(a) anything done, reported or said in good faith and in the exercise or intended exercise of any of their powers or duties under this Act; or

(b) any alleged neglect or default in the exercise in good faith of any of their powers or duties under this Act. 2004, c. 3, Sched. A, s. 69.

PART VII
GENERAL

Non-retaliation

70 No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that,

(a) the person, acting in good faith and on the basis of reasonable belief, has disclosed to the Commissioner that any other person has contravened or is about to contravene a provision of this Act or its regulations;

(b) the person, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to avoid having any person contravene a provision of this Act or its regulations;

(c) the person, acting in good faith and on the basis of reasonable belief, has refused to do or stated an intention of refusing to do anything that is in contravention of a provision of this Act or its regulations; or

(d) any person believes that the person will do anything described in clause (a), (b) or (c). 2004, c. 3, Sched. A, s. 70.

Immunity

71 (1) No action or other proceeding for damages may be instituted against a health information custodian or any other person for,

(a) anything done, reported or said, both in good faith and reasonably in the circumstances, in the exercise or intended exercise of any of their powers or duties under this Act; or

(b) any alleged neglect or default that was reasonable in the circumstances in the exercise in good faith of any of their powers or duties under this Act. 2004, c. 3, Sched. A, s. 71 (1).

Crown liability

(2) Despite subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject. 2004, c. 3, Sched. A, s. 71 (2); 2019, c. 7, Sched. 17, s. 139.

Substitute decision-maker

(3) A person who, on behalf of or in the place of an individual, gives or refuses consent to a collection, use or disclosure of personal health information about the individual, makes a request, gives an instruction or takes a step is not liable for damages for doing so if the person acts reasonably in the circumstances, in good faith and in accordance with this Act and its regulations. 2004, c. 3, Sched. A, s. 71 (3).

Reliance on assertion

(4) Unless it is not reasonable to do so in the circumstances, a person is entitled to rely on the accuracy of an assertion made by another person, in connection with a collection, use or disclosure of, or access to, the information under this Act, to the effect that the other person,

(a) is a person who is authorized to request access to a record of personal health information under section 53;

(b) is a person who is entitled under section 5 or 23 or subsection 26 (1) to consent to the collection, use or disclosure of personal health information about another individual;

(c) meets the requirement of clauses 26 (2) (b) and (c); or

(d) holds the beliefs described in subsection 26 (5). 2004, c. 3, Sched. A, s. 71 (4).

Section Amendments with date in force (d/m/y)

2019, c. 7, Sched. 17, s. 139 - 01/07/2019

Production order

71.1 (1) On application without notice by a provincial offences officer, a justice may issue a production order to a person, other than a person under investigation for an offence, requiring the person to,

(a) produce documents or copies of documents, certified by affidavit to be true copies, or produce data; or

(b) prepare a document based on documents or data already in existence and produce it. 2020, c. 5, Sched. 6, s. 22.

Contents of order

(2) A production order must stipulate when, where and how the documents or data are to be produced, and to whom they are to be produced. 2020, c. 5, Sched. 6, s. 22.

Grounds

(3) A justice may make a production order if satisfied by information given under oath or affirmation that there are reasonable grounds to believe that,

(a) an offence under this Act has been or is being committed;

(b) the document or data will provide evidence respecting the offence or suspected offence; and

(c) the person who is subject to the order has possession or control of the document or data. 2020, c. 5, Sched. 6, s. 22.

Conditions

(4) A production order may contain any conditions the justice considers advisable. 2020, c. 5, Sched. 6, s. 22.

Evidence

(5) A copy of a document or data produced under this section, on proof by affidavit that it is a true copy, is admissible in evidence in proceedings under this Act and has the same probative force as the original document or data would have if it had been proved in the ordinary way. 2020, c. 5, Sched. 6, s. 22.

No return of copies

(6) Copies of documents or data produced under this section are not required to be returned to the person who provided them. 2020, c. 5, Sched. 6, s. 22.

Compliance required

(7) A person to whom a production order is directed shall comply with the order according to its terms. 2020, c. 5, Sched. 6, s. 22.

Definitions

(8) In this section,

"justice" and "provincial offences officer" have the same meanings as in the *Provincial Offences Act*. 2020, c. 5, Sched. 6, s. 22.

Section Amendments with date in force (d/m/y)

2020, c. 5, Sched. 6, s. 22 - 25/03/2020

Offences

72 (1) A person is guilty of an offence if the person,

(a) wilfully collects, uses or discloses personal health information in contravention of this Act or its regulations;

(b) makes a request under this Act, under false pretences, for access to or correction of a record of personal health information;

(b.1) wilfully contravenes section 11.2;

(c) in connection with the collection, use or disclosure of personal health information or access to a record of personal health information, makes an assertion, knowing that it is untrue, to the effect that the person,

(i) is a person who is entitled to consent to the collection, use or disclosure of personal health information about another individual,

(ii) meets the requirement of clauses 26 (2) (b) and (c),

(iii) holds the beliefs described in subsection 26 (5), or

(iv) is a person entitled to access to a record of personal health information under section 52;

(d) disposes of a record of personal health information in the custody or under the control of the custodian with an intent to evade a request for access to the record that the custodian has received under subsection 53 (1);

(e) wilfully disposes of a record of personal health information in contravention of section 13;

(f) contravenes subsection 34 (2), (3) or (4) or clause 47 (15) (a), (e) or (f);

(g) wilfully obstructs the Commissioner or a person known to be acting under the authority of the Commissioner in the performance of his or her functions under this Act;

(h) wilfully makes a false statement to mislead or attempt to mislead the Commissioner or a person known to be acting under the authority of the Commissioner in the performance of his or her functions under this Act;

(i) wilfully fails to comply with an order made by the Commissioner or a person known to be acting under the authority of the Commissioner under this Act; or

(j) contravenes section 70. 2004, c. 3, Sched. A, s. 72 (1); 2019, c. 15, Sched. 30, s. 7 (1).

Penalty

(2) A person who is guilty of an offence under subsection (1) is liable, on conviction,

(a) if the person is a natural person, to a fine of not more than $200,000 or to a term of imprisonment of not more than 1 year, or to both; or

(b) if the person is not a natural person, to a fine of not more than $1,000,000. 2004, c. 3, Sched. A, s. 72 (2); 2016, c. 6, Sched. 1, s. 1 (26); 2020, c. 5, Sched. 6, s. 23.

Officers, etc.

(3) If a corporation commits an offence under this Act, every officer, member, employee or other agent of the corporation who authorized the offence, or who had the authority to prevent the offence from being committed but knowingly refrained from doing so, is a party to and guilty of the offence and is liable, on conviction, to the penalty for the offence, whether or not the corporation has been prosecuted or convicted. 2004, c. 3, Sched. A, s. 72 (3).

No prosecution

(4) No person is liable to prosecution for an offence against this or any other Act by reason of complying with a requirement of the Commissioner under this Act. 2004, c. 3, Sched. A, s. 72 (4).

Consent of Attorney General

(5) A prosecution shall not be commenced under subsection (1) without the consent of the Attorney General or his or her agent. 2016, c. 6, Sched. 1, s. 1 (27); 2019, c. 15, Sched. 30, s. 7 (2).

Presiding judge

(6) The Crown may, by notice to the clerk of the Ontario Court of Justice, require that a provincial judge preside over a proceeding in respect of an offence under subsection (1). 2016, c. 6, Sched. 1, s. 1 (27).

Protection of information

(7) In a prosecution for an offence under subsection (1) or where documents or materials are filed with a court under sections 158 to 160 of the *Provincial Offences Act* in relation to an investigation into an offence under this Act, the court may, at any time, take precautions to avoid the disclosure by the court or any person of any personal health information about an individual, including, where appropriate,

(a) removing the identifying information of any person whose personal health information is referred to in any documents or materials;

(b) receiving representations without notice;

(c) conducting hearings or parts of hearings in private; or

(d) sealing all or part of the court files. 2016, c. 6, Sched. 1, s. 1 (27).

No limitation

(8) Section 76 of the *Provincial Offences Act* does not apply to a prosecution under this Act. 2016, c. 6, Sched. 1, s. 1 (27).

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. C, s. 128 - 01/05/2007

2016, c. 6, Sched. 1, s. 1 (26, 27) - 03/06/2016

2019, c. 15, Sched. 30, s. 7 (1, 2) - 31/07/2020

2020, c. 5, Sched. 6, s. 23 - 25/03/2020

Regulations

73 (1) Subject to section 74, the Lieutenant Governor in Council may make regulations,

(a) prescribing or specifying anything that this Act describes as being prescribed, specified, described, provided for, authorized or required in the regulations made under this Act;

(b) exempting persons or classes of persons from the persons described in clause (d) of the definition of "health care practitioner" in section 2;

(c) specifying persons or classes of persons who shall not be included in the definition of "health information custodian" in subsection 3 (1);

(d) specifying that certain types of information shall or shall not be included in the definition of "personal health information" in subsection 4 (1);

(e) defining, for the purposes of this Act and its regulations, any word or expression used in this Act that has not already been expressly defined in this Act;

(f) making any provision of this Act or its regulations, that applies to some but not all health information custodians, applicable to a prescribed person mentioned in paragraph 8 of the definition of "health information custodian" in subsection 3 (1) or a member of a prescribed class of persons mentioned in that paragraph;

(g) specifying requirements with respect to information practices for the purposes of subsection 10 (1), including conditions that a health information custodian is required to comply with when collecting, using or disclosing personal health information or classes of personal health information, or specifying procedural processes or requirements for setting requirements with respect to information practices for the purposes of that subsection;

(h) specifying requirements, or a process for setting requirements, for the purposes of subsection 10 (3) with which a health information custodian is required to comply when using electronic means to collect, use, modify, disclose, retain or dispose of personal health information, including standards for transactions, data elements for transactions, code sets for data elements and procedures for the transmission and authentication of electronic signatures;

(i) specifying requirements for the purposes of subsection 17 (1), including requiring that a health information custodian and its agent enter into an agreement that complies with the regulations made under clause (k) before the custodian provides personal health information to the agent;

(j) specifying requirements that an agreement entered into under this Act or its regulations must contain;

(k) specifying requirements, restrictions or prohibitions with respect to the collection, use or disclosure of any class of personal health information by any person in addition to the requirements, restrictions or prohibitions set out in this Act;

(l) specifying requirements that an express instruction mentioned in clause 37 (1) (a), 38 (1) (a) or 50 (1) (e) must meet;

(l.1) prescribing circumstances in which a person who compiles or maintains a registry of personal health information referred to in clause 39 (1) (c) may use or disclose personal health information;

(m) permitting notices, statements or any other things, that under this Act are required to be provided in writing, to be provided in electronic or other form instead, subject to the conditions or restrictions that are specified by the regulations made under this Act;

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 73 (1) of the Act is amended by adding the following clause: (See: 2020, c. 5, Sched. 6, s. 24 (2))

(m.1) governing the services provided by consumer electronic service providers within the meaning of section 54.1, including their collection, use and disclosure of personal health information, the use of those services by health information custodians as well as by individuals and the rights of those individuals with regard to the services;

(n) prescribing under what circumstances the Canadian Blood Services may collect, use and disclose personal health information, the conditions that apply to the collection, use and disclosure of personal health information by the Canadian Blood Services and disclosures that may be made by a health information custodian to the Canadian Blood Services;

(n.1) requiring health information custodians to provide information to the Commissioner and specifying the type of information to be provided and the time at which and manner in which it is to be provided;

(n.2) prescribing under what circumstances the Agency may collect, use and disclose personal health information, the conditions that apply to the collection, use and disclosure of personal health information by the Agency and disclosures of personal health information that may be made by a health information custodian or other person to the Agency;

(n.3) prescribing,

(i) under what circumstances a person or entity or group of persons or entities designated under subsection 29 (1) of the *Connecting Care Act, 2019* may collect, use and disclose personal health information,

(ii) conditions that apply to the collection, use and disclosure of personal health information by a person, entity or group mentioned in subclause (i), and

(iii) disclosures of personal health information that may be made by a health information custodian or other person to a person, entity or group mentioned in subclause (i);

(n.4) providing for and governing powers, functions and responsibilities of the Agency for the purposes of this Act and the regulations;

(n.5) respecting requirements with which a health information custodian is required to comply when selecting and using electronic means to collect, use, modify, disclose, retain or dispose of personal health information, including the process for setting, monitoring and enforcing such requirements;

(o) specifying information relating to the administration or enforcement of this Act that is required to be contained in a report made under subsection 58 (1) of the *Freedom of Information and Protection of Privacy Act*;

(o.1) governing administrative penalties imposed by the Commissioner under clause 61 (1) (h.1) and all matters necessary and incidental to the administration of a system of administrative penalties under this Act;

(o.2) governing the de-identification of personal health information and the collection, use and disclosure of de-identified information by health information custodians and any other persons;

(p) respecting any matter necessary or advisable to carry out effectively the purposes of this Act. 2004, c. 3, Sched. A, s. 73 (1); 2016, c. 6, Sched. 1, s. 1 (28); 2019, c. 15, Sched. 30, s. 8 (1); 2020, c. 5, Sched. 6, s. 24 (1, 3).

General or specific application

(2) A regulation made under this Act may be of general application or specific to any person or persons or class or classes in its application. 2004, c. 3, Sched. A, s. 73 (2).

Classes

(3) A class described in the regulations made under this Act may be described according to any characteristic or combination of characteristics and may be described to include or exclude any specified member, whether or not with the same characteristics. 2004, c. 3, Sched. A, s. 73 (3).

Rolling incorporation by reference

(4) If a regulation adopts by reference any code, standard, guideline or similar document, the regulation may require compliance with the code, standard, guideline or document as amended from time to time, whether the amendment was made before or after the regulation was made. 2019, c. 15, Sched. 30, s. 8 (2).

Regulations respecting administrative penalties

(5) Without limiting the generality of clause (1) (o.1), regulations made under that clause may prescribe specific amounts of administrative penalties or provide that the amounts of administrative penalties be based on the type of the contravention in question, on the contravention history of the person required to pay the administrative penalty or on whether the person is or is not a natural person. 2020, c. 5, Sched. 6, s. 24 (4).

Section Amendments with date in force (d/m/y)

2016, c. 6, Sched. 1, s. 1 (28) - 03/06/2016

2019, c. 15, Sched. 30, s. 8 (1, 2) - 31/07/2020

2020, c. 5, Sched. 6, s. 24 (1, 3, 4) - 25/03/2020; 2020, c. 5, Sched. 6, s. 24 (2) - not in force

Public consultation before making regulations

74 (1) Subject to subsection (7), the Lieutenant Governor in Council shall not make any regulation under section 73 unless,

(a) the Minister has published a notice of the proposed regulation in *The Ontario Gazette* and given notice of the proposed regulation by all other means that the Minister considers appropriate for the purpose of providing notice to the persons who may be affected by the proposed regulation;

(b) the notice complies with the requirements of this section;

(c) the time periods specified in the notice, during which members of the public may exercise a right described in clause (2) (b) or (c), have expired; and

(d) the Minister has considered whatever comments and submissions that members of the public have made on the proposed regulation in accordance with clause (2) (b) or (c) and has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the Minister considers appropriate. 2004, c. 3, Sched. A, s. 74 (1).

Contents of notice

(2) The notice mentioned in clause (1) (a) shall contain,

(a) a description of the proposed regulation and the text of it;

(b) a statement of the time period during which members of the public may submit written comments on the proposed regulation to the Minister and the manner in which and the address to which the comments must be submitted;

(c) a description of whatever other rights, in addition to the right described in clause (b), that members of the public have to make submissions on the proposed regulation and the manner in which and the time period during which those rights must be exercised;

(d) a statement of where and when members of the public may review written information about the proposed regulation;

(e) all prescribed information; and

(f) all other information that the Minister considers appropriate. 2004, c. 3, Sched. A, s. 74 (2).

Time period for comments

(3) The time period mentioned in clauses (2) (b) and (c) shall be at least 60 days after the Minister gives the notice mentioned in clause (1) (a) unless the Minister shortens the time period in accordance with subsection (4). 2004, c. 3, Sched. A, s. 74 (3).

Shorter time period for comments

(4) The Minister may shorten the time period if, in the Minister's opinion,

(a) the urgency of the situation requires it;

(b) the proposed regulation clarifies the intent or operation of this Act or the regulations; or

(c) the proposed regulation is of a minor or technical nature. 2004, c. 3, Sched. A, s. 74 (4).

Discretion to make regulations

(5) Upon receiving the Minister's report mentioned in clause (1) (d), the Lieutenant Governor in Council, without further notice under subsection (1), may make the proposed regulation with the changes that the Lieutenant Governor in Council considers appropriate, whether or not those changes are mentioned in the Minister's report. 2004, c. 3, Sched. A, s. 74 (5).

No public consultation

(6) The Minister may decide that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 73 if, in the Minister's opinion,

(a) the urgency of the situation requires it;

(b) the proposed regulation clarifies the intent or operation of this Act or the regulations; or

(c) the proposed regulation is of a minor or technical nature. 2004, c. 3, Sched. A, s. 74 (6).

Same

(7) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 73,

(a) those subsections do not apply to the power of the Lieutenant Governor in Council to make the regulation; and

(b) the Minister shall give notice of the decision to the public and to the Commissioner as soon as is reasonably possible after making the decision. 2004, c. 3, Sched. A, s. 74 (7).

Contents of notice

(8) The notice mentioned in clause (7) (b) shall include a statement of the Minister's reasons for making the decision and all other information that the Minister considers appropriate. 2004, c. 3, Sched. A, s. 74 (8).

Publication of notice

(9) The Minister shall publish the notice mentioned in clause (7) (b) in *The Ontario Gazette* and give the notice by all other means that the Minister considers appropriate. 2004, c. 3, Sched. A, s. 74 (9).

Temporary regulation

(10) If the Minister decides that subsections (1) to (5) should not apply to the power of the Lieutenant Governor in Council to make a regulation under section 73 because the Minister is of the opinion that the urgency of the situation requires it, the regulation shall,

(a) be identified as a temporary regulation in the text of the regulation; and

(b) unless it is revoked before its expiry, expire at a time specified in the regulation, which shall not be after the second anniversary of the day on which the regulation comes into force. 2004, c. 3, Sched. A, s. 74 (10).

No review

(11) Subject to subsection (12), neither a court, nor the Commissioner shall review any action, decision, failure to take action or failure to make a decision by the Lieutenant Governor in Council or the Minister under this section. 2004, c. 3, Sched. A, s. 74 (11).

Exception

(12) Any person resident in Ontario may make an application for judicial review under the *Judicial Review Procedure Act* on the grounds that the Minister has not taken a step required by this section. 2004, c. 3, Sched. A, s. 74 (12).

Time for application

(13) No person shall make an application under subsection (12) with respect to a regulation later than 21 days after the day on which,

(a) the Minister publishes a notice with respect to the regulation under clause (1) (a) or subsection (9), where applicable; or

(b) the regulation is filed, if it is a regulation described in subsection (10). 2004, c. 3, Sched. A, s. 74 (13).

Review of Act

75 A committee of the Legislative Assembly shall,

(a) begin a comprehensive review of this Act not later than the third anniversary of the day on which this section comes into force; and

(b) within one year after beginning that review, make recommendations to the Assembly concerning amendments to this Act. 2004, c. 3, Sched. A, s. 75.

76.-98 OMITTED (AMENDS OR REPEALS OTHER ACTS). 2004, c. 3, Sched. A, ss. 76-98.

99 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 2004, c. 3, Sched. A, s. 99.

100 OMITTED (ENACTS SHORT TITLE OF THIS ACT). 2004, c. 3, Sched. A, s. 100.

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Frequently Asked Questions
Personal Health Information Protection Act

September 2015

Information and Privacy Commissioner of Ontario
Commissaire à l'information et à la protection de la vie privée de l'Ontario

This Frequently Asked Questions (FAQ) provides a general overview of the *Personal Health Information Protection Act* **and** *Regulation 329/04*. **The information contained in this document is for general reference purposes only and should not be considered as legal advice. Legal counsel should be consulted for all purposes of interpretation. This FAQ is not binding on the Information and Privacy Commissioner of Ontario (IPC) and should not be construed to interfere with the IPC's ability to discharge its duties under the *Personal Health Information Protection Act*.**

This publication is also available on the IPC website.

Cette publication est également disponible en français.

CONTENTS

INTRODUCTION

WHAT IS THE *PERSONAL HEALTH INFORMATION PROTECTION ACT* AND WHY IS IT NECESSARY?

The *Personal Health Information Protection Act* (*PHIPA*) is Ontario's health-specific privacy legislation which came into force on November 1, 2004. *PHIPA* governs the manner in which personal health information may be collected, used and disclosed within the health sector. It regulates health information custodians (custodians), as well as individuals and organizations that receive personal health information from custodians.

Personal health information is among the most sensitive of personal information. People are understandably protective about sharing personal details relating to their medical conditions. At the same time, personal health information must flow freely between health care practitioners in order to ensure the best care for patients.

The nature of our health system is that personal health information passes through many links in the health care chain: from a doctor's office, to a referral to a specialist, to a medical lab, to a hospital or to an insurance company for reimbursement of claims. There are many circumstances in which personal health information must be readily, as well as expeditiously shared, such as in the case of a medical emergency. Beyond patient care, personal health information is needed for important activities, such as health research which is vital to develop new treatments and cures.

PHIPA creates a consistent approach to protecting personal health information across the health sector. The legislation was designed to give individuals greater control over how their personal health information is collected, used or disclosed. *PHIPA* balances the privacy rights of individuals with the legitimate need of custodians to collect, use and disclose personal health information in order to deliver effective and timely health care and to plan and manage our publicly funded health system.

With limited exceptions, PHIPA requires custodians to obtain consent before personal health information is collected, used or disclosed. In addition, PHIPA provides individuals with a right to access and request correction of their personal health information. PHIPA also provides a means for redress through the Office of the Information and Privacy Commissioner of Ontario (IPC) when privacy rights relating to personal health information have been violated.

What is the *Personal Health Information Protection Act* and why is it necessary?

The IPC is the designated oversight body responsible for administering and enforcing these health sector privacy rules. As such, we have prepared the following questions and answers to guide Ontarians and custodians in understanding their respective privacy rights and obligations.

OVERVIEW

WHAT IS THE PURPOSE OF *PHIPA*?

PHIPA establishes rules for the collection, use and disclosure of personal health information and includes provisions that:

- require consent for the collection, use and disclosure of personal health information, with necessary but limited exceptions,
- require that custodians treat all personal health information as confidential and keep it secure,
- provide individuals with a right of access to their personal health information, as well as the right to correct errors,
- give individuals the right to withhold or withdraw consent to the collection, use or disclosure of personal health information or to expressly instruct custodians not to use or disclose their personal health information for health care purposes,
- establish clear rules for the collection, use and disclosure of personal health information for fundraising and marketing purposes,
- set guidelines for the collection, use and disclosure of personal health information for research purposes,
- ensure accountability by granting individuals the right to complain to the IPC about the practices of custodians and
- establish remedies for breaches of the legislation.

WHAT RIGHTS DO INDIVIDUALS HAVE?

PHIPA gives individuals the right to:

- be informed of the purposes for the collection, use and disclosure of personal health information,
- be notified by a custodian if personal health information has been stolen, lost or accessed by unauthorized persons,
- refuse or give consent to the collection, use or disclosure of personal health information, except in circumstances specified in *PHIPA*,

What rights do individuals have?

- withdraw consent by providing notice to the custodian,
- expressly instruct a custodian not to use or disclose personal health information for health care purposes without consent,
- access a copy of their own personal health information, except in limited circumstances specified in *PHIPA*,
- request corrections to be made to their personal health information,
- complain to the IPC about a custodian's refusal to give access to all or part of a record of personal health information,
- complain to the IPC about a custodian's refusal to grant a correction request,
- complain to the IPC about any breach or potential breach of *PHIPA* or its regulations and
- begin a proceeding in court for damages for actual harm suffered, if affected by a final order or conduct leading to a final conviction for an offence under *PHIPA*.

PHIPA establishes a formal process for individuals to access and correct their personal health information, within specified time frames and the right to complain if an access or correction request is denied.

WHAT IS THE RELATIONSHIP BETWEEN *PHIPA* AND THE FEDERAL *PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT* (*PIPEDA*)?

The collection, use and disclosure of personal information within the commercial sector is regulated by federal privacy legislation—the *Personal Information Protection and Electronic Documents Act*. *PIPEDA* was enacted to regulate the collection, use or disclosure of personal information in the hands of private sector organizations. *PIPEDA* does not apply to personal information in provinces and territories that have "substantially similar" privacy legislation in place.

The federal government has deemed *PHIPA* to be "substantially similar" to *PIPEDA*. Custodians and their agents are exempted from having to comply with the provisions of *PIPEDA* to the extent that they collect, use and disclose personal health information within Ontario. *PIPEDA* continues to apply to all commercial activities relating to the exchange of personal health information between provinces and territories and to information transfers outside of Canada.

WHAT IS THE RELATIONSHIP BETWEEN *PHIPA*, THE *FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT* (*FIPPA*) AND THE *MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT* (*MFIPPA*)?

Organizations that are both custodians under *PHIPA* and institutions under public sector privacy and access to information legislation, namely the provincial *FIPPA* or its municipal counterpart *MFIPPA*, include hospitals, the Ontario Agency for Health Protection and Promotion, the Ministry of Health and Long-Term Care, medical officers of health and municipally operated long-term care homes and ambulance services.

The general rule is that, subject to certain exceptions, a custodian that is also an institution or a part of an institution is governed by *PHIPA*, not *FIPPA* or *MFIPPA*, with respect to personal health information in its custody or under its control. All other recorded information about an individual that is not personal health information and that is in the custody or under the control of an organization that is both a custodian and an institution or part of an institution is subject to *FIPPA* or *MFIPPA*, as the case may be.

PHIPA also contains provisions that are specific to custodians that are institutions. For example, *PHIPA* provides a number of exceptions to the general rule that custodians are only permitted to collect personal health information directly from the individual to whom the information relates. In addition to the exceptions available to all custodians, a custodian that is also an institution under *FIPPA* or *MFIPPA* may collect personal health information indirectly for a purpose related to investigating a breach of an agreement or a contravention or alleged contravention of laws of Ontario or Canada, the conduct of a proceeding or possible proceeding or the statutory function of the custodian.

For further information, please see the IPC documents *Applying* PHIPA *and* FIPPA/MFIPPA *to Personal Health Information*, *Freedom of Information at Ontario Hospitals: Frequently Asked Questions*, and *Applying* PHIPA *and* FIPPA *to Personal Health Information: Guidance for Hospitals*.

INTERPRETATION AND APPLICATION OF *PHIPA*

TO WHOM DOES *PHIPA* APPLY?

PHIPA applies to a wide variety of persons and organizations defined as health information custodians. *PHIPA* also applies to agents who are authorized to act for or on behalf of custodians. Additionally, *PHIPA* applies to the use and disclosure of personal health information by those who receive personal health information from custodians (recipients) and to electronic service providers, including health information network providers.

WHAT IS PERSONAL HEALTH INFORMATION?

Personal health information is "identifying information" about an individual, whether oral or recorded if the information:

- relates to the individual's physical or mental condition, including family medical history,
- relates to the provision of health care to the individual,
- is a plan of service for the individual,
- relates to payments, or eligibility for health care or for coverage for health care,
- relates to the donation of any body part or bodily substance or is derived from the testing or examination of any such body part or bodily substance,
- is the individual's health number or
- identifies a health care provider or a substitute decision-maker for the individual.

"Identifying information" includes information that identifies an individual or for which it is reasonably foreseeable that it could be used, either alone or with other information, to identify an individual.

Personal health information includes identifying information that is not personal health information but that is contained in a record that contains personal health information. Personal health information does not include identifying information

about an employee or agent of the custodian that is not maintained primarily for the provision of health care. For example, a doctor's note to support an absence from work in the personnel file of a secretary employed by a custodian is not personal health information.

What is personal health information?

WHAT DOES "HEALTH CARE" MEAN?

"Health care" means any observation, examination, assessment, care, service or procedure that is done for a health-related purpose and that is carried out or provided:

- for diagnosis, treatment or maintenance of an individual's physical or mental condition,
- for prevention of disease or injury or the promotion of health or
- as part of palliative care.

It also includes:

- the compounding, dispensing or selling of a drug, device or equipment pursuant to a prescription,
- a community service that is described in the *Home Care and Community Services Act* and
- taking blood or a blood product donation from an individual.

WHAT IS A CUSTODIAN?

A custodian is a person or organization listed in *PHIPA* that, as a result of his, her or its power or duties or work set out in *PHIPA*, has custody or control of personal health information. Examples of custodians include:

- health care practitioners, (including doctors, nurses, speech-language pathologists, chiropractors, dental professionals, dieticians, medical laboratory technologists, massage therapists, midwives, occupational therapists, opticians and physiotherapists),
- community care access corporations,
- hospitals,
- psychiatric facilities,
- long-term care homes,

What is a custodian?

- pharmacies,
- laboratories,
- ambulance services,
- retirement homes and homes for special care,
- medical officers of health of boards of health,
- the Minister of Health and Long-Term Care and
- Canadian Blood Services.

A custodian does not include:

- a health care practitioner, service provider, evaluator or assessor who is an agent of a custodian,
- a person authorized to act for or on behalf of a person that is not a custodian, if the scope of duties of the authorized person does not include the provision of health care,
- an aboriginal healer who provides traditional healing services to aboriginal persons or members of an aboriginal community,
- an aboriginal midwife who provides traditional midwifery services to aboriginal persons or members of an aboriginal community and
- a person who provides treatment solely by spiritual means or by prayer.

IS A HEALTH CARE PRACTITIONER WORKING FOR A NON-CUSTODIAN CONSIDERED TO BE A CUSTODIAN?

A health care practitioner, who provides health care, but who contracts with, is employed by or volunteers for an organization that is not defined as a custodian under *PHIPA*, would fall within the definition of a custodian under *PHIPA* and must comply with all requirements for custodians.

Examples of custodians who work for non-custodians include:

- a nurse employed by a school board to provide health care services to students,
- a doctor employed by a professional sports team in order to diagnose sporting injuries,

- a registered massage therapist providing health care services to clients of a spa and
- a nurse employed in-house by a manufacturing firm in a health care capacity.

Is a health care practitioner working for a non-custodian considered to be a custodian?

A custodian cannot disclose personal health information to a non-custodian, including the non-custodian for whom the individual is working, unless the individual whose personal health information is at issue has given express consent or the disclosure is permitted or required by *PHIPA* or another law.

For further information, please see the IPC fact sheet, *Health Information Custodians Working for Non-Health Information Custodians*.

WHAT IS AN AGENT?

PHIPA defines an agent to include any person who is authorized by a custodian to perform services or activities in respect of personal health information on the custodian's behalf and for the purposes of that custodian.

An agent may include a person or company that contracts with, is employed by or volunteers for a custodian and, as a result, may have access to personal health information. *PHIPA* permits custodians to provide personal health information to their agents only if the custodian is permitted to collect, use, disclose, retain or dispose of the information.

For example, an agency relationship under *PHIPA* includes a nurse who is employed by, or a student who volunteers at, a hospital. An agency relationship may also include a physician who is not employed by a hospital, but has admitting privileges to use the hospital's equipment or facilities. In such cases, the custodian hospital is permitted to authorize the agent to handle or deal with personal health information on its behalf, as long as the agent complies with *PHIPA* and adopts the information practices of the custodian. An agent must notify the custodian if the personal health information the agent is handling is stolen, lost or accessed by unauthorized persons.

The custodian remains accountable for the personal health information in its custody or under its control, even where the agent is authorized to act on its behalf with respect to that personal health information. The custodian also remains accountable for the personal health information in its custody or under its control where the agent acted beyond what was authorized by the custodian. For example, in Order HO-013, employees were found to be agents when they used and/or disclosed personal health information in the custody or under the control of a hospital for the purpose of selling or marketing Registered Education Saving Plans. The custodian hospital was accountable for the contravention of *PHIPA*, even though the agents may have acted beyond the authority delegated by the hospital.

DOES *PHIPA* APPLY TO INSURANCE COMPANIES OR EMPLOYERS?

Certain organizations, such as insurance companies and employers, who may hold personal health information in their files, are not governed by *PHIPA*, unless they receive personal health information from a custodian. When an insurance company or employer receives personal health information from a custodian, the receiving entity may, in general, only use or disclose the information for the authorized purpose for which the information was disclosed or for the purpose of carrying out a statutory or legal duty. This rule is colloquially referred to as the "recipient rule."

However, an exception to the recipient rule applies to insurance providers that receive personal health information from a pharmacist. In that situation, PHIPA permits the insurance provider to disclose personal health information to the pharmacist to assist the pharmacist in advising the individual or providing the individual with health care. For example, the insurance provider may disclose to a pharmacist the types of medications an individual has purchased from different pharmacies so that the pharmacist may advise of any incompatible prescriptions.

WHAT IS AN ELECTRONIC SERVICE PROVIDER?

An electronic service provider is a person who supplies services that enable a custodian to collect, use, modify, disclose, retain or dispose of personal health information electronically. If the electronic service provider is not an agent of the custodian, then it shall not use any personal health information to which it has access in the course of providing services to the custodian, except as necessary in the course of providing the service and it cannot disclose the information. Electronic service providers must also ensure their employees or any other persons acting on their behalf agree to comply with these restrictions.

WHAT IS A HEALTH INFORMATION NETWORK PROVIDER?

PHIPA contains requirements that apply to a specific type of electronic service provider, referred to as a health information network provider. A health information network provider is a person who provides services to two or more custodians, where the services are provided primarily to enable the custodians to use electronic means to disclose personal health information to one another, whether or not the person is an agent of any of the custodians. Among other requirements, health information network providers must:

What is a health information network provider?

- notify the custodian of any breaches,
- perform threat risk assessments and privacy impact assessments,
- upon request, provide an electronic record to the custodian of all accesses and transfers of the personal health information,
- ensure that retained third parties comply with necessary restrictions and conditions,
- enter into a written agreement with the custodian and
- make publicly available information about its services to the custodian.

WHO IS A PRESCRIBED PERSON?

The regulations prescribe a list of persons who compile and maintain registries of personal health information for the purpose of facilitating or improving the provision of health care or that relates to the storage or donation of bodily parts or substances. Custodians are permitted to disclose personal health information without consent to these listed persons. They consist of the following:

- Cardiac Care Network of Ontario in respect of its registry of cardiac services,
- INSCYTE (Information System for Cytology etc.) Corporation in respect of CytoBase,
- Hamilton Health Sciences Corporation in respect of the Critical Care Information System,
- Cancer Care Ontario in respect of the Ontario Cancer Screening Registry,
- Children's Hospital of Eastern Ontario in respect of the Better Outcomes Registry and Network and
- Ontario Institute for Cancer Research in respect of the Ontario Tumour Bank.

The above-noted prescribed persons may use and disclose personal health information for the purpose of facilitating or improving the provision of health care or for the storage or donation of bodily parts or substances. They are also permitted to use and disclose personal health information for research purposes, with a research plan approved by a research ethics board (REB) in certain circumstances. These prescribed persons are also permitted to disclose personal health information to prescribed entities for the planning, management or analysis of the health system.

Who is a prescribed person?

The regulations also require that prescribed persons make publicly available:

- a plain language description of the functions of the registry and
- a summary of the practices and procedures to protect the privacy of the individuals whose personal health information they receive and to maintain the confidentiality of the information.

The prescribed person must have its practices and procedures approved by the IPC every three years.

For further information, please see the IPC's *Manual for the Review and Approval of Prescribed Persons and Prescribed Entities*.

WHAT IS A PRESCRIBED ENTITY?

The regulations prescribe a list of entities, including any registries maintained within these listed entities, that custodians are permitted to disclose personal health information to without consent for purposes of planning, management and analysis of the health system. Prescribed entities consist of the following:

- Cancer Care Ontario,
- Canadian Institute for Health Information,
- Institute for Clinical Evaluative Sciences and
- Pediatric Oncology Group of Ontario.

In certain circumstances, with a research plan approved by a research ethics board, these prescribed entities are permitted to use and disclose personal health information for research purposes as if they were custodians. A prescribed entity is permitted to disclose personal health information to a prescribed person who compiles or maintains a registry of personal health information, and to another prescribed entity for purposes related to the planning, management and analysis of the health system.

The regulations also require that prescribed entities make publicly available:

- a plain language description of the functions of the entity and
- a summary of the practices and procedures to protect the privacy of the individuals whose personal health information they receive and to maintain the confidentiality of the information.

The prescribed entity must have its practices and procedures approved by the IPC every three years.

For further information, please see the IPC's *Manual for the Review and Approval of Prescribed Persons and Prescribed Entities*.

PRACTICES TO PROTECT PERSONAL HEALTH INFORMATION

HOW DOES *PHIPA* PROTECT PERSONAL HEALTH INFORMATION?

PHIPA establishes certain privacy rights for individuals and imposes specific obligations on custodians in protecting personal health information. Custodians who have custody or control of personal health information must develop and implement information practices that comply with the requirements of *PHIPA*. Custodians must also ensure that personal health information is as accurate, up-to-date and complete as is necessary for the purposes for which they use or disclose personal health information.

PHIPA requires custodians to take steps that are reasonable in the circumstances to ensure personal health information in their custody or under their control is protected against theft, loss and unauthorized use and disclosure, and to ensure that records of personal health information are protected against unauthorized copying, modification or disposal.

PHIPA also requires custodians to ensure that records of personal health information are retained, transferred and disposed of in a secure manner. According to the definition of "disposed of in a secure manner" in the regulations, records of personal health information must be destroyed in such a manner that their reconstruction is not reasonably foreseeable.

PHIPA requires records of personal health information to be kept for as long as needed to allow an individual to exhaust any legal recourse regarding an access request. As *PHIPA* does not establish specific retention periods for personal health information, custodians should refer to their governing legislation to determine applicable record retention requirements. For example, regulations under the *Public Hospitals Act* specify how long hospitals must retain records of personal health information.

For further information, please see the IPC fact sheets, *Safeguarding Personal Health Information*, *Secure Destruction of Personal Health Information*, *Encrypting Personal Health Information on Mobile Devices*, *Health-Care Requirement for Strong Encryption* and *The Secure Transfer of Personal Health Information,* and the IPC discussion papers *Get Rid of it Securely to keep it Private – Best Practices for the Secure Destruction of Personal Health Information* and *Detecting and Deterring Unauthorized Access to Personal Health Information*.

WHAT ARE THE NOTIFICATION REQUIREMENTS IN *PHIPA* IN THE EVENT OF A BREACH?

PHIPA contains notification requirements for both agents and custodians. If personal health information handled by an agent on behalf of a custodian is stolen, lost or accessed by unauthorized persons, the agent must notify the custodian of the breach at the first reasonable opportunity. *PHIPA* also requires custodians to notify individuals at the first reasonable opportunity if personal health information is stolen, lost or accessed by an unauthorized person. However, a custodian who is a researcher and received personal health information for research purposes from another custodian must not notify an individual, unless the researcher is informed that the individual has given consent to being contacted.

For further information please see the IPC guidelines, *What to do When Faced With a Privacy Breach: Guidelines for the Health Sector*.

DO CUSTODIANS HAVE RESPONSIBILITIES WITH RESPECT TO ACCOUNTABILITY AND OPENNESS?

In order to enhance transparency, *PHIPA* contains specific requirements for custodians that relate to accountability and openness. For example, a custodian must designate a contact person who is authorized on behalf of the custodian to facilitate compliance with *PHIPA*, ensure agents are appropriately informed of their duties, respond to inquiries about the custodian's information practices, respond to access and correction requests and receive complaints from the public. A custodian that is a natural person may designate a contact person, or else perform the functions on their own.

A custodian must also provide a written statement that is readily available to the public and describes the custodian's information practices, how to reach the contact person, how to obtain access to or request a correction of a record of personal health information and how to make a complaint to the custodian and to the IPC.

Unless an individual does not have a right of access, a custodian must notify the individual of any uses and disclosures of personal health information that occur without the individual's consent in a manner that is outside of the scope of the custodian's description of its information practices. The custodian must also make a note of these uses and disclosures and keep the note as a part of, or linked to, the records of personal health information.

WHAT ARE THE REQUIREMENTS FOR THE TREATMENT OF PERSONAL HEALTH RECORDS IN THE EVENT OF A CHANGE IN PRACTICE?

A change in practice occurs in a variety of circumstances, for example, due to death, bankruptcy, retirement or relocation. It is important to identify who the custodian of records of personal health information is in the event of a planned or unforeseen change in practice. Generally, a custodian remains a custodian with respect to a record of personal health information until complete custody and control of the record passes to another person who is legally authorized to hold it.

Upon the death of a custodian, the estate trustee or the person who assumed responsibility for the administration of the estate becomes the custodian, until custody and control passes to another person who is legally authorized to hold the records. If another person, for example a trustee in bankruptcy, obtains complete custody or control of the records as a result of the bankruptcy or insolvency of the custodian, then that person becomes the custodian. A custodian may also divest itself of responsibility for records by transferring them to an archive.

When complete custody or control of the records is transferred to a successor, then the successor becomes the custodian. The original custodian must make reasonable efforts to notify the individual to whom the personal health information relates before the transfer to the successor, or, if that is not reasonably possible, as soon as possible after transferring the records.

If none of the above conditions apply, then the existing custodian of the records remains the custodian. *PHIPA* requires custodians to protect personal health information and to ensure that records of personal health information are retained, transferred and disposed of in a secure manner. A custodian remains responsible for records of personal health information even where the records are being retained by an agent of the custodian, such as a record storage company.

For further information, please see the IPC documents *How to Avoid Abandoned Records: Guidelines on the Treatment of Personal Health Information, in the Event of a Change in Practice* and *Checklist for Health Information Custodians in the Event of a Planned or Unforeseen Change in Practice*.

CONSENT CONCERNING PERSONAL HEALTH INFORMATION

WHAT ARE THE REQUIREMENTS FOR CONSENT?

The general rule is that a custodian needs to obtain an individual's consent to collect, use and disclose personal health information, unless *PHIPA* allows the collection, use or disclosure without consent. An individual's consent may be express or implied. Under *PHIPA*, regardless of whether it is express or implied, consent must be:

- knowledgeable,
- voluntary (not obtained through deception or coercion),
- related to the information in question and
- given by the individual.

Knowledgeable consent means that it is reasonable in the circumstances to believe that an individual knows why a custodian collects, uses and discloses their personal health information and that they may give or withhold this consent.

A custodian may ensure that consent is knowledgeable by posting or making readily available a notice that is likely to come to the individual's attention, describing the purposes for the collection, use and disclosure of personal health information.

WHAT IS THE DIFFERENCE BETWEEN EXPRESS AND IMPLIED CONSENT?

Express consent to the collection, use or disclosure of personal health information by a custodian is consent that has been clearly and unmistakably given. Express consent may be explicitly provided, either orally or in writing.

Implied consent to the collection, use or disclosure of personal health information is consent that a custodian concludes has been given based on an individual's action or inaction in particular factual circumstances.

For example, when an individual discloses their personal health information for the purposes of filling out a prescription, a pharmacist can reasonably infer consent to the collection of that information.

What is the difference between express and implied consent?

WHEN IS EXPRESS CONSENT REQUIRED?

Subject to very limited exceptions, express consent is required:

- where personal health information is disclosed to a person or an organization, such as an insurance company, that is not a custodian and
- where information is disclosed by one custodian to another for a purpose other than providing or assisting in providing health care.

Express consent is also required where a custodian:

- collects, uses or discloses personal health information other than an individual's name and mailing address for fundraising purposes,
- collects, uses or discloses personal health information for marketing or marketing research and
- collects, uses or discloses personal information for research purposes, unless certain conditions and restrictions are met.

WHEN IS IMPLIED CONSENT SUFFICIENT?

In practice, a custodian is not required to obtain an individual's written or verbal consent every time personal health information is collected, used or disclosed. Custodians may rely on the implied consent of an individual to collect and use personal health information for most purposes. They may also infer consent to disclose personal health information to another custodian for the purposes of providing or assisting in providing health care. Subject to limited exceptions, custodians cannot rely on implied consent when disclosing personal health information to a person or organization that is not a custodian, or when disclosing personal health information for a purpose other than providing or assisting in providing health care.

Subject to additional requirements and restrictions, implied consent is permitted if a custodian collects, uses or discloses names or mailing addresses for the purposes of fundraising. In addition, if individuals have provided information about their religious affiliation to a health care facility, the facility may rely on implied consent to provide the individual's name and location within the facility to a person representing their religious organization. Before making this

When is implied consent sufficient?

disclosure, the facility must provide the individual with an opportunity to withhold or withdraw consent. A health care facility may also disclose to a person the fact that an individual is a patient or resident in the facility, the individual's general health status, and the location of the individual, if the individual is offered the option, at the first reasonable opportunity after admission to the facility, to object to such disclosures and does not do so.

PHIPA distinguishes between implied consent and assumed implied consent. In the case of implied consent, custodians must ensure that all the required elements of consent are fulfilled; whereas in the case of assumed implied consent, custodians may assume that all the elements of consent are fulfilled, unless it is not reasonable to do so in the circumstances.

WHAT IS THE 'CIRCLE OF CARE'?

The "circle of care" is not a defined term under *PHIPA*. It is a term of reference used to describe the provisions of *PHIPA* that enable custodians to rely on an individual's assumed implied consent when collecting, using or disclosing personal health information for the purpose of providing or assisting in providing health care. For example:

- With respect to a physician's office, the circle of care may include: the physician, a nurse, a specialist or other health care practitioner referred by the physician and any other health care practitioner selected by the patient, such as a pharmacist or physiotherapist.
- In the context of a hospital, the circle of care may include: the attending physician and the health care team, for example residents, nurses, clinical clerks and employees assigned to the patient, who have the responsibility of providing care to the individual or assisting with that care. The circle of care could also include, among others, custodians, external to the hospital, who will be involved in providing health care to the patient upon discharge from the hospital.

The circle of care does not include:

- custodians who are not part of the direct or follow-up treatment of an individual and
- non-custodians, for example, insurance companies.

WHEN CAN CUSTODIANS ASSUME IMPLIED CONSENT?

In order to rely on assumed implied consent to collect, use or disclose personal health information, the custodian must first fall within a category of custodians that are entitled to rely on assumed implied consent. Most custodians, such as health care practitioners, hospitals, pharmacies, long-term care homes and community care access centres, can rely on assumed implied consent. However, some custodians are not entitled to assume implied consent. For example, these include:

- an evaluator under the *Health Care Consent Act*,
- an assessor under the *Substitute Decisions Act, 1992*,
- the Minister or Ministry of Health and Long-Term Care and
- Canadian Blood Services.

In order for a custodian to rely on assumed implied consent a number of other requirements must also be fulfilled, including:

- The personal health information to be collected, used or disclosed by the custodian must be received from the individual, the substitute-decision maker or another custodian.
    - For example, a custodian may not rely on assumed implied consent if the personal health information was received from an employer, insurance provider or educational institution.
- The custodian must have received the personal health information that is being collected, used or disclosed for the purpose of providing or assisting in the provision of health care to the individual.
    - A custodian may not rely on assumed implied consent if the personal health information was received for other purposes such as research, fundraising, marketing or providing or assisting in the provision health care to another individual or group of individuals.
- The purpose of the collection, use or disclosure of personal health information by the custodian must be for the provision of health care or assisting in the provision of health care to the individual.
    - A custodian may not rely on assumed implied consent if the collection, use or disclosure is for other purposes, such as research, fundraising, marketing or providing or assisting in the provision of health care to another individual or group of individuals.

When can custodians assume implied consent?

- In the context of disclosure, the disclosure of personal health information by the custodian must be to another custodian.
- The custodian that receives the personal health information must not be aware that the individual have expressly withheld or withdrawn consent to the collection, use or disclosure.

For further information, please see the IPC guidance document *Circle of Care: Sharing Personal Health Information for Health-Care Purposes*.

ARE PHARMACISTS REQUIRED TO OBTAIN EXPRESS CONSENT FROM AN INDIVIDUAL TO DISCLOSE PERSONAL HEALTH INFORMATION TO A THIRD PARTY BENEFITS PAYOR?

No. The regulations provide an exception to the express consent requirement where a pharmacist discloses personal health information to a third party who is not a custodian and who is being asked to provide payment for a medication or related goods or services provided to an individual. Pharmacists are permitted to rely on an individual's implied consent as long as they are satisfied that all the required elements of consent are fulfilled.

CAN INDIVIDUALS CONTROL WHAT PERSONAL HEALTH INFORMATION IS RECORDED IN THEIR FILE?

Yes, but any condition placed on the collection, use or disclosure of personal health information cannot prohibit or restrict the recording of personal health information that is required by law or by established standards of professional or institutional practice.

CAN INDIVIDUALS WITHDRAW THEIR CONSENT?

Yes. An individual may, with limited exceptions, withdraw consent at any time for the collection, use or disclosure of personal health information by providing notice to the custodian. This applies to implied, as well as express consent.

A withdrawal of consent is not retroactive. For example, this means that where a disclosure has been made on the basis of consent, the custodian is not required to retrieve the information that has already been disclosed. However, the custodian must stop disclosing the personal health information as soon as

Can individuals withdraw their consent?

the notice of withdrawal is received. A withdrawal of consent would not apply to a collection or use that had already occurred prior to receiving the notice of withdrawal. It would only apply to new collections of personal health information and future uses for the purpose of which the consent was initially obtained.

WHAT IS A 'LOCK–BOX'?

The "lock-box" is not a defined term under *PHIPA*. It is a term commonly used to describe the right of individuals to withhold or withdraw their consent to the collection, use or disclosure of their personal health information for health care purposes. Individuals may expressly instruct custodians not to use or disclose their personal health information for health care purposes without consent, where *PHIPA* would otherwise permit a use or disclosure for such a purpose.

The withholding or withdrawal of consent or the express instructions may take various forms, including communications from individuals to custodians: not to collect, use or disclose a particular item of personal health information, such as a specific diagnosis, for health care purposes, not to collect, use or disclose the contents of their entire record of personal health information for health care purposes and/or not to use and/or disclose their personal health information to a particular custodian, a particular agent of a custodian or to a class of custodians or agents, for example, physicians, nurses or social workers, for health care purposes.

WHAT ARE THE RESTRICTIONS AND LIMITATIONS ON THE LOCK–BOX?

Once an individual locks personal health information, a custodian subject to the withdrawal or withholding of consent or express instruction cannot collect, use or disclose, as the case may be, that personal health information for health care purposes, unless the individual provides express consent and informs the custodian accordingly or unless *PHIPA* otherwise permits the collection, use or disclosure to be made without consent. For example, the custodian is permitted to disclose the locked personal health information where the custodian believes, on reasonable grounds, that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to an individual or a group of persons.

Further, an individual's restriction may not impede a custodian from recording personal health information about an individual that is required by law or by established standards of professional or institutional practice.

What are the restrictions and limitations on the lock-box?

If a custodian discloses an individual's personal health information to another custodian for the provision of health care and the disclosing custodian does not have consent to disclose all the personal health information that it considers reasonably necessary for that purpose, the disclosing custodian must notify the receiving custodian of that fact. The receiving custodian would then be able to explore the matter of the locked personal health information with the individual and seek their express consent to access the locked information.

For further information, please see the IPC fact sheet, *Lock-Box Fact Sheet*.

WHAT HAPPENS WHEN AN INDIVIDUAL IS INCAPABLE OF PROVIDING CONSENT?

Under *PHIPA*, individuals are presumed to be capable of making their own decisions regarding the collection, use or disclosure of their personal health information. Individuals are capable of consent if they are able to understand information relevant to deciding whether to consent to the collection, use or disclosure of their personal health information, and to appreciate the reasonably foreseeable consequences of giving, not giving, withholding or withdrawing their consent.

If a custodian believes that an individual is incapable of providing consent, *PHIPA* permits a substitute decision-maker, such as a relative, spouse, child's parent, or the Public Guardian and Trustee, to make a decision on an individual's behalf.

PHIPA lists, in order of priority, the following substitute decision-makers who may consent on behalf of an individual when consent is required, including:

- a substitute decision-maker within the meaning of section 9, section 39 and section 56 of the *Health Care Consent Act*, if the purpose of the collection, use or disclosure is necessary for, or ancillary to, a decision about a treatment under Part II, a decision about admission to a care facility under Part III or a decision about a personal assistance service under Part IV of the *Health Care Consent Act* respectively,,
- the attorney for personal care or for property,
- the representative appointed by the Consent and Capacity Board,
- the spouse or partner,
- a child or parent, including a children's aid society,
- a parent who has a right of access,

- a sibling,
- a relative and if no other person meets the requirements
- the Public Guardian and Trustee.

CAN A CHILD UNDER 16 YEARS OLD PROVIDE CONSENT?

A custodian may obtain consent for the collection, use and disclosure of personal health information from a capable child, regardless of age. As discussed above, individuals are capable of consent if they are able to understand information relevant to deciding whether to consent to the collection, use or disclosure of their personal health information, and to appreciate the reasonably foreseeable consequences of giving, not giving, withholding or withdrawing their consent.

If the child is less than 16 years old, a parent of the child or a children's aid society or other person who is lawfully entitled to give or refuse consent in the place of the parent may also give, withhold or withdraw consent. However, this does not apply in the context of information that relates to treatment within the meaning of the *Health Care Consent Act*, about which children have made a decision on their own, or counselling in which children have participated on their own under the *Child and Family Services Act*. A parent does not include a parent who has only a right of access to the child. If there is a conflict between a capable child who is less than 16 years old, and the person who is entitled to act as the child's substitute decision-maker, the decision of the capable child regarding giving, withholding or withdrawing consent prevails.

CAN ANOTHER PERSON, SUCH AS A FAMILY MEMBER, PROVIDE CONSENT ON AN INDIVIDUAL'S BEHALF WHEN PICKING UP OR DROPPING OFF A PRESCRIPTION?

Yes. The regulations permit a pharmacist to provide a prescription to another person. This is also permitted under the *Drug and Pharmacies Regulation Act*.

COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION

WHAT ARE THE GENERAL LIMITATIONS ON THE COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION?

A custodian is prohibited from collecting, using or disclosing personal health information unless consent has been obtained and the collection, use and disclosure is, to the best of the custodian's knowledge, necessary for a lawful purpose or is permitted or required by *PHIPA*.

According to *PHIPA*, a custodian must not collect, use or disclose personal health information if other information will serve the purpose of the collection, use or disclosure. For example, a custodian may be able to provide a researcher conducting a study with de-identified information, rather than disclosing personal health information. A custodian must not collect, use or disclose more personal health information than is reasonably necessary to meet the purpose of the collection, use or disclosure. For example, if a patient requests a doctor's note to give to the employer, the doctor should only include the minimum information necessary, rather than the patient's entire health history.

COLLECTION

WHAT IS A COLLECTION OF PERSONAL HEALTH INFORMATION UNDER *PHIPA*?

PHIPA defines the term "collect" as the gathering, acquiring, receiving or obtaining of personal health information by any means from any source. This means that personal health information can be collected by a custodian or an authorized agent under *PHIPA* in several ways, such as when a doctor makes notes about a patient or when a pharmacist receives a prescription to be filled.

WHAT ARE THE RULES REGARDING THE COLLECTION OF PERSONAL HEALTH INFORMATION?

As a general rule, consent is required for any collection of an individual's personal health information, unless *PHIPA* allows the collection without consent. Custodians within the "circle of care" may rely on an individual's implied consent, or assumed implied consent if the requirements are fulfilled, to collect personal health information for the purpose of providing health care.

With limited exceptions, custodians must collect personal health information directly from the individual involved. Custodians must not collect personal health information if other information will serve the purpose of the collection and may only collect as much information as is necessary to meet the purpose of collection.

WHEN CAN CUSTODIANS INDIRECTLY COLLECT PERSONAL HEALTH INFORMATION?

Custodians may collect personal health information indirectly where, for example:

- the individual consents,
- the collection is necessary for providing health care and it is not possible to collect personal health information directly from the individual that can be relied on as accurate and complete,
- the collection is necessary for providing health care and it is not possible to collect personal health information directly from the individual in a timely manner,
- the custodian collects personal health information for the purposes of research from a person who is not a custodian, provided that certain conditions are met,
- the indirect collection is required or permitted by law,
- the custodian is a prescribed entity and is collecting personal health information from a person who is not a custodian for the purposes of the planning and management of the health system or
- the IPC authorizes the indirect collection.

USE

WHAT IS A USE OF PERSONAL HEALTH INFORMATION UNDER *PHIPA*?

The term "use" in relation to personal health information in the custody or under the control of a custodian or a person, is defined under *PHIPA* as meaning to handle or deal with personal health information, but does not include to disclose the information. Where a custodian is authorized to use the information, the custodian may provide the information to an agent of the custodian to use it for that purpose on behalf of the custodian. The sharing of information between a custodian and its agent is considered to be a use and not a disclosure or a collection for the purposes of *PHIPA*. Order HO-013 found that handling and dealing with personal health information includes accessing/viewing personal health information.

WHAT ARE THE RULES REGARDING THE USE OF PERSONAL HEALTH INFORMATION?

As a general rule, consent is required for any use of an individual's personal health information, unless *PHIPA* allows the use without consent. Custodians must not use personal health information if other information will serve the purpose of the use, and may only use as much information as is necessary to meet the purpose of the use of personal health information.

When using personal health information, a custodian must take reasonable steps to ensure that the individual's personal health information is as accurate, complete and up-to-date as is necessary for the purposes for which the custodian uses the information.

WHEN CAN PERSONAL HEALTH INFORMATION BE USED WITHOUT CONSENT?

PHIPA sets out a limited set of acceptable uses of personal health information without consent, including, for example, the following purposes:

- planning or delivering programs or services,
- risk management, error management or activities to improve or maintain the quality of care or any related program or service,
- educating agents to provide health care,

When can personal health information be used without consent?

- obtaining payment or processing, monitoring, verifying or reimbursing health care claims,
- research, provided that specific requirements and conditions are met and
- If permitted or required by law.

A custodian may provide personal health information to an agent of the custodian for any of these purposes.

DISCLOSURE

WHAT IS A DISCLOSURE OF PERSONAL HEALTH INFORMATION UNDER *PHIPA*?

The term "disclose" in relation to personal health information in the custody or under the control of a custodian or a person, is defined under *PHIPA* as meaning to make the personal health information available or to release it to another custodian or person. It does not include providing personal health information back to the person who provided it or disclosed it in the first place, whether or not the personal health information has been manipulated or altered, as long as it does not include additional identifying information.

WHAT ARE THE RULES REGARDING THE DISCLOSURE OF PERSONAL HEALTH INFORMATION?

As a general rule, consent is required to disclose an individual's personal health information, unless *PHIPA* allows the disclosure without consent. Custodians must not disclose personal health information if other information will serve the purpose of the disclosure, and may only disclose as much information as is necessary to meet the purpose.

A custodian and its authorized agents may rely on implied consent, or assumed implied consent if the requirements are fulfilled, for the disclosure of personal health information within the "circle of care" while providing health care, as long as the disclosure is reasonably necessary for the provision of health care, and the individual has not expressly withheld or withdrawn consent.

PHIPA permits custodians to disclose personal health information in certain limited situations. However, simply because a disclosure is permitted does not mean it is mandatory, unless it is necessary to carry out a statutory or legal duty.

What are the rules regarding the disclosure of personal health information?

Unless permitted or required by law, express consent is generally required when personal health information is disclosed by a custodian to a non-custodian, where a custodian discloses to another custodian for a purpose other than for health care or for market research, unless specific conditions are met and fundraising, if more than contact information is provided.

When disclosing personal health information, the custodian should take care to ensure that no information is inadvertently disclosed to third parties.

WHEN CAN PERSONAL HEALTH INFORMATION BE DISCLOSED WITHOUT CONSENT?

PHIPA recognizes the need for a flexible approach to regulating information exchanges between custodians in order to ensure the effective and efficient operation of the health system. Consequently, custodians may disclose personal health information without an individual's consent in certain circumstances. While these disclosures without consent are permitted by *PHIPA*, they are not mandatory, unless they are necessary to carry out a statutory or legal duty. Examples of permitted disclosures of personal health information without consent include:

- if the disclosure is reasonably necessary for providing health care and consent cannot be obtained in a timely manner, unless there is an express request from the individual instructing otherwise,
- in order for the Minister of Health and Long-Term Care to provide funding to the custodian for the provision of health care,
- for the purpose of contacting a relative or friend or potential substitute decision-maker of an individual who is injured, incapacitated or ill and unable to give consent personally,
- to inform any person that an individual is a patient or resident in a facility, the individual's general health status, and the location of the individual in the facility, unless there is an express request from the individual instructing otherwise,
- to eliminate or reduce a significant risk of serious bodily harm to a person or group of persons,
- when transferring records to the archives for conservation,
- for the purpose of carrying out an inspection, investigation or similar procedure that is authorized by a warrant, *PHIPA* or another *Act*,

When can personal health information be disclosed without consent?

- for determining or verifying eligibility for publicly funded health care or related goods, services or benefits,
- for the purpose of administration and enforcement of various *Acts* by the professional Colleges and other regulatory bodies,
- to a prescribed person, listed in the regulations, that compiles and maintains a registry of personal health information for the purposes of facilitating or improving the provision of health care or that relates to the storage or donation of body parts or bodily substances,
- to a prescribed entity, listed in the regulations, for the purpose of analysis or compiling information with respect to the management, evaluation or monitoring of the health system,
- to the Public Guardian and Trustee, a children's aid society and the Children's Lawyer for the purpose of carrying out their statutory functions,
- to a person conducting an audit or reviewing an accreditation or application for accreditation related to the services of a custodian,
- for the purpose of legal proceedings, in specific circumstances,
- for the purpose of research, subject to restrictions and conditions and
- for any purpose as required or permitted by law.

CAN PERSONAL HEALTH INFORMATION BE DISCLOSED IN THE EVENT OF AN EMERGENCY?

PHIPA does not prevent the rapid sharing of personal health information in certain situations. *PHIPA* is not intended to stand in the way of the disclosure of vital—and in some cases, life-saving—information in emergency or critical situations affecting individuals or public health and safety, as well as in situations that call for compassion.

Personal health information may be disclosed without consent if the custodian believes on reasonable grounds that the disclosure is necessary for eliminating or reducing a significant risk of serious bodily harm to a person or group of persons. For example, a psychologist at a university could disclose a student's personal health information to the student's family or physician, if the psychologist believes it is necessary to reduce the risk of suicide. *PHIPA* also allows a custodian to disclose personal health information without consent in order to contact a relative, friend or potential substitute decision-maker if an individual is injured, incapacitated or ill and unable to consent.

Can personal health information be disclosed in the event of an emergency?

Custodians may also disclose personal health information if permitted or required by another law. For example, the *Health Protection and Promotion Act* (*HPPA*) requires certain custodians to report diseases defined as reportable, communicable or virulent to the Medical Officer of Health. *PHIPA* also provides that custodians may disclose personal health information without consent to the Chief Medical Officer of Health or to a local medical officer of health for the purposes of the *HPPA* and to the Ontario Agency for Health Protection and Promotion for the purposes of the *Ontario Agency for Health Protection and Promotion Act*. For example, a custodian may report an outbreak of a suspicious condition that is not identified as a reportable, communicable or virulent disease, but which the custodian believes could be dangerous.

For further information, please see the IPC fact sheet, *Disclosure of Information Permitted in Emergency or other Urgent Circumstances*.

DOES *PHIPA* PERMIT DISCLOSURE OF PERSONAL HEALTH INFORMATION ABOUT A DECEASED INDIVIDUAL?

PHIPA permits the disclosure of personal health information about a deceased individual in certain circumstances. A custodian may only disclose personal health information to a person who is not a custodian, such as a relative of a deceased individual, if the individual whose personal health information is at issue, has given express consent or the disclosure is permitted or required by *PHIPA* or another law. In the case of a deceased individual, the consent may be given by the deceased individual's substitute decision-maker. This means that if the substitute decision-maker consents, the personal health information may be disclosed to a relative of the deceased individual.

PHIPA permits, but does not require, a custodian to disclose personal health information without consent for the purposes of identifying the individual or for informing people whom it is reasonable to inform, that the individual is deceased or reasonably suspected to be deceased and the circumstances of death, where appropriate. *PHIPA* also permits disclosure to the spouse, partner, sibling or child of the deceased individual if the recipients reasonably require the information to make decisions about their own, or their children's health care.

For further information, please see the IPC fact sheet, *Obtaining Personal Health Information About a Deceased Relative*.

CAN A CUSTODIAN DISCLOSE PERSONAL HEALTH INFORMATION TO THE WORKPLACE SAFETY AND INSURANCE BOARD (WSIB) ABOUT AN INJURED WORKER WITHOUT THE INDIVIDUAL'S CONSENT?

Yes. *PHIPA* permits the disclosure of personal health information without consent, if permitted or required by another law. For example, this means that *PHIPA* does not interfere with the *Workplace Safety and Insurance Act* (*Act*), where that *Act* requires a hospital or health facility, which provides health care to a worker claiming benefits under the insurance plan, to give the WSIB such information relating to the worker as the WSIB may require. This requirement also applies to a health care practitioner who provides health care to a worker or is consulted with respect to a worker's health care. When requested to do so by an injured worker or the employer, the *Act* requires a health care practitioner treating the worker to give the WSIB, the worker and the employer prescribed information concerning the worker's functional abilities.

PHIPA also does not interfere with the *Occupational Health and Safety Act*, which sets out an employer's and supervisor's duty, subject to specific limitations, to provide a worker with information, including personal information, related to a risk of workplace violence from a person with a history of violent behaviour.

CAN A CUSTODIAN STORE, ACCESS OR DISCLOSE PERSONAL HEALTH INFORMATION OUTSIDE OF ONTARIO?

PHIPA does not require that personal health information be retained and stored in Ontario or Canada. There is no legislative prohibition on storing and accessing personal health information outside of Ontario. For example, a custodian may decide to outsource the storage of personal health information to a service provider in another jurisdiction. However, the custodian is ultimately accountable for the actions of its agent and must be satisfied that appropriate administrative, physical and technical safeguards are in place, for example, through contractual arrangements.

PHIPA permits disclosures of personal health information to a person outside of Ontario in certain situations. A custodian may disclose personal health information about an individual collected in Ontario to a person outside of Ontario if:

- the individual consents to the disclosure,
- *PHIPA* permits the disclosure,

Can a custodian store, access or disclose personal health information outside of Ontario?

- the person receiving the information performs functions comparable to the functions of certain persons to whom the disclosure in Ontario is permitted,
- the custodian is a prescribed entity and the disclosure is for the purpose of health planning or health administration, the information relates to health care provided in Ontario to a person who is a resident of another province or territory of Canada and the disclosure is made to the government of that province or territory,
- the disclosure is reasonably necessary for the provision of health care to the individual and the individual has not expressly instructed the custodian not to make the disclosure or
- the disclosure is reasonably necessary for the administration of payments in connection with the provision of health care to the individual or for contractual or legal requirements in that connection.

FUNDRAISING AND MARKETING

CAN CUSTODIANS COLLECT, USE OR DISCLOSE PERSONAL HEALTH INFORMATION FOR FUNDRAISING ACTIVITIES?

The regulations contain specific requirements and restrictions that apply to all collections, uses and disclosures of personal health information for fundraising, including the following:

- The collection, use or disclosure of personal health information for fundraising purposes is only permitted where the fundraising relates to a charitable or philanthropic purpose related to the custodian's operations.
- All solicitations must contain an easy opt-out from any further solicitations.
- No solicitations may contain information about an individual's health care or state of health.

In general, custodians are only permitted to collect, use or disclose personal health information for purposes that are not related to the provision of health care with the express consent of the individual in question. However, *PHIPA* and its regulations provide that a collection, use or disclosure of an individual's name and mailing address (or the name and mailing address of a substitute decision-maker, if applicable) for fundraising may take place with the implied consent of the individual in question, as long as the following requirements are met:

- at the time the service has been provided to the individual, the custodian has posted, or has made available to the individual, a notice informing the individual of the custodian's intention to use or disclose the information for fundraising purposes, along with information on how the individual can easily opt out and
- the individual had not opted out within 60 days from the time the notice had been provided.

For personal health information collected before November 1, 2004, a custodian may assume implied consent to use or disclose an individual's name and contact information for fundraising, unless the custodian is aware that the individual has expressly withheld or withdrawn consent.

For further information please see the IPC fact sheet, *Fundraising under PHIPA*.

CAN PERSONAL HEALTH INFORMATION BE COLLECTED, USED OR DISCLOSED FOR MARKETING PURPOSES?

A custodian can only collect, use or disclose personal health information about an individual for market research or for marketing purposes with the express consent of the individual.

Note that the following activities are excluded from the definition of marketing:

- communications by health care practitioners about the availability of non-OHIP covered charges for a block fee or on the basis of a set fee for service and
- communications by Canadian Blood Services for recruiting donors of blood and blood products.

RESEARCH

WHAT ARE THE REQUIREMENTS FOR THE COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION FOR RESEARCH?

The general rule is that a custodian needs to obtain an individual's consent to collect, use and disclose personal health information, unless *PHIPA* allows the collection, use or disclosure without consent. In recognizing the importance of health research, PHIPA permits the collection, use or disclosure of personal health information for research purposes without an individual's consent, if strict conditions are met.

For example, a custodian who uses personal health information for research and, similarly, a researcher who seeks disclosure of personal health information for research purposes, must both submit a detailed research plan to a Research Ethics Board (REB) for approval. When deciding whether to approve a research plan involving the use or disclosure of personal health information without consent, a REB must consider:

- whether the research can be reasonably accomplished without using the personal health information,
- the public interest in conducting the research and in protecting privacy,
- whether obtaining consent is impractical and
- whether adequate safeguards will be in place to protect the privacy of individuals and the confidentiality of their personal health information.

A researcher requesting disclosure of personal health information from a custodian must submit to the custodian a written application, a research plan and a copy of the decision approving the research plan by a REB. In addition, the custodian must enter into an agreement with the researcher that may impose further restrictions, including the manner in which the researcher may use and disclose the personal health information.

A researcher with an approved research plan who receives personal health information from a custodian shall:

- comply with the conditions, if any, imposed by the REB,

What are the requirements for the collection, use and disclosure of personal health information for research?

- use personal health information only for the purpose set out in the research plan,
- not publish information in a form that could reasonably enable a person to identify the individual,
- not disclose information unless required by law or if the disclosure is to prescribed persons or registries,
- not attempt to contact the individual whose personal information is the subject of the research project unless the custodian obtains the consent of that individual,
- notify the custodian in writing of any breaches of either the agreement or *PHIPA* and
- comply with the agreement between the researcher and the custodian.

Researchers are permitted to disclose personal health information to another researcher or to a prescribed person or a prescribed entity if the disclosure is either part of a research plan approved by a REB, or it is necessary for the purpose of verifying or validating the information or the research.

ARE THERE ANY REQUIREMENTS FOR RESEARCH ETHICS BOARDS AND RESEARCH PLANS?

Yes. The regulations specify that a REB must have at least five members, including:

- a member who has no affiliation to the person who established the REB,
- a member who has knowledge in privacy issues,
- a member who has knowledge in research ethics and
- at least two members with expertise in the methods or the relevant areas of research.

In addition, the regulations list a number of requirements that research plans must include. For example, a research plan must include a description of why consent to the disclosure of personal health information is not being sought from the individual to whom the information relates; a description of how the information will be used, the safeguards the researcher will put in place to protect the confidentiality and security of the information and a description of all persons who will have access to the information.

ONTARIO HEALTH CARDS AND HEALTH NUMBERS

WHO CAN COLLECT, USE OR DISCLOSE ONTARIO HEALTH NUMBERS AND UNDER WHAT CIRCUMSTANCES?

Custodians and certain persons or organizations prescribed in the regulations are permitted to collect, use or disclose Ontario health numbers.

A person or organization that is not a custodian or an agent of a custodian may only collect or use an Ontario health number for the following purposes:

- for purposes related to the provision of provincially funded health resources,
- for the purposes for which the custodian disclosed the number,
- for purposes related to the duties or powers of a governing body of health care practitioners who provide provincially funded health resources or
- for health administration, health planning or health research or epidemiological studies by persons listed in the regulations including, the WSIB, prescribed persons and prescribed entities.

An organization or person who is not a custodian or agent of a custodian may not disclose a health number, except as set out in the regulations or as required by law.

These restrictions on the collection, use and disclosure of health numbers do not apply to:

- a person who collects, uses or discloses health numbers for a proceeding,
- a prescribed entity or
- the individual or the individual's substitute decision-maker.

ARE OTHER ORGANIZATIONS PERMITTED TO REQUEST THE PRODUCTION OF A HEALTH CARD?

PHIPA states that only a person who provides a provincially funded health care resource may require the production of an individual's health card.

Are other organizations permitted to request the production of a health card?

However, there is nothing in *PHIPA* that prevents an organization from requesting a health card, as long as it is made clear that disclosure is voluntary and the information will only be used for purposes directly related to the provision of provincially funded health resources. For instance, an employer may allow an employee to voluntarily provide a health card in order to expedite the provision of health care services in the event of an emergency. A school, day care, or camp may also request a child's health number so that it is on record in the event of a medical emergency.

Please note that any such disclosure must be voluntary, and non-custodians may not require the production of health cards. It is an offence under *PHIPA* for any organization to wilfully collect, use or disclose any personal health information—including health numbers—in a manner that contravenes *PHIPA*.

An organization, for example a private sector business not directly involved in the delivery of provincially funded health services, is not permitted to take note of, record, collect, or use a health number for identification purposes. However, nothing prevents individuals from voluntarily choosing to show their health cards in order to verify identity. For example, individuals may voluntarily decide to provide their health cards to librarians in order to confirm their identity and obtain a library card. The librarians may view the health card, but are not permitted to record the health number.

For further information, please see the IPC document, *Frequently Asked Questions: Health Cards and Health Numbers*.

ACCESS TO RECORDS OF PERSONAL HEALTH INFORMATION AND CORRECTION

ACCESS

ARE INDIVIDUALS PERMITTED TO ACCESS THEIR OWN PERSONAL HEALTH INFORMATION?

With limited exceptions, *PHIPA* provides individuals with a general right to access their personal health information held by a custodian and sets out a formal procedure for access requests. The right of access does not apply to:

- records that contain quality of care information,
- personal health information required for quality assurance programs,
- raw data from psychological tests or assessments,
- personal health information used solely for research purposes or
- personal health information that is in the custody or under the control of a laboratory in respect of a test, where an individual has the right of access to that information from the health care practitioner and the practitioner has not directed the laboratory to provide the information directly to the individual.

As previously noted, personal health information includes identifying information that is not personal health information, but that is contained in a record that contains personal health information. Personal health information does not include identifying information if the information relates primarily to one or more employees or other agents of the custodian and the record is maintained primarily for a purpose other than the provision or assisting in the provision of health care.

For further information please see the IPC fact sheet, *Your health information: Your access and correction rights*.

HOW DO AN INDIVIDUAL OBTAIN ACCESS TO THEIR PERSONAL HEALTH INFORMATION?

An individual may exercise a right of access to a record of personal health information by making a written request for access to the custodian that has custody or control of the information.

The custodian should then either make the record available for examination or provide a copy of the record. Otherwise, the custodian must give a written notice to the individual seeking access stating that, after a reasonable search, the record does not exist, cannot be found or is not a record to which access applies. If the custodian is entitled to refuse the request, in whole or in part, the custodian must give a written notice stating that the request is being refused and providing reasons for the refusal. The notice must also state that the individual is entitled to make a complaint about the refusal to the IPC. If an individual decides to complain to the IPC, the complaint must be in writing.

The request must contain sufficient detail to allow the custodian to locate the record in question. Where the individual has not provided sufficient detail to enable the custodian to identify and locate the record, the custodian is required to assist the individual in reformulating the request.

Nothing in *PHIPA* prevents a custodian from granting an individual access to a record of personal health information if the individual makes an oral request for access.

For further information, please see the IPC's *PHIPA* Practice Directions, *Clarifying Access Requests and Drafting a Letter Responding to a Request for Access to Personal Health Information*.

HOW LONG DOES A CUSTODIAN HAVE TO RESPOND TO AN INDIVIDUAL'S REQUEST FOR ACCESS TO PERSONAL HEALTH INFORMATION?

A custodian must respond no later than 30 calendar days after the request was made.

Extensions of up to a maximum of 30 additional calendar days are allowed, where meeting this time frame would unreasonably interfere with the custodian's operations, or where the necessary consultations would not make it reasonably practical to reply within that time frame. In such situations, the custodian must inform the individual in writing of the extension and set out the length of the extension and the reasons for the extension.

CAN A CUSTODIAN REFUSE TO PROVIDE ACCESS TO AN INDIVIDUAL'S PERSONAL HEALTH INFORMATION?

Generally, custodians are responsible for providing individuals with access to their records of personal health information.

Custodians may only refuse access in limited situations, including:

- the information in question is subject to a legal privilege,
- access could reasonably be expected to result in a risk of serious harm to the treatment or recovery of the individual or serious bodily harm to the individual or another person,
- the information was collected in the course of an inspection, investigation or similar procedure and the resulting proceedings, appeals or processes have not yet been concluded or
- another law prohibits the disclosure of that information.

If an exception applies, an individual still has a right of access to the part of the record that can reasonably be severed from the part containing the information to which the individual does not have the right of access. If a custodian denies an individual access to the personal health information, the individual has the right to file a written complaint with the IPC.

IS THERE A FEE ASSOCIATED WITH AN ACCESS REQUEST?

Custodians may charge a reasonable fee for providing access to an individual's records of personal health information. *PHIPA* also permits a custodian to waive all or part of the fee associated with an access request. In charging a fee, *PHIPA* requires custodians to first provide the individual with a fee estimate. The fee amount must not exceed the prescribed amount set out in the regulations, if any, or the amount of reasonable cost recovery.

There is currently no regulation prescribing the fee for providing access to an individual's records of personal health information. Order HO-009 found that a custodian may charge a set fee of $30 for photocopying or printing the first 20 pages of a record and 25 cents per page for every additional page. The set fee of $30 also includes additional activities, for example, locating and retrieving the record, reviewing the contents of the record for not more than 15 minutes and preparing a response letter to the individual.

WHAT IF THE CUSTODIAN WORKS FOR A NON-CUSTODIAN THAT IS COVERED UNDER PUBLIC SECTOR ACCESS AND PRIVACY LEGISLATION, SUCH AS A SCHOOL BOARD OR MUNICIPALITY?

The provisions of *PHIPA* regarding access to, and correction of, personal health information do not apply to records in the custody or under the control of a health care practitioner who is employed by or acting for an institution within the meaning of the *Freedom of Information and Protection of Privacy Act*, which covers provincial ministries and most provincial boards, agencies and commissions, or the *Municipal Freedom of Information and Protection of Privacy Act*, which covers local government organizations such as municipalities, police, school, health and library boards, if the individual has the right to request access under either of those Acts. In that case, the individual would submit an access request under *FIPPA* or *MFIPPA*, as applicable. For example, if an individual wants to access personal health information compiled by a psychologist who works for a school board, the individual should make the request to the freedom of information coordinator of the custodian's institution, for example the school board, in accordance with *MFIPPA*, rather than directly to the custodian.

If the custodian works for a non-custodian that is not covered under *FIPPA* or *MFIPPA*, for example a private sector organization, the provisions of *PHIPA* would apply. In that case, the individual would submit an access request under *PHIPA* directly to the custodian.

CORRECTION

CAN INDIVIDUALS CORRECT ERRORS IN THEIR PERSONAL HEALTH INFORMATION?

An individual who believes that personal health information is incomplete or inaccurate may request that a custodian correct the record. It is the responsibility of the custodian to ensure that personal health information is complete and accurate.

For further information please see the IPC fact sheet, *Your health information: Your access and correction rights*.

HOW DOES AN INDIVIDUAL CORRECT ERRORS?

An individual seeking a correction to personal health information may submit a request to the custodian who has custody or control of the records. The custodian is permitted to make a correction based on an oral request; however, the custodian may require that the request be made in writing.

The custodian must respond within 30 days of receiving a written correction request. *PHIPA* provides limited grounds for extending this 30-day time frame. Extensions of up to a maximum of 30 additional days are allowed, where replying within 30 days would unreasonably interfere with the custodian's operations, or where the necessary consultations would not make it reasonably practical to reply within that time frame. In such situations, the custodian must inform the individual in writing of the extension and set out the length of the extension and the reasons for the extension.

CAN A CUSTODIAN REFUSE TO CORRECT AN INDIVIDUAL'S PERSONAL HEALTH INFORMATION?

Subject to the exceptions set out in the next paragraph, a custodian is obligated to correct a record of personal health information where an individual demonstrates, to the satisfaction of the custodian, that the record is inaccurate or incomplete for the purposes for which the custodian uses the information and the individual gives the custodian the necessary information to correct the record.

However, a custodian may refuse to correct a record of personal health information that was not originally created by the custodian and which the custodian does not have sufficient knowledge, expertise and authority to correct, or if the record consists of a professional opinion or an observation that a custodian has made in good faith, for example, a medical diagnosis made by a physician. If a correction is refused, the custodian is required to inform the individual of the refusal, the reasons for the refusal, the individual's right to file a complaint regarding the refusal to the IPC and the right of the individual to attach a statement of disagreement to the record.

ADMINISTRATION AND ENFORCEMENT

HOW IS *PHIPA* ENFORCED?

The IPC has been designated as the independent oversight body responsible for ensuring that custodians collect, use and disclose personal health information according to the rules set out in *PHIPA*. The IPC plays a significant role in enforcing overall compliance.

The IPC has various powers under *PHIPA*, including the authority to review and adjudicate complaints. These include the authority to:

- require a complainant to try to resolve the issue directly with the custodian,
- appoint a mediator to resolve the complaint and/or
- review a complaint initiated by an individual or, in the absence of a complaint, self-initiate a review where there are reasonable grounds to do so.

The IPC also has the authority to issue orders requiring compliance with *PHIPA*. For example, the IPC may order a custodian to:

- provide the individual with access to a record of personal health information,
- correct a record of personal health information,
- dispose of records of personal health information and
- change or cease a particular information practice.

HOW DOES AN INDIVIDUAL INITIATE A COMPLAINT?

A person who believes that another person has contravened, or is about to contravene *PHIPA*, has the right to submit a written complaint to the IPC. For example, a person may complain about:

- a custodian's information practices,
- a refusal to grant access to personal health information or
- a refusal to correct or amend personal health information.

For further information please see the IPC document, *Access and Correction Complaints – Personal Health Information Protection Act*.

How does an individual initiate a complaint?

IS THERE A TIME LIMIT WITHIN WHICH AN INDIVIDUAL MAY COMPLAIN?

In general, an individual must file a complaint with the IPC within one year from when the individual became aware of the problem. The legislation provides the IPC with the discretion to extend this one year limitation period.

For complaints that deal with access or correction, an individual must file a complaint with the IPC within six months from the time a custodian refuses an access or correction request.

IF A PERSON IS NOT SATISFIED WITH AN IPC ORDER, WHAT CAN BE DONE?

Persons affected by most types of orders issued by the IPC have the right to appeal on a question of law to the Divisional Court of Ontario within 30 days of receiving a copy of the order. Where the IPC issues an order relating to access or correction of health records, there is no right of appeal. In such a case, a person may apply to the Divisional Court of Ontario for judicial review.

CAN A PERSON SEEK COMPENSATION FOR DAMAGES?

A person affected by an order of the IPC or a person affected by conduct leading to a conviction for an offence under *PHIPA*, that has become final, may commence a proceeding in court for damages for actual harm suffered. If a court determines that the harm suffered was caused by wilful or reckless misconduct, *PHIPA* permits the court to award up to $10,000 in damages for mental anguish.

WHAT IS AN OFFENCE UNDER *PHIPA*?

Offences under *PHIPA* include:

- wilfully collecting, using or disclosing personal health information in contravention of *PHIPA* or its regulations,

- requesting access to or correction of a record of personal health information under false pretences,
- intentionally disposing of a record of personal health information to avoid providing access,
- collecting, using or disclosing an individual's health number in contravention of *PHIPA*,
- obstructing the IPC, or one of its delegates, in the performance of its oversight functions,
- dismissing, suspending, demoting, disciplining, harassing or disadvantaging an individual who has alerted the IPC of an alleged contravention of *PHIPA* or
- failing to comply with an IPC order.

WHAT ARE THE CONSEQUENCES FOR COMMITTING AN OFFENCE UNDER *PHIPA*?

A natural person found guilty of committing an offence under *PHIPA* can be liable for a fine of up to $50,000. A person who is not a natural person for example, an organization or institution can be liable for a fine of up to $250,000.

Any officer, member, employee or agent of a corporation found to have authorized or acquiesced to a breach of *PHIPA* can be held personally liable.

In addition, persons who are convicted of an offence under *PHIPA* may be subject to a civil suit for damages for breach of privacy. Generally, custodians who have acted reasonably and in good faith will be protected from liability.

WHO IS RESPONSIBLE FOR PROSECUTING OFFENCES UNDER *PHIPA*?

No person other than the Attorney General, or an agent for the Attorney General, may commence a prosecution for an offence under *PHIPA*. A proceeding to prosecute an offence cannot be commenced after six months from the time the offence under *PHIPA* was alleged to have been committed.

ABOUT THE INFORMATION AND PRIVACY COMMISSIONER OF ONTARIO

The role of the Information and Privacy Commissioner of Ontario is set out in three statutes: the *Freedom of Information and Protection of Privacy Act*, the *Municipal Freedom of Information and Protection of Privacy Act* and the *Personal Health Information Protection Act*. The Commissioner acts independently of government to uphold and promote open government and the protection of personal privacy.

Under the three *Acts*, the Commissioner:

- **Resolves access to information appeals and complaints when government or health care practitioners and organizations refuse to grant requests for access or correction;**
- **Investigates complaints with respect to personal information held by government or health care practitioners and organizations;**
- **Conducts research into access and privacy issues;**
- **Comments on proposed government legislation and programs; and**
- **Educates the public about Ontario's access and privacy laws.**

Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Information and Privacy Commissioner of Ontario
2 Bloor Street East, Suite 1400
Toronto, Ontario
Canada M4W 1A8

Web site: www.ipc.on.ca
Telephone: 416-326-3333
Email: info@ipc.on.ca

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Legislative Assembly of Ontario

Assemblée législative de l'Ontario

2ND SESSION, 41ST LEGISLATURE, ONTARIO
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Bill 87

(Chapter 11 of the Statutes of Ontario, 2017)

An Act to implement health measures and measures relating to seniors by enacting, amending or repealing various statutes

The Hon. E. Hoskins
Minister of Health and Long-Term Care

1st Reading	December 8, 2016
2nd Reading	April 4, 2017
3rd Reading	May 30, 2017
Royal Assent	May 30, 2017

EXPLANATORY NOTE

This Explanatory Note was written as a reader's aid to Bill 87 and does not form part of the law. Bill 87 has been enacted as Chapter 11 of the Statutes of Ontario, 2017.

SCHEDULE 1
DRUG AND PHARMACIES REGULATION ACT

Various amendments are made to the *Drug and Pharmacies Regulation Act*, including amendments to facilitate implementation of interim orders regarding suspensions and the imposition of terms, conditions and limitations.

SCHEDULE 2
IMMUNIZATION OF SCHOOL PUPILS ACT

The *Immunization of School Pupils Act* is amended:

1. To require parents to complete an immunization education session before filing a statement of conscience or religious belief.
2. To expand the categories of persons who may provide statements regarding the administration of immunizing agents.
3. To require those who administer immunizing agents to provide information to the local medical officer of health.

SCHEDULE 3
LABORATORY AND SPECIMEN COLLECTION CENTRE LICENSING ACT

A number of amendments are made to the *Laboratory and Specimen Collection Centre Licensing Act.* Among them:

1. The two categories of "laboratory" and "specimen collection centre" are both provided for under the new term "laboratory facility", and the licensing provisions of the Act are amended accordingly.
2. Provision is made for the emergency suspension of licences.
3. The transfer of licences is provided for.
4. The powers of inspectors under the Act are revised.
5. The collection, use and disclosure of personal information by the Ministry is provided for.
6. Revisions are made concerning the prosecution of offences under the Act.

The *Animals for Research Act* is amended to correct a cross-reference.

The *Health Insurance Act* is amended to permit the Minister to enter into arrangements for the payment of remuneration to health facilities rendering insured services to insured persons on a basis other than fee for service, in addition to physicians and practitioners.

The *Public Hospitals Act* is amended to permit the Minister to designate hospitals to provide community laboratory services.

SCHEDULE 4
ONTARIO DRUG BENEFIT ACT

The *Ontario Drug Benefit Act* is amended to add new definitions for an "authorized prescriber" and a "registered nurse in the extended class". Several amendments are made throughout the Act to accommodate prescriptions by authorized prescribers. A reference to a repealed Act is removed.

The Act is also amended to allow regulations to incorporate other documents by reference as they are amended from time to time after the regulation is made.

SCHEDULE 5
REGULATED HEALTH PROFESSIONS ACT, 1991

The *Regulated Health Professions Act, 1991* and its Health Professions Procedural Code are amended. Among the changes:

1. The purposes for which the Minister may require a College to collect information from members under section 36.1 of the Act are expanded to include health human resources research.
2. The Minister is given the power to make regulations respecting College committees and panels.
3. The matters that a College is required to note in its register are expanded.
4. For the purposes of the sexual abuse provisions of the Code, the definition of "patient", without restricting the ordinary meaning of the term, is expanded to include an individual who was a member's patient within the last year or within such longer period of time as may be prescribed from the date on which they ceased to be a patient, and an individual who is determined to be a patient in accordance with the criteria set out in regulations.

5. The Inquiries, Complaints and Reports Committee and its panels may make an order for the interim suspension of a member's certificate of registration at any time following the receipt of a complaint or after the appointment of an investigator, instead of only when a matter is referred for discipline or incapacity proceedings.
6. The imposition of gender-based terms, conditions or limitations on a member's certificate of registration is prohibited.
7. The grounds for mandatory revocation of the certificate of registration of a member who has sexually abused a patient are expanded, and suspension is made mandatory in sexual abuse cases that do not involve conduct requiring mandatory revocation.
8. Members are required to report to the Registrar if they belong to professional bodies outside Ontario, and if there has been a finding of professional misconduct or incompetence against them by such a body.
9. Members are required to report to the Registrar if they are charged with an offence, and are required to provide information about bail conditions.
10. The mandatory program for Colleges to provide funding for therapy and counselling for patients who were sexually abused by members is expanded to apply to persons who are alleged to have been sexually abused while a patient, and to provide funding for other purposes provided for in regulations.
11. The penalties for failing to report sexual abuse of patients are increased.

SCHEDULE 6
SENIORS ACTIVE LIVING CENTRES ACT, 2017

The *Elderly Persons Centres Act* is repealed and replaced with a new Act. Under the new Act, an operator that is not an individual can obtain funding from the Minister Responsible for Seniors Affairs to establish, maintain or operate a program if a director appointed by the Minister approves both the operator and the program. The director approves a program on being satisfied that its purpose is to promote active and healthy living, social engagement and learning for persons who are primarily seniors by providing them with activities and services.

If the operator operates the program in a municipality, any one municipality is required to make a contribution to the operator. If the operator operates the program in a location that is not in a municipality, the regulations made under the Act can prescribe what entities are required to make a contribution to the operator.

There is broad regulation-making power under the Act, including the power to make regulations governing contributions.

Bill 87 **2017**

An Act to implement health measures and measures relating to seniors by enacting, amending or repealing various statutes

CONTENTS

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3 The short title of this Act is the *Protecting Patients Act, 2017*.

SCHEDULE 1
DRUG AND PHARMACIES REGULATION ACT

1 The definition of "registered pharmacy student" in subsection 1 (1) of the *Drug and Pharmacies Regulation Act* is repealed and the following substituted:

"intern technician" means a person registered as an intern technician under the *Pharmacy Act, 1991*;

2 Subsections 139 (5) of the Act is amended by adding the following paragraph:

3. Subsections 17 (2) and (3).

3 (1) Subsection 140 (2) of the Act is amended by striking out "interim orders where such allegations are referred to the Committee".

(2) Section 140 of the Act is amended by adding the following subsections:

Interim order

(2.0.1) The Accreditation Committee may at any time make an interim order directing the Registrar to suspend, or to impose terms, conditions or limitations on, a certificate of accreditation, if it is of the opinion that the conduct or operation of a pharmacy is likely to expose a patient, or a member of the public, to harm or injury.

Procedure

(2.0.2) The provisions of the Health Professions Procedural Code dealing with interim suspension orders made by the Inquiries, Complaints and Reports Committee or a panel of the Committee apply, with necessary modifications, to interim suspension orders made by the Accreditation Committee under subsection (2.0.1).

(3) Subsection 140 (2.1) of the Act is amended by striking out "section 37" and substituting "section 25.4".

4 (1) Clause 149 (1) (c) of the Act is amended by striking out "a registered pharmacy student" at the beginning and substituting "a student who is in the course of fulfilling the educational requirements to become a member of the College".

(2) Clause 149 (1) (d) of the Act is amended by adding "or an intern technician" after "a pharmacy technician".

(3) Subsection 149 (3) of the Act is repealed and the following substituted:

Remote dispensing locations

(3) Despite clause (1) (d), a pharmacy technician may compound, dispense or sell a drug in a remote dispensing location without a pharmacist being physically present to supervise, as long as a pharmacist is actively supervising the pharmacy technician and,

(a) a certificate of accreditation has been issued permitting the operation of the remote dispensing location; and

(b) the remote dispensing location is operated in accordance with the regulations.

5 Subsection 156 (2) of the Act is amended by striking out "two years" at the end and substituting "ten years".

6 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE 2
IMMUNIZATION OF SCHOOL PUPILS ACT

1 (1) Section 1 of the *Immunization of School Pupils Act* is amended by adding the following definition:

"nurse" means a member of the College of Nurses of Ontario; ("infirmière ou infirmier")

(2) The definition of "physician" in section 1 of the Act is repealed and the following substituted:

"physician" means a member of the College of Physicians and Surgeons of Ontario; ("médecin")

2 Subsections 3 (3) and (4) of the Act are repealed and the following substituted:

Same, statement of conscience or religious belief

(3) Subsection (1) does not apply to a parent who has completed an immunization education session with a medical officer of health or with a medical officer of health's delegate that complies with the prescribed requirements, if any, and who has filed a statement of conscience or religious belief with the proper medical officer of health.

Transitional

(4) Subsection (1) does not apply to a parent who, before the coming into force of section 2 of Schedule 2 to the *Protecting Patients Act, 2017*, filed a statement of conscience or religious belief with the proper medical officer of health.

3 Clause 6 (2) (a) of the Act is repealed and the following substituted:

(a) that the medical officer of health has not received,

(i) a statement from a physician, nurse or prescribed person showing that the pupil has completed the prescribed program of immunization in relation to the designated diseases,

(ii) an unexpired statement of medical exemption in respect of the pupil, or

(iii) a statement of conscience or religious belief in respect of the pupil and confirmation that the parent has completed the education session described in subsection 3 (3); and

4 Section 10 of the Act is repealed and the following substituted:

Statements by providers of immunizing agents

10 (1) Every physician, nurse or prescribed person who administers an immunizing agent to a child in relation to a designated disease shall provide to a parent of the child a statement that shows that the immunizing agent has been administered.

Information for M.O.H.

(2) Every physician, nurse or prescribed person who administers an immunizing agent to a child in relation to a designated disease shall provide the prescribed information to the medical officer of health for the public health unit in which the immunizing agent was administered.

5 Subclause 12 (2) (b) (i) of the Act is repealed and the following substituted:

(i) either a statement from a physician, nurse or prescribed person showing that the pupil has completed the prescribed program of immunization in relation to the designated disease or other information satisfying the medical officer of health that the pupil has completed the prescribed program, or

6 Subsection 17 (1) of the Act is amended by adding the following clause:

(f.1) respecting and governing the information described in subsection 10 (2), including, without being limited to, specifying one or more methods by which the information is to be provided, and requiring the information to be provided by such a method;

Commencement

7 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE 3
LABORATORY AND SPECIMEN COLLECTION CENTRE LICENSING ACT

1 (1) Clause (a) of the definition of "laboratory" in section 5 of the *Laboratory and Specimen Collection Centre Licensing Act* is amended by striking out "prophylaxis" and substituting "prevention".

(2) Section 5 of the Act is amended by adding the following definition:

"laboratory facility" means a laboratory or a specimen collection centre; ("centre de laboratoire")

(3) The definition of "operator" in section 5 of the Act is repealed and the following substituted:

"operator" means a person having charge or control of a laboratory facility; ("exploitant")

(4) Section 5 of the Act is amended by adding the following definition:

"personal information" includes personal information as defined in the *Freedom of Information and Protection of Privacy Act* and personal health information as defined in the *Personal Health Information Protection Act, 2004*; ("renseignements personnels")

(5) The definition of "specimen collection centre" in section 5 of the Act is amended by striking out "prophylaxis" in the portion before clause (a) and substituting "prevention".

(6) Clauses (a) to (d) of the definition of "specimen collection centre" in section 5 of the Act are repealed.

2 Section 9 of the Act is repealed and the following substituted:

Licence required

9 (1) No person shall establish, operate or maintain a laboratory facility except under the authority of a licence issued by the Director under this Act.

Issuing licences

(2) The Director may issue a licence for a laboratory facility to,

(a) perform one or more classes of tests specified in the licence;

(b) perform tests specified in the licence within one or more classes of tests;

(c) take or collect specimens or one or more classes of specimens specified in the licence; or

(d) take or collect specimens specified in the licence within one or more classes of specimens.

Conditions

(3) A licence is subject to the conditions, if any, specified by the Director in the licence.

Issuance of licence

(4) Subject to subsection (10), any person who applies in accordance with this Act and the regulations for a licence to establish, operate or maintain a laboratory facility and who meets the requirements of this Act and the regulations and who pays the prescribed fee is entitled to be issued the licence.

Where proposal not in public interest, issuance of licence

(5) Despite subsection (4), the following applies where an application is made for a licence and the Minister states in writing to the Director that it is not in the public interest to issue a licence to establish, operate or maintain the laboratory facility in the area where the applicant proposes to establish, operate or maintain the laboratory facility:

1. Section 11 does not apply.
2. The Director shall not issue the licence to the applicant.
3. The Director shall give written notice to the applicant of the refusal and of the Minister's statement.

Where proposal not in public interest, tests, specimens, etc.

(6) Despite subsection (4), where an application is made for a licence and the Minister states in writing to the Director that it is not in the public interest to issue a licence, either,

(a) in the case of a laboratory, for any classes of tests or any of the tests within a class or classes of tests in respect of which the application is made; or

(b) in the case of a specimen collection centre, to take or collect any specimens or class or classes of specimens in respect of which the application is made:

then,

(c) sections 10 and 11 do not apply;

(d) where the Director issues a licence to the applicant upon the application, the Director shall give written notice to the applicant of the Minister's statement; and

(e) the licence shall not be for the classes of tests or the tests within a class or classes of tests or for taking or collecting the specimens or class or classes of specimens that are set out in the Minister's statement.

Matters to be considered by Minister

(7) In making a decision as to what is in the public interest for the purposes of subsection (5) or (6), the Minister may consider any matter the Minister regards as relevant, including, without being limited to,

(a) the number and type of laboratory facilities that operate under the authority of licences issued under this Act,

(i) in the area, or

(ii) in the area and any other area;

(b) the tests and classes of tests performed or the specimens or class or classes of specimens taken or collected in the laboratory facilities,

(i) in the area, or

(ii) in the area and any other area;

(c) the utilization of existing laboratory facilities and their capacity to handle increased volume;

(d) the availability of facilities for the transportation of persons and specimens to laboratory facilities,

(i) in the area, or

(ii) in the area and any other area; or

(e) the funds available to provide payment for laboratory tests that are insured services under the *Health Insurance Act*.

Blood collection facilities

(8) Despite subsection (4), where an application is made for a licence to establish, operate or maintain a laboratory facility which will operate as a blood collection facility within the meaning of the *Voluntary Blood Donations Act, 2014* and the Minister states in writing to the Director that it is not in the public interest to issue such a licence, section 11 shall not apply and the Director shall not issue the licence to the applicant and shall give written notice to the applicant of the refusal and of the Minister's statement.

Same

(9) In making a decision in the public interest in subsection (8), the Minister may consider any matter the Minister regards as relevant, including, without being limited to, the principles set out in the *Voluntary Blood Donations Act, 2014*.

Grounds for refusal

(10) Subject to section 11, the Director may refuse to issue a licence where in the Director's opinion,

(a) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors affords reasonable grounds for belief that the laboratory facility will not be operated in accordance with the law and with honesty and integrity;

(b) the proposed laboratory facility or its operation would contravene this Act or the regulations or any other Act or regulation or any municipal by-law respecting its establishment or location;

(c) the applicant is not competent to operate a laboratory facility in accordance with this Act and the regulations;

(d) the equipment and premises are not suitable for the performance of the tests or the taking or collecting of the specimens for which the licence is sought; or

(e) any other ground for refusal that is prescribed in the regulations exists.

Provisional licence

(11) Where the applicant for a licence does not meet all the requirements for issuance of the licence and requires time to meet such requirements, the Director may issue a provisional licence for the laboratory facility.

Expiration and renewal of provisional licence

(12) A provisional licence expires on the date specified on the licence, which shall not be later than 12 months after the date of its issue, but the provisional licence may be renewed for one further period of no more than 12 months where, in the opinion of the Director, sufficient progress in complying with the requirements for issuance of a licence has been made.

Expiration and renewal of licence

(13) A licence that is not a provisional licence expires on the date specified on the licence, which shall not be later than five years from the date of its issue or renewal. A renewal shall be issued where the applicant is not disqualified under subsection (20).

Transitional

(14) Despite subsections (12) and (13), a licence or provisional licence that is in existence immediately before section 2 of Schedule 3 to the *Protecting Patients Act, 2017* comes into force expires when it would have otherwise expired.

Stay of refusal to renew

(15) Where the Director refuses to renew a licence, the laboratory facility shall be deemed to continue to be licensed until an order is made by the Review Board or until the time for requiring a hearing by the Review Board expires, whichever occurs first.

Operator to be named in licence

(16) It is a condition of a licence that the operation of the laboratory facility be under the charge and control of the operator named in the licence as operator and that the ownership of the laboratory facility be only in the person or persons named in the licence as owners.

Conditions re quality management

(17) It is a condition of a licence for a laboratory facility that,

(a) the operation of the laboratory facility meet the requirements of a quality management program;

(b) the owner and the operator of the laboratory facility permit an agency designated in the regulations to carry out a quality management program; and

(c) the owner of the laboratory facility pay the fees for an assessment under a quality management program, if any, that are prescribed by the regulations or established by an agency designated in the regulations.

Failure to meet program requirements

(18) Where an agency designated in the regulations to carry out a quality management program reports to the Director that the operation of a laboratory facility does not meet the requirements of the program, the Director may impose any conditions upon the laboratory facility's licence that the Director considers necessary or advisable in order that the health of the public be protected.

Notice of changes

(19) Where the operator or the owner named in the licence is a corporation, the corporation shall notify the Director in writing within 15 days of any change in the officers or directors of the corporation.

Revocation, suspension, renewal refusal

(20) The Director may revoke, suspend or refuse to renew a licence where,

(a) any person has made a false statement in the application for the licence or its renewal or in any report, document or other information required to be furnished by this Act or the regulations or any other Act or regulation that applies to the laboratory facility;

(b) any test authorized by the licence is incompetently performed;

(c) any specimen taking or collecting authorized by the licence is incompetently carried out;

(d) there is a breach of a condition of the licence;

(e) the owner or the operator does not comply with this Act or the regulations or any other Act or law relevant to the operation or maintenance of a laboratory facility;

(f) the services that can be provided by the laboratory facility are misrepresented;

(g) a change in the officers or directors of any corporation which is an operator or owner of a laboratory facility named in the licence would afford grounds for refusing to issue a licence under clause (10) (a); or

(h) any other ground for revoking, suspending or refusing renewal that is prescribed in the regulations exists.

Emergency suspension

9.1 (1) If the Director is of the opinion upon reasonable grounds that a laboratory facility is being operated or will be operated in a manner that poses an immediate threat to the health or safety of any person, the Director by a written order may suspend the licence of the laboratory facility.

Order effective immediately

(2) An order under subsection (1) takes effect immediately upon notice of the order being served on the licensee.

Notice requiring hearing by Review Board

(3) The Director shall deliver with the order under subsection (1) notice that the licensee is entitled to a hearing by the Review Board if the licensee mails or delivers, within 15 days after the notice is served on the licensee, notice in writing requiring a hearing to the Director and the Review Board, and the licensee may so require such a hearing.

Power of Review Board where hearing

(4) Section 11 applies, with necessary modifications, to a suspension under subsection (1).

Service of notice

(5) The Director may serve notice of an order under subsection (1) by sending the notice by any means that produces a paper record or by any other method of delivery that is prescribed in the regulations.

Deemed receipt

(6) If the Director serves notice in a manner described in subsection (5), the licensee shall be deemed to have received the notice on the day it is sent.

No stay

(7) Despite section 25 of the *Statutory Powers Procedure Act*, a request for a hearing by the Board made in accordance with subsection (3) of this section or an appeal to Divisional Court of the Review Board's decision under section 13 does not operate as a stay of a suspension of a licence ordered under subsection (1) of this section.

No interim order to stay

(8) Despite section 16.1 of the *Statutory Powers Procedure Act*, the Review Board shall not make an interim order to stay the suspension of a licence ordered under subsection (1) of this section.

Powers are additional

(9) For greater certainty, the powers of the Director under this section are in addition to, and not in place of, the powers of the Minister under the *Health Facilities Special Orders Act*.

Transfer of licence

9.2 (1) A licence issued under this Act is not transferrable without the consent of the Director.

How dealt with

(2) In deciding whether to consent to the transfer of a licence, the Director shall treat the proposed transferee of the licence as if the proposed transferee were an applicant for a licence and, for the purpose, section 9 applies with necessary modifications.

Limitations and conditions

(3) In consenting to the transfer of a licence, the Director may attach to the licence such conditions as the Director considers necessary in the circumstances.

3 Subsection 11 (1) of the Act is repealed and the following substituted:

Proposal to refuse to issue, suspend, revoke or impose condition

(1) Where the Director proposes to suspend, revoke or to refuse to issue or renew a licence or to impose a condition on an existing licence under this Act, the Director shall serve notice of the proposal, together with written reasons, on the applicant in the case of a proposal to refuse to issue or renew the licence and on the owner and operator in the case of a proposal to suspend, revoke or to impose a condition on the licence.

4 Section 15 of the Act is repealed.

5 Section 16 of the Act is repealed and the following substituted:

Appointment of inspectors

16 (1) The Minister may appoint, in writing, one or more persons as inspectors for the purposes of this Act and the regulations.

Certificate of appointment

(2) The Minister shall issue every inspector appointed under subsection (1) a certificate of appointment and every inspector, in the execution of his or her duties under this section and the regulations, shall produce the certificate of appointment upon request.

Director is an inspector

(3) The Director is an inspector by virtue of office, and when acting as an inspector shall, on request, produce evidence of being appointed as Director instead of the certificate of appointment required under subsection (2).

Inspections

(4) For the purpose of determining whether this Act and the regulations are being complied with, an inspector may, without a warrant, enter and inspect,

(a) a licensed laboratory facility;

(b) any business premises of a company that owns or operates one or more licensed laboratory facilities; and

(c) any place that the Director reasonably believes is being operated as a laboratory facility without a licence.

Time of entry

(5) The power under this section to enter and inspect without a warrant may be exercised only during the regular business hours of the laboratory facility, business premises or place.

Dwellings

(6) The power to enter and inspect under this section shall not be exercised to enter and inspect a place or a part of a place that is used as a dwelling.

Use of force

(7) An inspector is not entitled to use force to enter and inspect a laboratory facility, business premises or place.

Powers of inspector

(8) An inspector conducting an inspection may,

(a) examine records or anything else that is relevant to the inspection;

(b) demand the production of a record or any other thing that is relevant to the inspection;

(c) remove a record or any other thing that is relevant to the inspection for review, examination or testing;

(d) remove a record or any other thing that is relevant to the inspection for copying;

(e) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place;

(f) take photographs or make any other kind of recording; and

(g) question a person on matters relevant to the inspection.

Written demand

(9) A demand under this section that a record or any other thing be produced must be in writing and must include a statement of the nature of the record or thing required.

Obligation to produce and assist

(10) If an inspector demands that a record or any other thing be produced under this section, the person who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form.

Records and things removed from place

(11) A record or other thing that has been removed for review, examination, testing or copying,

(a) shall be made available to the person from whom it was removed on request and at a time and place that are convenient for the person and for the inspector; and

(b) shall be returned to the person within a reasonable time, unless, in the case of a thing that has been subject to testing, the thing has been made unsuitable for return as a result of the testing.

Copy admissible in evidence

(12) A copy of a record or other thing that purports to be certified by an inspector as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

Obstruction

(13) No person shall hinder, obstruct or interfere with or attempt to hinder, obstruct or interfere with an inspector conducting an inspection, refuse to answer questions on matters relevant to the inspection or provide the inspector with false information on matters relevant to the inspection.

Personal information in records

(14) For greater certainty, a reference to a record in this section includes a record that contains personal information.

6 The Act is amended by adding the following section:

Personal information

17.1 (1) The Ministry may directly or indirectly collect personal information for purposes related to the administration or enforcement of this Act, subject to any requirements or conditions provided for in the regulations.

Use of personal information

(2) The Ministry may use personal information for purposes related to the administration or enforcement of this Act, subject to any requirements or conditions provided for in the regulations.

Disclosure of personal information

(3) The Ministry may disclose personal information for purposes related to the administration or enforcement of this Act, subject to any requirements or conditions provided for in the regulations.

Personal health information not to be used for administration

(4) Despite the definition of "personal information" in section 5, "personal information" for purposes related to the administration of this Act does not include personal health information as defined in the *Personal Health Information Protection Act, 2004*.

7 Section 18 of the Act is repealed and the following substituted:

Regulations

18 (1) The Lieutenant Governor in Council may make regulations for carrying out the purposes and provisions of this Act.

Same

(2) Without restricting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

(a) providing for the issuance and renewal of licences and provisional licences and prescribing their terms and conditions;

(b) excluding institutions, buildings or places from the definitions of "laboratory" and "specimen collection centre" in section 5, and providing for additional institutions, buildings or places that are laboratories and specimen collection centres for the purposes of those definitions;

(c) prescribing examinations for the purpose of the definition of "laboratory" in section 5;

(d) prescribing grounds for the purposes of subsections 9 (10) and 9 (20);

(e) prescribing classes of tests for the purposes of this Act and the regulations;

(f) respecting the officers and employees of laboratory facilities and prescribing their duties, responsibilities and qualifications;

(g) prescribing the classes of persons who may perform tests in a laboratory;

(h) prescribing the classes of persons who may take or collect specimens in a specimen collection centre;

(i) prescribing classes of persons who shall not be owners of laboratory facilities or of any interest in a laboratory facility;

(j) respecting the management and operation of laboratory facilities;

(k) requiring laboratory facilities to keep any records and make any reports that are prescribed;

(l) respecting and governing the promotion and advertising of laboratory facilities;

(m) prescribing fees for licences, provisional licences and renewals and for laboratory services performed by the Ministry;

(n) exempting laboratory facilities or any class of laboratory facilities or any class of persons from the application of any provision of this Act or the regulations;

(o) prescribing tests to which this Act does not apply;

(p) prescribing other duties and powers of the Director and the Review Board, including the approval of educational qualifications of officers and employees of laboratory facilities;

(q) instituting a system for the payment by the Province of all or any part of the annual expenditures of laboratories in lieu of amounts payable under the *Health Insurance Act*;

(r) prescribing fees for assessments under a quality management program;

(s) designating an agency or agencies to carry out a quality management program, and permitting the agency or agencies to establish and charge fees for assessments under the quality management program;

(t) requiring an agency designated under clause (s) to submit reports to the Director, and governing the contents of those reports;

(u) prescribing, providing for and governing any other matter that this Act refers to as being prescribed or provided for in the regulations.

8 Section 21 of the Act is repealed.

9 (1) Subsection 22 (3) of the Act is repealed and the following substituted:

Directors, officers, etc.

(3) Whether or not a corporation has been convicted of an offence under subsection (1), each director, officer, employee or agent of the corporation who authorized, permitted, acquiesced in or participated in the commission of an offence by the corporation under subsection (1) or failed to take reasonable care to prevent the corporation from committing an offence under subsection (1) is a party to and guilty of the offence, and on conviction is liable to the punishment provided for under subsection (1).

(2) Section 22 of the Act is amended by adding the following subsections:

Provincial Judge required

(5) The Attorney General or an agent of the Attorney General may, by notice to the clerk of the Ontario Court of Justice, require that a provincial judge preside over a proceeding in respect of an offence under this Act.

Publication re convictions

(6) If a person is convicted of an offence under this Act, the Minister may publish or otherwise make available to the general public the name of the person, a description of the offence, the date of the conviction and the person's sentence.

Restraining order not necessary

(7) A person may be prosecuted under this section whether or not a restraining order has been previously made with respect to the subject matter of the prosecution.

Certificates

(8) In any prosecution or other proceeding under this Act, a certificate of an analyst stating that the analyst has made an analysis of a sample and stating the result of that analysis is evidence of the facts alleged in the certificate without proof of the signature or the official character of the person appearing to have signed the certificate.

ANIMALS FOR RESEARCH ACT

10 Subsection 20 (13) of the *Animals for Research Act* is amended by striking out "the *Laboratory and Specimen Collection Centre Licensing Act*" and substituting "the *Health Protection and Promotion Act*".

HEALTH INSURANCE ACT

11 Clause 2 (2) (a) of the *Health Insurance Act* is amended by striking out "physicians and practitioners" and substituting "physicians, practitioners and health facilities".

PUBLIC HOSPITALS ACT

12 Section 1 of the *Public Hospitals Act* is amended by adding the following definition:

"community laboratory services" means the services of a laboratory or specimen collection centre under the *Laboratory and Specimen Collection Centre Licensing Act* that are provided by a hospital designated under subsection 22 (1) of this Act to persons who are neither in-patients nor out-patients; ("services de laboratoire communautaire")

13 The Act is amended by adding the following section:

Community laboratory services

22 (1) The Minister may designate one or more hospitals to provide community laboratory services.

Same

(2) A hospital that is designated under subsection (1) may provide community laboratory services, subject to any conditions, restrictions or requirements that may be prescribed in the regulations.

14 Subsection 32 (1) of the Act is amended by adding the following clauses:

(c.1) prescribing conditions, restrictions and requirements for the purposes of subsection 22 (2);

(c.2) providing for provisions of this Act or the regulations that do not apply with respect to community laboratory services provided by a hospital designated under subsection 22 (1);

Commencement

15 (1) Subject to subsection (2), this Schedule comes into force on the day the *Protecting Patients Act, 2017* receives Royal Assent.

(2) Sections 1 to 9 and 12 to 14 come into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE 4
ONTARIO DRUG BENEFIT ACT

1 Subsection 1 (1) of the *Ontario Drug Benefit Act* is amended by adding the following definitions:

"authorized prescriber" means a physician, registered nurse in the extended class, a prescribed person or a member of a prescribed class; (prescripteur autorisé)

"registered nurse in the extended class" means a registered nurse who holds an extended certificate of registration under the *Nursing Act, 1991*; ("infirmière autorisée ou infirmier autorisé de la catégorie supérieure")

2 Subsection 2 (2) of the Act is amended by striking out "the *Family Benefits Act*".

3 Subsections 9 (1) and (2) of the Act are amended by striking out "a physician" wherever it appears and substituting in each case "an authorized prescriber".

4 Subsections 16 (1), (3) and (4) of the Act are repealed and the following substituted:

Unlisted drugs, special case

(1) If an authorized prescriber informs the executive officer that the proper treatment of a patient who is an eligible person requires the administration of a drug for which there is not a listed drug product, the executive officer may make this Act apply in respect of the supplying of that drug as if it were a listed drug product by so notifying the prescriber.

. . . . .

Listed drugs, special case

(3) If an authorized prescriber informs the executive officer that the proper treatment of a patient who is an eligible person requires the administration of a drug for which there are one or more listed drug products but for which the conditions for payment under section 23 are not satisfied, the executive officer may make this Act apply in respect of the supplying of those listed drug products as if the conditions were satisfied.

Notice to operator

(4) An operator of a pharmacy is not liable for contravening this Act or the regulations in respect of supplying a drug referred to in subsection (1) or a listed drug product referred to in subsection (3) unless the operator has received notice from the authorized prescriber or from the executive officer that this Act applies to that supplying.

5 (1) Section 18 of the Act is amended by adding the following subsection:

Authorized prescribers

(1.1) The Minister may make regulations prescribing persons or classes of persons for the purpose of the definition of "authorized prescriber" in subsection 1 (1).

(2) Subsection 18 (8) of the Act is amended by adding "and the Minister shall not make any regulation under subsection (1.1)" before "unless" in the portion before clause (a).

(3) Subsection 18 (8) of the Act is amended by striking out "and" after clause (c) and by repealing clause (d) and substituting the following:

(d) the Minister has considered whatever comments and submissions that members of the public have made on the proposed regulation in accordance with clause (9) (b) or (c); and

(e) in the case of regulations made by the Lieutenant Governor in Council, the Minister has reported to the Lieutenant Governor in Council on what, if any, changes to the proposed regulation the Minister considers appropriate.

(4) Section 18 of the Act is amended by adding the following subsection:

Discretion to make regulations, Minister

(11.1) After considering the comments and submissions mentioned in clause (8) (d), the Minister, without further notice under subsection (8), may make the proposed regulation under subsection (1.1) with the changes that the Minister considers appropriate, whether or not those changes are mentioned in the comments and submissions.

(5) Subsection 18 (12) of the Act is amended by striking out "clause 8 (d)" and substituting "clause 8 (e)".

(6) Section 18 of the Act is amended by adding the following subsection:

Rolling incorporation

(16) A regulation made under subsection (1) that incorporates another document by reference may provide that the reference to the document includes amendments made to the document from time to time after the regulation is made.

Commencement

6 This Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

SCHEDULE 5
REGULATED HEALTH PROFESSIONS ACT, 1991

1 Subsection 1 (1) of the *Regulated Health Professions Act, 1991* is amended by adding the following definition:

"personal health information" has the same meaning as in section 4 of the *Personal Health Information Protection Act, 2004*; ("renseignements personnels sur la santé")

2 (1) Clause 36 (1) (d) of the Act is repealed and the following substituted:

(d) as may be required for the administration of the *Drug Interchangeability and Dispensing Fee Act*, the *Healing Arts Radiation Protection Act*, the *Health Insurance Act*, the *Health Protection and Promotion Act*, the *Independent Health Facilities Act*, the *Laboratory and Specimen Collection Centre Licensing Act*, the *Long-Term Care Homes Act, 2007*, the *Retirement Homes Act, 2010*, the *Ontario Drug Benefit Act*, the *Coroners Act*, the *Controlled Drugs and Substances Act* (Canada) and the *Food and Drugs Act* (Canada);

(2) Subsection 36 (1) of the Act is amended by striking out "or" at the end of clause (i), by adding "or" at the end of clause (j) and by adding the following clause:

(k) to the Minister in order to allow the Minister to determine,

(i) whether the College is fulfilling its duties and carrying out its objects under this Act, a health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*, or

(ii) whether the Minister should exercise any power of the Minister under this Act, or any Act mentioned in subclause (i).

(3) Section 36 of the Act is amended by adding the following subsection:

Restriction

(1.6) Information disclosed to the Minister under clause (1) (k) shall only be used or disclosed for the purpose for which it was provided to the Minister or for a consistent purpose.

3 (1) Subsection 36.1 (1) of the Act is repealed and the following substituted:

Collection of personal information by College

(1) At the request of the Minister, a College shall collect information directly from members of the College as is reasonably necessary for the purpose of health human resources planning or research.

(2) Subsections 36.1 (5) and (6) of the Act are repealed and the following substituted:

Use, collection, disclosure and publication

(5) The following applies to information collected under subsection (1):

1. The information may only be used for the purposes set out under subsection (1).
2. The Minister shall not collect personal information if other information will serve the purposes set out under subsection (1).
3. The Minister shall not collect more personal information than is necessary for the purposes set out under subsection (1).
4. The Minister may disclose the information only for the purposes set out in subsection (1).
5. Reports and other documents using information collected under this section may be published for the purposes set out under subsection (1), and for those purposes only, but personal information about a member of a College shall not be included in those reports or documents.

(3) The definition of "information" in subsection 36.1 (9) of the Act is repealed and the following substituted:

"information" includes personal information about members, but does not include personal health information; ("renseignements")

(4) Subsection 36.1 (9) of the Act is amended by adding the following definition:

"research" means the study of data and information in respect of health human resources planning. ("recherche")

4 The definition of "personal health information" in subsection 36.2 (6) of the Act is repealed.

5 (1) Subsection 43 (1) of the Act is amended by adding the following clause:

(o) establishing criteria for the definition of "patient" in relation to professional misconduct involving the sexual abuse of a patient for the purposes of subsection 1 (3) of the Code.

(2) Subsection 43 (1) of the Act is amended by adding the following clauses:

(p) respecting the composition of committees that a College is required to have pursuant to subsection 10 (1) of the Code and governing the relationship between such regulations and the by-laws of the College;

(q) respecting the qualification, selection, appointment and terms of office of members of committees that a College is required to have pursuant to subsection 10 (1) of the Code and governing the relationship between such regulations and the by-laws of the College;

(r) prescribing conditions that disqualify committee members from sitting on committees that a College is required to have pursuant to subsection 10 (1) of the Code and governing the removal of disqualified committee members and governing the relationship between such regulations and the by-laws of the College;

(s) specifying the composition of panels selected from amongst the members of the Registration Committee, Inquiries, Complaints and Reports Committee, Discipline Committee and Fitness to Practise Committee for the purposes of subsections 17 (2), 25 (2), 38 (2) and 64 (2) of the Code, and providing for quorum for such panels.

(3) Subsection 43 (1) of the Act is amended by adding the following clause:

(t) prescribing additional information to be contained in a College's register for the purposes of paragraph 19 of subsection 23 (2) of the Code and designating such information as information subject to subsection 23 (13.1) of the Code.

(4) Subsection 43 (1) of the Act is amended by adding the following clauses:

(u) prescribing conduct for the purposes of subparagraph 3 vii of subsection 51 (5) of the Code;

(v) prescribing offences for the purposes of clause 51 (5.2) (a) of the Code.

(5) Subsection 43 (1) of the Act is amended by adding the following clause:

(w) clarifying how a College is required to perform its functions under sections 25 to 69 and 72 to 74 of the Code with respect to matters involving allegations of a member's misconduct of a sexual nature, and providing for further functions and duties that are not inconsistent with those functions.

(6) Subsection 43 (1) of the Act is amended by adding the following clause:

(x) prescribing additional functions of the patient relations program for the purposes of subsection 84 (3.1) of the Code.

(7) Subsection 43 (1) of the Act is amended by adding the following clause:

(y) prescribing additional purposes for which funding may be provided under the program which Colleges are required to maintain under section 85.7 of the Code, and prescribing additional persons or classes of persons to whom funding may be paid for the purposes of subsection 85.7 (8) of the Code.

(8) Subsection 43 (1) of the Act is amended by adding the following clause:

(z) governing transitional matters arising from the enactment of Schedule 5 to the *Protecting Patients Act, 2017*.

6 Subsection 1 (6) of Schedule 2 to the Act is repealed and the following substituted:

Definitions

(6) For the purposes of subsections (3) and (5),

"patient", without restricting the ordinary meaning of the term, includes,

(a) an individual who was a member's patient within one year or such longer period of time as may be prescribed from the date on which the individual ceased to be the member's patient, and

(b) an individual who is determined to be a patient in accordance with the criteria in any regulations made under clause 43 (1) (o) of the *Regulated Health Professions Act, 1991*; ("patient")

"spouse", in relation to a member, means,

(a) a person who is the member's spouse as defined in section 1 of the *Family Law Act*, or

(b) a person who has lived with the member in a conjugal relationship outside of marriage continuously for a period of not less than three years. ("conjoint")

7 Section 1.1 of Schedule 2 to the Act is repealed and the following substituted:

Statement of purpose, sexual abuse provisions

1.1 The purpose of the provisions of this Code with respect to sexual abuse of patients by members is to encourage the reporting of such abuse, to provide funding for therapy and counselling in connection with allegations of sexual abuse by members and, ultimately, to eradicate the sexual abuse of patients by members.

8 Section 7 of Schedule 2 to the Act is amended by adding the following subsections:

Posting of meeting information

(1.1) The College shall post on its website information regarding upcoming meetings of the Council, including the dates of those meetings, matters to be discussed at those meetings, and information and documentation that will be provided to members of the Council for the purpose of those meetings.

Items where public excluded

(1.2) If the Registrar anticipates that the Council will exclude the public from any meeting or part of a meeting under subsection (2), the grounds for doing so shall be noted in the information posted under subsection (1.1) and information and documentation related to that meeting or part of that meeting shall not be posted under subsection (1.1).

9 Subsection 10 (3) of Schedule 2 to the Act is repealed and the following substituted:

Composition

(3) The composition of the committees shall be in accordance with the by-laws and with any regulations made pursuant to clauses 43 (1) (p) to (r) of the *Regulated Health Professions Act, 1991*.

10 Subsections 17 (2) and (3) of Schedule 2 to the Act are repealed and the following substituted:

Composition of panels

(2) The panel selected by the chair shall be composed in accordance with regulations made pursuant to clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*.

Quorum

(3) Quorum for the panel shall be in accordance with regulations made pursuant to clause 43 (1) (s) of the *Regulated Health Professions Act, 1991*.

11 (1) Subsection 23 (2) of Schedule 2 to the Act is repealed and the following substituted:

Contents of register

(2) The register shall contain the following:

1. Each member's name, business address and business telephone number, and, if applicable, the name of every health profession corporation of which the member is a shareholder.
2. Where a member is deceased, the name of the deceased member and the date upon which the member died, if known to the Registrar.
3. The name, business address and business telephone number of every health profession corporation.
4. The names of the shareholders of each health profession corporation who are members of the College.
5. Each member's class of registration and specialist status.
6. The terms, conditions and limitations that are in effect on each certificate of registration.
7. A notation of every caution that a member has received from a panel of the Inquiries, Complaints and Reports Committee under paragraph 3 of subsection 26 (1), and any specified continuing education or remedial programs required by a panel of the Inquiries, Complaints and Reports Committee using its powers under paragraph 4 of subsection 26 (1).
8. A notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and that has not been finally resolved, including the date of the referral and the status of the hearing before a panel of the Discipline Committee, until the matter has been resolved.
9. A copy of the specified allegations against a member for every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and that has not been finally resolved.
10. Every result of a disciplinary or incapacity proceeding.
11. A notation and synopsis of any acknowledgements and undertakings in relation to matters involving allegations of professional misconduct or incompetence before the Inquiries, Complaints and Reports Committee or the Discipline Committee that a member has entered into with the College and that are in effect.
12. A notation of every finding of professional negligence or malpractice, which may or may not relate to the member's suitability to practise, made against the member, unless the finding is reversed on appeal.
13. A notation of every revocation or suspension of a certificate of registration.
14. A notation of every revocation or suspension of a certificate of authorization.

15. Information that a panel of the Registration Committee, Discipline Committee or Fitness to Practise Committee specifies shall be included.

16. Where findings of the Discipline Committee are appealed, a notation that they are under appeal, until the appeal is finally disposed of.

17. Where, during or as a result of a proceeding under section 25, a member has resigned and agreed never to practise again in Ontario, a notation of the resignation and agreement.

18. Where the College has an inspection program established under clause 95 (1) (h) or (h.1), the outcomes of inspections conducted by the college.

19. Information that is required to be kept in the register in accordance with regulations made pursuant to clause 43 (1) (t) of the *Regulated Health Professions Act, 1991*.

20. Information that is required to be kept in the register in accordance with the by-laws.

(2) Subsection 23 (4) of Schedule 2 to the Act is amended by striking out "paragraph 11" and substituting "paragraph 15".

(3) Subsection 23 (5) of Schedule 2 to the Act is repealed and the following substituted:

Access to information by the public

(5) All of the information required by paragraphs 1 to 19 of subsection (2) and all information designated as public in the by-laws shall, subject to subsections (6), (7), (8), (9) and (11), be made available to an individual during normal business hours, and shall be posted on the College's website within a reasonable amount of time of the Registrar having received the information and in a manner that is accessible to the public or in any other manner and form specified by the Minister.

(4) Subsection 23 (11) of Schedule 2 to the Act is amended by striking out "paragraph 7" in the portion before clause (a) and substituting "paragraph 10".

(5) Clause 23 (11) (d) of Schedule 2 to the Act is amended by striking out "clause (a) or (b)" and substituting "clause (a), (b) or (c)."

(6) Section 23 of Schedule 2 to the Act is amended by adding the following subsection:

Other cases when information may be withheld

(11.1) The Registrar shall refuse to disclose to an individual or to post on the College's website information required by paragraph 10 of subsection (2) if,

(a) the result of a discipline proceeding was that no finding of professional misconduct or incompetence was made against the member; and

(b) more than 90 days have passed since the information was prepared or last updated, unless before the expiry of the 90 days the member to whom the information relates specifically requests in writing that the Registrar continue to maintain public access to the information.

(7) Section 23 of Schedule 2 to the Act is amended by adding the following subsection:

Correction of information

(13.1) The Registrar shall correct any information contained in the register that is required by paragraph 12 of subsection (2) or that is both required by paragraph 19 of subsection (2) and designated as subject to this subsection in a regulation made under clause 43 (1) (t) of the *Regulated Health Professions Act, 1991*, where a member demonstrates, to the satisfaction of the Registrar, that the information contained in the register is incomplete or inaccurate and where the member provides the Registrar with the information that is necessary to enable the Registrar to correct the incomplete or inaccurate information.

(8) Subsection 23 (14) of Schedule 2 to the Act is repealed and the following substituted:

Meaning of results of proceeding

(14) For the purpose of this section and section 56,

"result",

(a) when used in reference to a disciplinary proceeding, means the panel's finding that the member committed an act of professional misconduct or was incompetent, particulars of the grounds for the finding, a synopsis of the decision and the order made, including any reprimand, and where the panel has made no such finding, includes a notation that no such finding was made and the reason why no such finding was made, and

(b) when used in reference to an incapacity proceeding, means the panel's finding that the member is incapacitated and the order made by the panel.

12 Subsections 25 (2) and (3) of Schedule 2 to the Act are repealed and the following substituted:

Composition of panels

(2) The panel selected by the chair shall be composed in accordance with regulations made pursuant to clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*.

Quorum

(3) Quorum for the panel shall be in accordance with regulations made pursuant to clause 43 (1) (s) of the *Regulated Health Professions Act, 1991*.

13 Subsection 25.1 (4) of Schedule 2 to the Act is repealed and the following substituted:

Ratification of resolution

(4) If the complainant and the member reach a resolution of the complaint through alternative dispute resolution, they shall advise the Registrar of the resolution, and the Registrar may,

(a) adopt the proposed resolution; or

(b) refer the decision of whether or not to adopt the proposed resolution to the panel.

Referral to panel

(5) Where the Registrar makes a referral to the panel under clause (4) (b), the panel may,

(a) adopt the proposed resolution; or

(b) continue with its investigation of the complaint.

Time limit for ADR

(6) If the complainant and the member do not reach a resolution of the complaint within 60 days of a referral to alternative dispute resolution under subsection (1), the Registrar or the panel shall not adopt any resolution reached after that date and the panel shall proceed with its investigation of the complaint.

Extension of time

(7) Despite subsection (6), the Registrar or the panel may, where the Registrar or the panel believes it is in the public interest to do so, and with the agreement of the complainant and the member, adopt a resolution reached within 120 days of a referral to alternative dispute resolution under subsection (1).

14 Schedule 2 to the Act is amended by adding the following sections:

Withdrawal of complaint by Registrar

25.3 (1) At any time following the receipt of a complaint regarding the conduct or actions of a member and prior to any action being taken by a panel of the Inquiries, Complaints and Reports Committee under subsection 26 (1), the Registrar may, at the request of the complainant, withdraw the complaint if the Registrar believes that the withdrawal is in the public interest.

Notice

(2) The Registrar shall give the complainant and the member, within 14 days of the Registrar having withdrawn the complaint, notice that the complaint has been withdrawn.

Interim suspension

25.4 (1) The Inquiries, Complaints and Reports Committee may, subject to subsections (2) and (6), at any time following the receipt of a complaint or following the appointment of an investigator pursuant to subsection 75 (1) or (2), make an interim order directing the Registrar to suspend, or to impose terms, conditions or limitations on, a member's certificate of registration if it is of the opinion that the conduct of the member exposes or is likely to expose the member's patients to harm or injury.

No gender-based terms, conditions, limitations

(2) Despite subsection (1), the Inquiries, Complaints and Reports Committee shall not make an interim order directing the Registrar to impose any gender-based terms, conditions or limitations on a member's certificate of registration.

Procedure following interim suspension

(3) If an order is made under subsection (1) by the Inquiries, Complaints and Reports Committee,

(a) the matter shall be investigated and prosecuted expeditiously; and

(b) the Inquiries, Complaints and Reports Committee, the Discipline Committee or the Fitness to Practise Committee, as the case may be, shall give precedence to the matter.

Duration of order

(4) An order under subsection (1) continues in force until it is varied by the Inquiries, Complaints and Reports Committee or until the matter is withdrawn, resolved by way of an alternative dispute resolution process or otherwise finally disposed of by a panel of the Inquiries, Complaints and Reports Committee, the Discipline Committee or the Fitness to Practise Committee.

Panel's order

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

Restrictions on orders

(6) No order shall be made under subsection (1) unless the member has been given,

(a) notice of the intention to make the order;

(b) at least 14 days to make written submissions to the Committee; and

(c) a copy of the provisions of this section.

Extraordinary action to protect public

(7) Despite subsection (6), an order may be made under subsection (1) without notice to the member, subject to the right of the member to make submissions while the suspension or the terms, conditions or limitations are in place, if the Committee is of the opinion, on reasonable and probable grounds, that the conduct of the member exposes or is likely to expose the member's patients to harm or injury and urgent intervention is needed.

15 Subsection 28 (2) of Schedule 2 to the Act is repealed and the following substituted:

Impact of ADR on timelines

(2) Time spent by a complainant and member in an alternative dispute resolution process pursuant to a referral under section 25.1 shall not be included in the calculation of time under this section.

16 Section 37 of Schedule 2 to the Act is repealed.

17 (1) Subsections 38 (2) and (3) of Schedule 2 to the Act are repealed and the following substituted:

Composition

(2) The panel selected by the chair shall be composed in accordance with regulations made pursuant to clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*.

(2) Subsection 38 (5) of Schedule 2 to the Act is repealed and the following substituted:

Quorum

(5) Quorum for the panel shall be in accordance with regulations made pursuant to clause 43 (1) (s) of the *Regulated Health Professions Act, 1991*.

18 Schedule 2 to the Act is amended by adding the following section:

Production orders

42.2 (1) Where, in relation to a hearing involving allegations of a member's misconduct of a sexual nature, the member seeks an order of the panel of the Discipline Committee for the production and disclosure of a record that contains information for which there is a reasonable expectation of privacy from a person who is not a party to the hearing, any one or more of the following assertions made by the member are not sufficient on their own to establish that the record is likely relevant to an issue in the hearing or to the competence of a witness to testify:

1. That the record exists.
2. That the record relates to medical or psychiatric treatment, therapy or counselling that the complainant or a witness has received or is receiving.
3. That the record relates to the incident that is the subject-matter of the proceedings.
4. That the record may disclose a prior inconsistent statement of the complainant or a witness.
5. That the record may relate to the credibility of the complainant or a witness.
6. That the record may relate to the reliability of the testimony of the complainant or a witness merely because the complainant or witness has received or is receiving psychiatric treatment, therapy or counselling.
7. That the record may reveal allegations of sexual abuse of the complainant or a witness by a person other than the member.

8. That the record relates to the sexual activity of the complainant or a witness with any person, including the member.
9. That the record relates to the presence or absence of a recent complaint.
10. That the record relates to the sexual reputation of the complainant or a witness.
11. That the record was made close in time to a complaint or report or to the activity that forms the subject-matter of the allegation against the member.

Same

(2) A panel of the Discipline Committee may order the person who has possession or control of the record to produce the record or part of the record if the panel is satisfied that the member has established that the record is likely relevant to an issue in the hearing or to the competence of a witness to testify in the hearing and the production of the record is necessary in the interest of justice.

Factors to be considered

(3) In determining whether to grant an order for the production of records in accordance with this section, the panel shall consider,

(a) the regulatory nature of the proceedings;

(b) the primary purpose of the proceedings, which is to protect the public and regulate the profession in the public interest;

(c) the privacy interest of the complainant or a witness in the record sought; and

(d) the nature and purpose of the record sought in the motion.

Standing

(4) Despite subsection 41.1 (1), the panel shall, upon the application of any person who has a privacy interest in the records referred to in subsection (1) of this section, grant the person standing on the member's motion for production of the records.

Interpretation

(5) In subsection (1),

"allegations of a member's misconduct of a sexual nature" include, but are not limited to, allegations that the member sexually abused a patient.

19 (1) Clause 51 (1) (b) of Schedule 2 to the Act is repealed and the following substituted:

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

(2) Section 51 of Schedule 2 to the Act is amended by adding the following subsections:

No gender-based terms, conditions, limitations

(4.1) In making an order under paragraph 3 of subsection (2), a panel shall not make any order directing the Registrar to impose any gender-based terms, conditions or limitations on a member's certificate of registration.

Interim suspension of certificate

(4.2) The panel shall immediately make an interim order suspending a member's certificate of registration until such time as the panel makes an order under subsection (5) or (5.2) if the panel finds that the member has committed an act of professional misconduct,

(a) under clause (1) (a) and the offence is prescribed for the purposes of clause (5.2) (a) in a regulation made under clause 43 (1) (v) of the *Regulated Health Professions Act, 1991*;

(b) under clause (1) (b) and the misconduct includes or consists of any of the conduct listed in paragraph 3 of subsection (5); or

(c) by sexually abusing a patient and the sexual abuse involves conduct listed under subparagraphs 3 i to vii of subsection (5).

Non-application to mandatory orders

(4.3) For greater certainty, subsection (4) does not apply to a mandatory order made under subsection (5) or a mandatory order made under subsection (5.2).

(3) Subsection 51 (5) of Schedule 2 to the Act is repealed and the following substituted:

Orders relating to sexual abuse

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

1. Reprimand the member.
2. Suspend the member's certificate of registration if the sexual abuse does not consist of or include conduct listed in paragraph 3 and the panel has not otherwise made an order revoking the member's certificate of registration under subsection (2).
3. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following:
    i. Sexual intercourse.
    ii. Genital to genital, genital to anal, oral to genital or oral to anal contact.
    iii. Masturbation of the member by, or in the presence of, the patient.
    iv. Masturbation of the patient by the member.
    v. Encouraging the patient to masturbate in the presence of the member.
    vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.
    vii. Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the *Regulated Health Professions Act, 1991*.

Interpretation

(5.1) For greater certainty, for the purposes of subsection (5),

"sexual nature" does not include touching or conduct of a clinical nature appropriate to the service provided.

Mandatory revocation

(5.2) The panel shall, in addition to anything else the panel may do under subsection (2), reprimand the member and revoke the member's certificate of registration if,

(a) the member has been found guilty of professional misconduct under clause (1) (a) and the offence is prescribed in a regulation made under clause 43 (1) (v) of the *Regulated Health Professions Act, 1991*; or

(b) the member has been found guilty of professional misconduct under clause (1) (b) and the misconduct includes or consists of any of the conduct listed in paragraph 3 of subsection (5).

20 Section 62 of Schedule 2 to the Act is repealed and the following substituted:

Interim suspension

62 (1) The panel may, subject to section 63, make an interim order directing the Registrar to suspend or impose terms, conditions or limitations on a member's certificate of registration if it is of the opinion that the physical or mental state of the member exposes or is likely to expose his or her patients to harm or injury.

No gender-based terms

(2) Despite subsection (1), the panel shall not make an interim order directing the Registrar to impose any gender-based terms, conditions or limitations on a member's certificate of registration.

Procedure following interim suspension

(3) If an order is made under subsection (1) in relation to a matter,

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

(b) the Inquiries, Complaints and Reports Committee and the Fitness to Practise Committee shall give precedence to the matter.

Duration of order

(4) An order under subsection (1) continues in force until it is varied by the panel of the Inquiries, Complaints and Reports Committee or until the matter is finally disposed of by a panel of the Inquiries, Complaints and Reports Committee or the Fitness to Practise Committee.

21 Subsection 63 (1) of Schedule 2 to the Act is repealed and the following substituted:

Restrictions on orders

(1) No order shall be made with respect to a member under subsection 59 (2) or subsection 62 (1) unless the member has been given,

(a) notice of the intention to make the order;

(b) at least 14 days to make written submissions to the panel; and

(c) in the case of an order under subsection 62 (1), a copy of the provisions of section 62.

22 Subsections 64 (2) and (3) of Schedule 2 to the Act are repealed and the following substituted:

Composition of panels

(2) The panel selected by the chair shall be composed in accordance with regulations made pursuant to clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*.

Quorum

(3) Quorum for the panel shall be in accordance with regulations made pursuant to clause 43 (1) (s) of the *Regulated Health Professions Act, 1991*.

23 Section 71.1 of Schedule 2 to the Act is repealed and the following substituted:

No stay of certain orders pending appeal

71.1 Section 71 also applies to an order made by a panel of the Discipline Committee because of a finding that a member has committed sexual abuse of the kind described in paragraph 3 of subsection 51 (5) or an act of professional misconduct described in subsection 51 (5.2).

24 Paragraph 3 of subsection 73 (3) of Schedule 2 to the Act is repealed.

25 Section 84 of Schedule 2 to the Act is amended by adding the following subsection:

Other functions

(3.1) The patient relations program shall perform any other functions that are prescribed in regulations made under clause 43 (1) (x) of the *Regulated Health Professions Act, 1991*.

26 Schedule 2 to the Act is amended by adding the following section:

Reporting by members re: other professional memberships and findings

85.6.3 (1) A member shall advise the Registrar in writing if the member is a member of another body that governs a profession inside or outside of Ontario.

Findings of misconduct or incompetence

(2) A member shall file a report in writing with the Registrar if there has been a finding of professional misconduct or incompetence made against the member by another body that governs a profession inside or outside of Ontario.

Timing of report

(3) The report must be filed as soon as reasonably practicable after the member receives notice of the finding made against the member.

Contents of report

(4) The report must contain,

(a) the name of the member filing the report;

(b) the nature of, and a description of, the finding;

(c) the date that the finding was made against the member;

(d) the name and location of the body that made the finding against the member; and

(e) the status of any appeal initiated respecting the finding made against the member.

Publication ban

(5) The report shall not contain any information that violates a publication ban.

Same

(6) No action shall be taken under this section which violates a publication ban and nothing in this section requires or authorizes the violation of a publication ban.

Additional reports

(7) A member who files a report under subsection (1) shall file an additional report if there is a change in status of the finding made against the member as the result of an appeal.

27 Schedule 2 to the Act is amended by adding the following section:

Reporting by members re: charges and bail conditions, etc.

85.6.4 (1) A member shall file a report in writing with the Registrar if the member has been charged with an offence, and the report shall include information about every bail condition or other restriction imposed on, or agreed to, by the member in connection with the charge.

Timing of report

(2) The report must be filed as soon as reasonably practicable after the member receives notice of the charge, bail condition or restriction.

Contents of report

(3) The report must contain,

(a) the name of the member filing the report;

(b) the nature of, and a description of, the charge;

(c) the date the charge was laid against the member;

(d) the name and location of the court in which the charge was laid or in which the bail condition or restriction was imposed on or agreed to by the member;

(e) every bail condition imposed on the member as a result of the charge;

(f) any other restriction imposed on or agreed to by the member relating to the charge; and

(g) the status of any proceedings with respect to the charge.

Publication ban

(4) The report shall not contain any information that violates a publication ban.

Same

(5) No action shall be taken under this section which violates a publication ban and nothing in this section requires or authorizes the violation of a publication ban.

Additional reports

(6) A member who files a report under subsection (1) shall file an additional report if there is a change in the status of the charge or bail conditions.

28 (1) Subsection 85.7 (1) of Schedule 2 to the Act is repealed and the following substituted:

Funding provided by College

(1) There shall be a program, established by the College, to provide funding for the following purposes in connection with allegations of sexual abuse by members:

1. Therapy and counselling for persons alleging sexual abuse by a member.
2. Any other purposes prescribed in regulations made under clause 43 (1) (y) of the *Regulated Health Professions Act, 1991*.

(2) Subsections 85.7 (4) and (5) of Schedule 2 to the Act are repealed and the following substituted:

Eligibility

(4) A person is eligible for funding if,

(a) it is alleged, in a complaint or report, that the person was sexually abused by a member while the person was a patient of the member; or

(b) the alternative requirements prescribed in the regulations made by the Council are satisfied.

Timing

(5) Where a request is made for funding pursuant to subsection (1), a determination of the person's eligibility for such funding in accordance with subsection (4) shall be made within a reasonable period of time of the request having been received.

Not a finding

(5.1) The determination of a person's eligibility for funding in accordance with subsection (4) does not constitute a finding against the member and shall not be considered by any other committee of the College dealing with the member.

Cessation of eligibility

(5.2) Despite subsection (4), a person's eligibility to receive funding pursuant to subsection (1) ceases upon the occurrence of any of the prescribed circumstances.

(3) Subsections 85.7 (8) to (12) of Schedule 2 to the Act are repealed and the following substituted:

Payment

(8) Funding shall be paid only to the therapist or counsellor chosen by the person or to other persons or classes of persons prescribed in any regulation made under clause 43 (1) (y) of the *Regulated Health Professions Act, 1991*.

Use of funding

(9) Funding shall be used only to pay for therapy or counselling and for any other purposes prescribed in any regulation made under clause 43 (1) (y) of the *Regulated Health Professions Act, 1991* and shall not be applied directly or indirectly for any other purpose.

Same

(10) Funding may be used to pay for therapy or counselling that was provided at any time after the alleged sexual abuse took place.

Other coverage

(11) The funding that is provided to a person for therapy and counselling shall be reduced by the amount that the Ontario Health Insurance Plan or a private insurer is required to pay for therapy or counselling for the person during the period of time during which funding may be provided for the person under the program.

Right of recovery

(12) The College is entitled to recover from the member, in a proceeding brought in a court of competent jurisdiction, money paid in accordance with this section for an eligible person referred to in subsection (4).

29 Subsection 93 (2) of Schedule 2 to the Act is repealed and the following substituted:

Same

(2) Every person who contravenes subsection 85.1 (1) or 85.4 (1) is guilty of an offence and on conviction is liable to a fine of not more than $50,000.

Sexual abuse reporting by facilities

(3) Despite subsection (1), every person who contravenes subsection 85.2 (1) in respect of a matter concerning the sexual abuse of a patient is guilty of an offence and on conviction is liable,

(a) in the case of an individual to a fine of not more than $50,000; or

(b) in the case of a corporation to a fine of not more than $200,000.

30 (1) Clauses 94 (1) (h.1) to (h.4) of Schedule 2 to the Act are repealed and the following substituted:

(h.1) subject to the regulations made under clauses 43 (1) (p) to (s) of the *Regulated Health Professions Act, 1991*,

(i) respecting the filling of vacancies on the Council or on committees,

(ii) providing for the composition of committees,

(iii) respecting the qualification, selection, appointment and terms of office of members of committees required by subsection 10 (1) who are not members of the Council,

(iv) prescribing conditions that disqualify committee members from sitting on committees required under subsection 10 (1) and governing the removal of disqualified committee members;

(2) Clause 94 (1) (l.2) of Schedule 2 to the Act is repealed and the following substituted:

(l.2) specifying information as information to be kept in the register for the purposes of paragraph 20 of subsection 23 (2), designating information kept in the register as public for the purposes of subsection 23 (5), and designating information kept in the register as public for the purposes of subsection 23 (5) that may be withheld from the public for the purposes of subsection 23 (6);

31 Subsection 95 (1) of Schedule 2 to the Act is amended by adding the following clause:

(q.1) prescribing the circumstances in respect of which a person's eligibility for funding ceases for the purposes of subsection 85.7 (5.2);

Commencement

32 (1) Subject to subsection (2), this Schedule comes into force on the day the *Protecting Patients Act, 2017* receives Royal Assent.

(2) The following provisions come into force on a day to be named by proclamation of the Lieutenant Governor:

1. **Subsections 5 (1), (2) and (7).**
2. **Section 6.**
3. **Section 7.**
4. **Section 9.**
5. **Section 10.**
6. **Section 12.**
7. **Section 17.**
8. **Section 18.**
9. **Section 22.**
10. **Section 24.**
11. **Section 26.**
12. **Section 27.**
13. **Section 28.**
14. **Subsection 30 (1).**
15. **Section 31.**

SCHEDULE 6
SENIORS ACTIVE LIVING CENTRES ACT, 2017

INTERPRETATION AND ADMINISTRATION

Definitions

1 In this Act,

"approval" means an approval of an operator or a program issued under section 4; ("agrément")

"director" means the director appointed under section 2; ("directeur")

"Minister" means the Minister Responsible for Seniors Affairs or any other member of the Executive Council to whom the responsibility for the administration of this Act is assigned under the *Executive Council Act*; ("ministre")

"operator" means a corporation that establishes, maintains or operates a program, where the corporation is a corporation without share capital having objects of a charitable nature,

(a) to which Part III of the *Corporations Act* applies, or

(b) that is incorporated under a general or special Act of the Parliament of Canada; ("prestataire")

"program" means a program whose purpose is described in subsection 4 (3); ("programme")

"regulations" means the regulations made under this Act. ("règlement")

Director

2 (1) The Minister shall appoint an individual, in writing, as the director for the purposes of this Act and the regulations from among the public servants who are employed under Part III of the *Public Service of Ontario Act, 2006* and who work in the Ontario Seniors' Secretariat.

Restrictions on appointment

(2) The Minister may specify, in the appointment, conditions or restrictions to which the appointment is subject.

Delegation of powers and duties

(3) The director may delegate his or her powers or duties under the appointment.

APPROVALS

Approvals required for grants

3 No operator shall receive a payment under section 8 to establish, maintain or operate a program unless the director has approved both the operator and the program.

Issuance of approvals

4 (1) In order to obtain an approval of itself or an approval of a program, an operator shall apply to the director in accordance with this Act and the regulations and shall provide the director with the documents and information specified in the regulations and the other documents and information that the director reasonably requires.

Approval of operator

(2) The director shall approve an operator that applies for approval if the director is satisfied that the operator,

(a) is financially capable of establishing, maintaining and operating a program;

(b) will carry on the program under competent management in good faith; and

(c) meets the other criteria, if any, that are prescribed by the regulations.

Approval of program

(3) The director shall approve a program if the operator of the program applies for the approval and if the director is satisfied that,

(a) the purpose of the program is to promote active and healthy living, social engagement and learning for persons who are primarily seniors by providing them with activities and services; and

(b) the program meets the other criteria, if any, that are prescribed by the regulations.

Refusal to approve an operator

(4) Subject to section 5, the director shall refuse to approve an operator if, in the opinion of the director, the operator has not complied with subsection (1) or the criteria set out in subsection (2) have not been met.

Refusal to approve a program

(5) Subject to section 5, the director shall refuse to approve a program if, in the opinion of the director, the operator has not complied with subsection (1) or the criteria set out in subsection (3) have not been met.

No hearing required

5 (1) The director is not required to hold an oral hearing or to afford a person an opportunity for a hearing before doing anything under section 4.

Non-application of *Statutory Powers Procedure Act*

(2) The *Statutory Powers Procedure Act* does not apply to anything done by the director under section 4.

Notice of intent to make decision

(3) The director shall not make a decision to refuse to issue an approval to an applicant unless, before doing so, the director,

(a) serves a notice of intent to make the decision on the applicant in accordance with subsection (4);

(b) gives the applicant an opportunity to make written submissions with respect to the proposed decision in accordance with subsection (5); and

(c) reviews the written submissions, if any, made by the applicant in accordance with subsection (5).

Content of notice of intent

(4) A notice of intent shall,

(a) set out the proposed decision and the reasons for it; and

(b) state that the applicant may provide written submissions to the director in accordance with subsection (5).

Written submissions

(5) An applicant that is served with a notice of intent may provide written submissions to the director with respect to any matter set out in the notice, within 15 days after the day the notice of intent was served on the applicant or within whatever other period is specified in the notice.

Refusal of approval

6 If the director makes a decision to refuse to issue an approval to an applicant,

(a) the director shall serve the applicant with a notice of decision setting out the decision and the reasons for it; and

(b) the applicant may reapply to the director for approval if the applicant satisfies the director that new or other evidence is available or that material circumstances have changed.

Director's decision final

7 (1) A decision made by the director under section 4 is final and not subject to appeal.

No judicial review

(2) Despite any other Act or law, no person may bring an application for judicial review of a decision made by the director under section 4.

PAYMENT OF GRANTS

Maintenance and operating grants

8 (1) Subject to subsections (3) and (4), the Minister may direct that an amount be paid, out of the money appropriated for that purpose by the Legislature, to an approved operator towards the cost of maintaining and operating an approved program.

Amount of payment

(2) The Minister has discretion to determine the amount of the payment.

Contribution if program in a municipality

(3) No payment shall be made to an approved operator with respect to an approved program that the operator will maintain and operate in a municipality unless one of the following, as the Minister determines, directs payment to the operator of a sum equal to at least the amount determined in accordance with subsection (5) or, if the Minister approves, contributes personal property or services that are equivalent in value to at least that amount:

1. The council of any one municipality.
2. The council of any one municipality, together with the councils of one or more contiguous municipalities.
3. The other entities, if any, that are prescribed.

Contribution if program not in a municipality

(4) No payment shall be made to an approved operator with respect to an approved program that the operator will maintain and operate in a location, other than a municipality, unless the entities, if any, that are prescribed,

(a) direct payment to the operator of a sum equal to at least the amount determined in accordance with subsection (5); or

(b) if the Minister approves, contribute personal property or services that are equivalent in value to at least the amount described in clause (a).

Amount of contribution

(5) Subject to the regulations, the amount mentioned in subsection (3) or (4) is,

(a) the amount equal to 20 per cent of the net annual cost to the approved operator of maintaining and operating the approved program, if the operator was approved on or after April 1, 2008 under this Act or the *Elderly Persons Centres Act*, as it read at the time of the approval; or

(b) the amount equal to 20 per cent of the net annual cost to the approved operator in the operator's 2007-2008 fiscal year of maintaining and operating the approved program, if the operator was approved before April 1, 2008 under the *Elderly Persons Centres Act*, as it read at the time of the approval.

Special grants

9 (1) If the Minister directs that an amount be paid to an approved operator under subsection 8 (1) towards the cost of maintaining and operating an approved program, the Minister may, in addition, direct that an amount be paid, out of the money appropriated for that purpose by the Legislature, on a one-time basis to the operator towards the cost of maintaining and operating the program.

No contributions

(2) For greater certainty, subsections 8 (3) and (4) do not apply to a payment made under subsection (1).

Repayment of grants if approval ceases

10 If an approved operator ceases to meet the criteria for approval set out in subsection 4 (2) or if the program that the operator operates ceases to meet the criteria for approval set out in subsection 4 (3), the director may determine, on a reasonable basis, what part of any payment that the operator has received under this Act is to be repaid to the Crown.

GENERAL

Regulations

11 (1) The Lieutenant Governor in Council may make regulations,

(a) specifying anything that this Act describes as prescribed or specified in the regulations or done by or in accordance with the regulations;

(b) governing applications for approvals;

(c) setting a percentage for the purposes of subsection 8 (5) that differs from the one set out in that subsection;

(d) governing how the annual cost mentioned in subsection 8 (5) is to be determined;

(e) governing repayments described in section 10.

Scope

(2) A regulation may be general or specific in its application to any person, place or thing or any class of them, may impose different requirements, conditions or restrictions on or in respect of any class and may be limited as to time and place.

Classes

(3) A class described in a regulation may be described according to any characteristic or combination of characteristics and may be described to include or exclude any specified member, whether or not with the same characteristics.

AMENDMENT TO THIS ACT

12 Subsection 8 (5) of this Act is repealed and the following substituted:

Amount of contribution

(5) Subject to the regulations, the amount mentioned in subsection (3) or (4) is the amount equal to 20 per cent of the net annual cost to the approved operator of maintaining and operating the approved program.

CONSEQUENTIAL AMENDMENTS

Not-for-Profit Corporations Act, 2010

13 (1) Section 222 of the *Not-for-Profit Corporations Act, 2010* is repealed.

(2) Subsection (1) applies only if section 222 of the *Not-for-Profit Corporations Act, 2010* does not come into force before subsection (1) comes into force.

Pay Equity Act

14 Clause 1 (p) under the heading "Ministry of Community and Social Services" in the Appendix to the Schedule to the *Pay Equity Act* is repealed and the following substituted:

(p) operates a program that receives a payment under the *Seniors Active Living Centres Act, 2017*;

REPEAL, COMMENCEMENT AND SHORT TITLE

Repeal and revocation

15 (1) The *Elderly Persons Centres Act* is repealed.

(2) Regulation 314 of the Revised Regulations of Ontario, 1990 (General) made under the *Elderly Persons Centres Act* is revoked.

Commencement

16 (1) Subject to subsection (2), the Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

(2) Sections 13 and 14 and subsection 15 (2) come into force on the day subsection 15 (1) comes into force.

Short title

17 The short title of the Act set out in this Schedule is the *Seniors Active Living Centres Act, 2017*.

SECTION 3

Federal Government Legislation

- Personal Information Protection and Electronic Documents Act, 2000
- What Every Dental Technologist Needs to Know About Privacy Legislation – by Richard Steinecke
- Medical Devices Regulations - Medical Devices Regulations
- Medical Devices Program Description – *Consulting and Audit Canada, August 2005*

Table of Contents

CANADA

CONSOLIDATION

CODIFICATION

Personal Information Protection and Electronic Documents Act

Loi sur la protection des renseignements personnels et les documents électroniques

S.C. 2000, c. 5

L.C. 2000, ch. 5

Current to March 23, 2021

Last amended on June 21, 2019

À jour au 23 mars 2021

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

This consolidation is current to March 23, 2021. The last amendments came into force on June 21, 2019. Any amendments that were not in force as of March 23, 2021 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 23 mars 2021. Les dernières modifications sont entrées en vigueur le 21 juin 2019. Toutes modifications qui n'étaient pas en vigueur au 23 mars 2021 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

TABLE OF PROVISIONS

An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act

TABLE ANALYTIQUE

Loi visant à faciliter et à promouvoir le commerce électronique en protégeant les renseignements personnels recueillis, utilisés ou communiqués dans certaines circonstances, en prévoyant l'utilisation de moyens électroniques pour communiquer ou enregistrer de l'information et des transactions et en modifiant la Loi sur la preuve au Canada, la Loi sur les textes réglementaires et la Loi sur la révision des lois

S.C. 2000, c. 5

An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act

[*Assented to 13th April 2000*]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the *Personal Information Protection and Electronic Documents Act*.

PART 1

Protection of Personal Information in the Private Sector

Interpretation

Definitions

2 (1) The definitions in this subsection apply in this Part.

alternative format, with respect to personal information, means a format that allows a person with a sensory

L.C. 2000, ch. 5

Loi visant à faciliter et à promouvoir le commerce électronique en protégeant les renseignements personnels recueillis, utilisés ou communiqués dans certaines circonstances, en prévoyant l'utilisation de moyens électroniques pour communiquer ou enregistrer de l'information et des transactions et en modifiant la Loi sur la preuve au Canada, la Loi sur les textes réglementaires et la Loi sur la révision des lois

[*Sanctionnée le 13 avril 2000*]

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

Titre abrégé

Titre abrégé

1 *Loi sur la protection des renseignements personnels et les documents électroniques*.

PARTIE 1

Protection des renseignements personnels dans le secteur privé

Définitions

Définitions

2 (1) Les définitions qui suivent s'appliquent à la présente partie.

activité commerciale Toute activité régulière ainsi que tout acte isolé qui revêtent un caractère commercial de

disability to read or listen to the personal information. (*support de substitution*)

breach of security safeguards means the loss of, unauthorized access to or unauthorized disclosure of personal information resulting from a breach of an organization's security safeguards that are referred to in clause 4.7 of Schedule 1 or from a failure to establish those safeguards. (*atteinte aux mesures de sécurité*)

business contact information means any information that is used for the purpose of communicating or facilitating communication with an individual in relation to their employment, business or profession such as the individual's name, position name or title, work address, work telephone number, work fax number or work electronic address. (*coordonnées d'affaires*)

business transaction includes

(a) the purchase, sale or other acquisition or disposition of an organization or a part of an organization, or any of its assets;

(b) the merger or amalgamation of two or more organizations;

(c) the making of a loan or provision of other financing to an organization or a part of an organization;

(d) the creating of a charge on, or the taking of a security interest in or a security on, any assets or securities of an organization;

(e) the lease or licensing of any of an organization's assets; and

(f) any other prescribed arrangement between two or more organizations to conduct a business activity. (*transaction commerciale*)

commercial activity means any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists. (*activité commerciale*)

Commissioner means the Privacy Commissioner appointed under section 53 of the *Privacy Act*. (*commissaire*)

Court means the Federal Court. (*Cour*)

federal work, undertaking or business means any work, undertaking or business that is within the legislative authority of Parliament. It includes

par leur nature, y compris la vente, le troc ou la location de listes de donneurs, d'adhésion ou de collecte de fonds. (*commercial activity*)

atteinte aux mesures de sécurité Communication non autorisée ou perte de renseignements personnels, ou accès non autorisé à ceux-ci, par suite d'une atteinte aux mesures de sécurité d'une organisation prévues à l'article 4.7 de l'annexe 1 ou du fait que ces mesures n'ont pas été mises en place. (*breach of security safeguards*)

commissaire Le Commissaire à la protection de la vie privée nommé en application de l'article 53 de la *Loi sur la protection des renseignements personnels*. (*Commissioner*)

coordonnées d'affaires Tout renseignement permettant d'entrer en contact — ou de faciliter la prise de contact — avec un individu dans le cadre de son emploi, de son entreprise ou de sa profession, tel que son nom, son poste ou son titre, l'adresse ou les numéros de téléphone ou de télécopieur de son lieu de travail ou son adresse électronique au travail. (*business contact information*)

Cour La Cour fédérale. (*Court*)

document Tous éléments d'information, quels que soient leur forme et leur support, notamment correspondance, note, livre, plan, carte, dessin, diagramme, illustration ou graphique, photographie, film, microforme, enregistrement sonore, magnétoscopique ou informatisé, ou toute reproduction de ces éléments d'information. (*record*)

entreprises fédérales Les installations, ouvrages, entreprises ou secteurs d'activité qui relèvent de la compétence législative du Parlement. Sont compris parmi les entreprises fédérales :

a) les installations, ouvrages, entreprises ou secteurs d'activité qui se rapportent à la navigation et aux transports par eau, notamment l'exploitation de navires et le transport par navire partout au Canada;

b) les installations ou ouvrages, notamment les chemins de fer, canaux ou liaisons télégraphiques, reliant une province à une autre, ou débordant les limites d'une province, et les entreprises correspondantes;

c) les lignes de transport par bateaux à vapeur ou autres navires, reliant une province à une autre, ou débordant les limites d'une province;

d) les passages par eaux entre deux provinces ou entre une province et un pays étranger;

(a) a work, undertaking or business that is operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;

(b) a railway, canal, telegraph or other work or undertaking that connects a province with another province, or that extends beyond the limits of a province;

(c) a line of ships that connects a province with another province, or that extends beyond the limits of a province;

(d) a ferry between a province and another province or between a province and a country other than Canada;

(e) aerodromes, aircraft or a line of air transportation;

(f) a radio broadcasting station;

(g) a bank or an authorized foreign bank as defined in section 2 of the *Bank Act*;

(h) a work that, although wholly situated within a province, is before or after its execution declared by Parliament to be for the general advantage of Canada or for the advantage of two or more provinces;

(i) a work, undertaking or business outside the exclusive legislative authority of the legislatures of the provinces; and

(j) a work, undertaking or business to which federal laws, within the meaning of section 2 of the *Oceans Act*, apply under section 20 of that Act and any regulations made under paragraph 26(1)(k) of that Act. (*entreprises fédérales*)

organization includes an association, a partnership, a person and a trade union. (*organisation*)

personal health information, with respect to an individual, whether living or deceased, means

(a) information concerning the physical or mental health of the individual;

(b) information concerning any health service provided to the individual;

(c) information concerning the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;

e) les aéroports, aéronefs ou lignes de transport aérien;

f) les stations de radiodiffusion;

g) les banques ou les banques étrangères autorisées au sens de l'article 2 de la *Loi sur les banques*;

h) les ouvrages qui, bien qu'entièrement situés dans une province, sont, avant ou après leur réalisation, déclarés par le Parlement être à l'avantage général du Canada ou à l'avantage de plusieurs provinces;

i) les installations, ouvrages, entreprises ou secteurs d'activité ne ressortissant pas au pouvoir législatif exclusif des législatures provinciales;

j) les installations, ouvrages, entreprises ou secteurs d'activité auxquels le droit, au sens de l'alinéa a) de la définition de ***droit*** à l'article 2 de la *Loi sur les océans*, s'applique en vertu de l'article 20 de cette loi et des règlements pris en vertu de l'alinéa 26(1)k) de la même loi. (*federal work, undertaking or business*)

organisation S'entend notamment des associations, sociétés de personnes, personnes et organisations syndicales. (*organization*)

renseignement personnel Tout renseignement concernant un individu identifiable. (*personal information*)

renseignement personnel sur la santé En ce qui concerne un individu vivant ou décédé :

a) tout renseignement ayant trait à sa santé physique ou mentale;

b) tout renseignement relatif aux services de santé fournis à celui-ci;

c) tout renseignement relatif aux dons de parties du corps ou de substances corporelles faits par lui, ou tout renseignement provenant des résultats de tests ou d'examens effectués sur une partie du corps ou une substance corporelle de celui-ci;

d) tout renseignement recueilli dans le cadre de la prestation de services de santé à celui-ci;

e) tout renseignement recueilli fortuitement lors de la prestation de services de santé à celui-ci. (*personal health information*)

support de substitution Tout support permettant à une personne ayant une déficience sensorielle de lire ou d'écouter des renseignements personnels. (*alternative format*)

(d) information that is collected in the course of providing health services to the individual; or

(e) information that is collected incidentally to the provision of health services to the individual. (*renseignement personnel sur la santé*)

personal information means information about an identifiable individual. (*renseignement personnel*)

prescribed means prescribed by regulation. (*Version anglaise seulement*)

record includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine-readable record and any other documentary material, regardless of physical form or characteristics, and any copy of any of those things. (*document*)

transaction commerciale S'entend notamment des transactions suivantes :

a) l'achat, la vente ou toute autre forme d'acquisition ou de disposition de tout ou partie d'une organisation, ou de ses éléments d'actif;

b) la fusion ou le regroupement d'organisations;

c) le fait de consentir un prêt à tout ou partie d'une organisation ou de lui fournir toute autre forme de financement;

d) le fait de grever d'une charge ou d'une sûreté les éléments d'actif ou les titres d'une organisation;

e) la location d'éléments d'actif d'une organisation, ou l'octroi ou l'obtention d'une licence à leur égard;

f) tout autre arrangement prévu par règlement entre des organisations pour la poursuite d'activités d'affaires. (*business transaction*)

Notes in Schedule 1

(2) In this Part, a reference to clause 4.3 or 4.9 of Schedule 1 does not include a reference to the note that accompanies that clause.

2000, c. 5, s. 2; 2002, c. 8, s. 183; 2015, c. 32, s. 2.

Notes de l'annexe 1

(2) Dans la présente partie, la mention des articles 4.3 ou 4.9 de l'annexe 1 ne vise pas les notes afférentes.

2000, ch. 5, art. 2; 2002, ch. 8, art. 183; 2015, ch. 32, art. 2.

Purpose

Purpose

3 The purpose of this Part is to establish, in an era in which technology increasingly facilitates the circulation and exchange of information, rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

Objet

Objet

3 La présente partie a pour objet de fixer, dans une ère où la technologie facilite de plus en plus la circulation et l'échange de renseignements, des règles régissant la collecte, l'utilisation et la communication de renseignements personnels d'une manière qui tient compte du droit des individus à la vie privée à l'égard des renseignements personnels qui les concernent et du besoin des organisations de recueillir, d'utiliser ou de communiquer des renseignements personnels à des fins qu'une personne raisonnable estimerait acceptables dans les circonstances.

Application

Application

4 (1) This Part applies to every organization in respect of personal information that

(a) the organization collects, uses or discloses in the course of commercial activities; or

Champ d'application

Champ d'application

4 (1) La présente partie s'applique à toute organisation à l'égard des renseignements personnels :

a) soit qu'elle recueille, utilise ou communique dans le cadre d'activités commerciales;

(b) is about an employee of, or an applicant for employment with, the organization and that the organization collects, uses or discloses in connection with the operation of a federal work, undertaking or business.

b) soit qui concernent un de ses employés ou l'individu qui postule pour le devenir et qu'elle recueille, utilise ou communique dans le cadre d'une entreprise fédérale.

Application

(1.1) This Part applies to an organization set out in column 1 of Schedule 4 in respect of personal information set out in column 2.

Application

(1.1) La présente partie s'applique à toute organisation figurant à la colonne 1 de l'annexe 4 à l'égard des renseignements personnels figurant à la colonne 2.

Limit

(2) This Part does not apply to

(a) any government institution to which the *Privacy Act* applies;

(b) any individual in respect of personal information that the individual collects, uses or discloses for personal or domestic purposes and does not collect, use or disclose for any other purpose; or

(c) any organization in respect of personal information that the organization collects, uses or discloses for journalistic, artistic or literary purposes and does not collect, use or disclose for any other purpose.

Limite

(2) La présente partie ne s'applique pas :

a) aux institutions fédérales auxquelles s'applique la *Loi sur la protection des renseignements personnels*;

b) à un individu à l'égard des renseignements personnels qu'il recueille, utilise ou communique à des fins personnelles ou domestiques et à aucune autre fin;

c) à une organisation à l'égard des renseignements personnels qu'elle recueille, utilise ou communique à des fins journalistiques, artistiques ou littéraires et à aucune autre fin.

Other Acts

[*]**(3)** Every provision of this Part applies despite any provision, enacted after this subsection comes into force, of any other Act of Parliament, unless the other Act expressly declares that that provision operates despite the provision of this Part.

[*] [Note: Subsection 4(3) in force January 1, 2001, *see* SI/2000-29.]

2000, c. 5, s. 4; 2015, c. 32, s. 3, c. 36, s. 164.

Autre loi

[*]**(3)** Toute disposition de la présente partie s'applique malgré toute disposition — édictée après l'entrée en vigueur du présent paragraphe — d'une autre loi fédérale, sauf dérogation expresse de la disposition de l'autre loi.

[*] [Note : Paragraphe 4(3) en vigueur le 1er janvier 2001, *voir* TR/2000-29.]

2000, ch. 5, art. 4; 2015, ch. 32, art. 3, ch. 36, art. 164.

Business contact information

4.01 This Part does not apply to an organization in respect of the business contact information of an individual that the organization collects, uses or discloses solely for the purpose of communicating or facilitating communication with the individual in relation to their employment, business or profession.

2015, c. 32, s. 4.

Coordonnées d'affaires

4.01 La présente partie ne s'applique pas à une organisation à l'égard des coordonnées d'affaires d'un individu qu'elle recueille, utilise ou communique uniquement pour entrer en contact — ou pour faciliter la prise de contact — avec lui dans le cadre de son emploi, de son entreprise ou de sa profession.

2015, ch. 32, art. 4.

Certificate under *Canada Evidence Act*

4.1 (1) Where a certificate under section 38.13 of the *Canada Evidence Act* prohibiting the disclosure of personal information of a specific individual is issued before a complaint is filed by that individual under this Part in respect of a request for access to that information, the provisions of this Part respecting that individual's right of access to his or her personal information do not apply to the information that is subject to the certificate.

Certificat en vertu de la *Loi sur la preuve au Canada*

4.1 (1) Dans le cas où a été délivré au titre de l'article 38.13 de la *Loi sur la preuve au Canada* un certificat interdisant la divulgation de renseignements personnels concernant un individu donné avant le dépôt par celui-ci d'une plainte au titre de la présente partie relative à la communication de ces renseignements, les dispositions de cette partie concernant le droit d'accès de l'individu aux renseignements personnels le concernant ne

Certificate following filing of complaint

(2) Notwithstanding any other provision of this Part, where a certificate under section 38.13 of the *Canada Evidence Act* prohibiting the disclosure of personal information of a specific individual is issued after the filing of a complaint under this Part in relation to a request for access to that information:

(a) all proceedings under this Part in respect of that information, including an investigation, audit, appeal or judicial review, are discontinued;

(b) the Commissioner shall not disclose the information and shall take all necessary precautions to prevent its disclosure; and

(c) the Commissioner shall, within 10 days after the certificate is published in the *Canada Gazette*, return the information to the organization that provided the information.

Information not to be disclosed

(3) The Commissioner and every person acting on behalf or under the direction of the Commissioner, in carrying out their functions under this Part, shall not disclose information subject to a certificate issued under section 38.13 of the *Canada Evidence Act*, and shall take every reasonable precaution to avoid the disclosure of that information.

Power to delegate

(4) The Commissioner may not delegate the investigation of any complaint relating to information subject to a certificate issued under section 38.13 of the *Canada Evidence Act* except to one of a maximum of four officers or employees of the Commissioner specifically designated by the Commissioner for the purpose of conducting that investigation.

2001, c. 41, s. 103.

s'appliquent pas aux renseignements visés par le certificat.

Certificat postérieur au dépôt d'une plainte

(2) Par dérogation aux autres dispositions de la présente partie, dans le cas où a été délivré au titre de l'article 38.13 de la *Loi sur la preuve au Canada* un certificat interdisant la divulgation de renseignements personnels concernant un individu donné après le dépôt d'une plainte de refus d'accès au titre de la présente partie relativement à la demande de communication de ces renseignements :

a) toute procédure — notamment une enquête, une vérification, un appel ou une révision judiciaire — prévue par la présente partie et portant sur ces renseignements est interrompue;

b) le commissaire ne peut communiquer les renseignements et prend les précautions nécessaires pour empêcher leur communication;

c) le commissaire renvoie les renseignements à l'organisation qui les a fournis dans les dix jours suivant la publication du certificat dans la *Gazette du Canada*.

Précaution à prendre

(3) Dans l'exercice de leurs attributions prévues par la présente partie, le commissaire et les personnes agissant en son nom ou sous son autorité ne peuvent communiquer, et prennent toutes les précautions pour éviter que ne soient communiqués, les renseignements visés par un certificat délivré au titre de l'article 38.13 de la *Loi sur la preuve au Canada*.

Pouvoir de délégation

(4) Le commissaire ne peut déléguer la tenue d'une enquête portant sur des renseignements visés par un certificat délivré au titre de l'article 38.13 de la *Loi sur la preuve au Canada* qu'à un de ses collaborateurs choisi parmi quatre des cadres ou employés du commissariat et qu'il désigne spécialement à cette fin.

2001, ch. 41, art. 103.

DIVISION 1

Protection of Personal Information

Compliance with obligations

5 (1) Subject to sections 6 to 9, every organization shall comply with the obligations set out in Schedule 1.

Meaning of *should*

(2) The word ***should***, when used in Schedule 1, indicates a recommendation and does not impose an obligation.

Appropriate purposes

(3) An organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.

Effect of designation of individual

6 The designation of an individual under clause 4.1 of Schedule 1 does not relieve the organization of the obligation to comply with the obligations set out in that Schedule.

Valid consent

6.1 For the purposes of clause 4.3 of Schedule 1, the consent of an individual is only valid if it is reasonable to expect that an individual to whom the organization's activities are directed would understand the nature, purpose and consequences of the collection, use or disclosure of the personal information to which they are consenting.

2015, c. 32, s. 5.

Collection without knowledge or consent

7 (1) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may collect personal information without the knowledge or consent of the individual only if

(a) the collection is clearly in the interests of the individual and consent cannot be obtained in a timely way;

(b) it is reasonable to expect that the collection with the knowledge or consent of the individual would

SECTION 1

Protection des renseignements personnels

Obligation de se conformer aux obligations

5 (1) Sous réserve des articles 6 à 9, toute organisation doit se conformer aux obligations énoncées dans l'annexe 1.

Emploi du conditionnel

(2) L'emploi du conditionnel dans l'annexe 1 indique qu'il s'agit d'une recommandation et non d'une obligation.

Fins acceptables

(3) L'organisation ne peut recueillir, utiliser ou communiquer des renseignements personnels qu'à des fins qu'une personne raisonnable estimerait acceptables dans les circonstances.

Conséquence de la désignation d'une personne

6 La désignation d'une personne en application de l'article 4.1 de l'annexe 1 n'exempte pas l'organisation des obligations énoncées dans cette annexe.

Validité du consentement

6.1 Pour l'application de l'article 4.3 de l'annexe 1, le consentement de l'intéressé n'est valable que s'il est raisonnable de s'attendre à ce qu'un individu visé par les activités de l'organisation comprenne la nature, les fins et les conséquences de la collecte, de l'utilisation ou de la communication des renseignements personnels auxquelles il a consenti.

2015, ch. 32, art. 5.

Collecte à l'insu de l'intéressé ou sans son consentement

7 (1) Pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, l'organisation ne peut recueillir de renseignement personnel à l'insu de l'intéressé ou sans son consentement que dans les cas suivants :

a) la collecte du renseignement est manifestement dans l'intérêt de l'intéressé et le consentement ne peut être obtenu auprès de celui-ci en temps opportun;

b) il est raisonnable de s'attendre à ce que la collecte effectuée au su ou avec le consentement de l'intéressé compromette l'exactitude du renseignement ou l'accès à celui-ci, et la collecte est raisonnable à des fins liées

compromise the availability or the accuracy of the information and the collection is reasonable for purposes related to investigating a breach of an agreement or a contravention of the laws of Canada or a province;

(b.1) it is contained in a witness statement and the collection is necessary to assess, process or settle an insurance claim;

(b.2) it was produced by the individual in the course of their employment, business or profession and the collection is consistent with the purposes for which the information was produced;

(c) the collection is solely for journalistic, artistic or literary purposes;

(d) the information is publicly available and is specified by the regulations; or

(e) the collection is made for the purpose of making a disclosure

(i) under subparagraph (3)(c.1)(i) or (d)(ii), or

(ii) that is required by law.

Use without knowledge or consent

(2) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may, without the knowledge or consent of the individual, use personal information only if

(a) in the course of its activities, the organization becomes aware of information that it has reasonable grounds to believe could be useful in the investigation of a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, and the information is used for the purpose of investigating that contravention;

(b) it is used for the purpose of acting in respect of an emergency that threatens the life, health or security of an individual;

(b.1) the information is contained in a witness statement and the use is necessary to assess, process or settle an insurance claim;

(b.2) the information was produced by the individual in the course of their employment, business or profession and the use is consistent with the purposes for which the information was produced;

(c) it is used for statistical, or scholarly study or research, purposes that cannot be achieved without

à une enquête sur la violation d'un accord ou la contravention au droit fédéral ou provincial;

b.1) il s'agit d'un renseignement contenu dans la déclaration d'un témoin et dont la collecte est nécessaire en vue de l'évaluation d'une réclamation d'assurance, de son traitement ou de son règlement;

b.2) il s'agit d'un renseignement produit par l'intéressé dans le cadre de son emploi, de son entreprise ou de sa profession, et dont la collecte est compatible avec les fins auxquelles il a été produit;

c) la collecte est faite uniquement à des fins journalistiques, artistiques ou littéraires;

d) il s'agit d'un renseignement réglementaire auquel le public a accès;

e) la collecte est faite en vue :

(i) soit de la communication prévue aux sous-alinéas (3)c.1)(i) ou d)(ii),

(ii) soit d'une communication exigée par la loi.

Utilisation à l'insu de l'intéressé ou sans son consentement

(2) Pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, l'organisation ne peut utiliser de renseignement personnel à l'insu de l'intéressé ou sans son consentement que dans les cas suivants :

a) dans le cadre de ses activités, l'organisation découvre l'existence d'un renseignement dont elle a des motifs raisonnables de croire qu'il pourrait être utile à une enquête sur une contravention au droit fédéral, provincial ou étranger qui a été commise ou est en train ou sur le point de l'être, et l'utilisation est faite aux fins d'enquête;

b) l'utilisation est faite pour répondre à une situation d'urgence mettant en danger la vie, la santé ou la sécurité de tout individu;

b.1) il s'agit d'un renseignement contenu dans la déclaration d'un témoin et dont l'utilisation est nécessaire en vue de l'évaluation d'une réclamation d'assurance, de son traitement ou de son règlement;

b.2) il s'agit d'un renseignement produit par l'intéressé dans le cadre de son emploi, de son entreprise ou de sa profession, et dont l'utilisation est compatible avec les fins auxquelles il a été produit;

using the information, the information is used in a manner that will ensure its confidentiality, it is impracticable to obtain consent and the organization informs the Commissioner of the use before the information is used;

(c.1) it is publicly available and is specified by the regulations; or

(d) it was collected under paragraph (1)(a), (b) or (e).

Disclosure without knowledge or consent

(3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is

(a) made to, in the Province of Quebec, an advocate or notary or, in any other province, a barrister or solicitor who is representing the organization;

(b) for the purpose of collecting a debt owed by the individual to the organization;

(c) required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records;

(c.1) made to a government institution or part of a government institution that has made a request for the information, identified its lawful authority to obtain the information and indicated that

(i) it suspects that the information relates to national security, the defence of Canada or the conduct of international affairs,

(ii) the disclosure is requested for the purpose of enforcing any law of Canada, a province or a foreign jurisdiction, carrying out an investigation relating to the enforcement of any such law or gathering intelligence for the purpose of enforcing any such law,

(iii) the disclosure is requested for the purpose of administering any law of Canada or a province, or

(iv) the disclosure is requested for the purpose of communicating with the next of kin or authorized

c) l'utilisation est faite à des fins statistiques ou à des fins d'étude ou de recherche érudites, ces fins ne peuvent être réalisées sans que le renseignement soit utilisé, celui-ci est utilisé d'une manière qui en assure le caractère confidentiel, le consentement est pratiquement impossible à obtenir et l'organisation informe le commissaire de l'utilisation avant de la faire;

c.1) il s'agit d'un renseignement réglementaire auquel le public a accès;

d) le renseignement a été recueilli au titre des alinéas (1)a), b) ou e).

Communication à l'insu de l'intéressé ou sans son consentement

(3) Pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, l'organisation ne peut communiquer de renseignement personnel à l'insu de l'intéressé ou sans son consentement que dans les cas suivants :

a) la communication est faite à un avocat — dans la province de Québec, à un avocat ou à un notaire — qui représente l'organisation;

b) elle est faite en vue du recouvrement d'une créance que celle-ci a contre l'intéressé;

c) elle est exigée par assignation, mandat ou ordonnance d'un tribunal, d'une personne ou d'un organisme ayant le pouvoir de contraindre à la production de renseignements ou exigée par des règles de procédure se rapportant à la production de documents;

c.1) elle est faite à une institution gouvernementale — ou à une subdivision d'une telle institution — qui a demandé à obtenir le renseignement en mentionnant la source de l'autorité légitime étayant son droit de l'obtenir et le fait, selon le cas :

(i) qu'elle soupçonne que le renseignement est afférent à la sécurité nationale, à la défense du Canada ou à la conduite des affaires internationales,

(ii) que la communication est demandée aux fins du contrôle d'application du droit canadien, provincial ou étranger, de la tenue d'enquêtes liées à ce contrôle d'application ou de la collecte de renseignements en matière de sécurité en vue de ce contrôle d'application,

(iii) qu'elle est demandée pour l'application du droit canadien ou provincial,

(iv) qu'elle est demandée afin d'entrer en contact avec le plus proche parent d'un individu blessé, malade ou décédé, ou avec son représentant autorisé;

representative of an injured, ill or deceased individual;

(c.2) made to the government institution mentioned in section 7 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* as required by that section;

(d) made on the initiative of the organization to a government institution or a part of a government institution and the organization

(i) has reasonable grounds to believe that the information relates to a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, or

(ii) suspects that the information relates to national security, the defence of Canada or the conduct of international affairs;

(d.1) made to another organization and is reasonable for the purposes of investigating a breach of an agreement or a contravention of the laws of Canada or a province that has been, is being or is about to be committed and it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the investigation;

(d.2) made to another organization and is reasonable for the purposes of detecting or suppressing fraud or of preventing fraud that is likely to be committed and it is reasonable to expect that the disclosure with the knowledge or consent of the individual would compromise the ability to prevent, detect or suppress the fraud;

(d.3) made on the initiative of the organization to a government institution, a part of a government institution or the individual's next of kin or authorized representative and

(i) the organization has reasonable grounds to believe that the individual has been, is or may be the victim of financial abuse,

(ii) the disclosure is made solely for purposes related to preventing or investigating the abuse, and

(iii) it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the ability to prevent or investigate the abuse;

(d.4) necessary to identify the individual who is injured, ill or deceased, made to a government institution, a part of a government institution or the

c.2) elle est faite au titre de l'article 7 de la *Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes* à l'institution gouvernementale mentionnée à cet article;

d) elle est faite, à l'initiative de l'organisation, à une institution gouvernementale ou une subdivision d'une telle institution et l'organisation :

(i) soit a des motifs raisonnables de croire que le renseignement est afférent à une contravention au droit fédéral, provincial ou étranger qui a été commise ou est en train ou sur le point de l'être,

(ii) soit soupçonne que le renseignement est afférent à la sécurité nationale, à la défense du Canada ou à la conduite des affaires internationales;

d.1) elle est faite à une autre organisation et est raisonnable en vue d'une enquête sur la violation d'un accord ou sur la contravention au droit fédéral ou provincial qui a été commise ou est en train ou sur le point de l'être, s'il est raisonnable de s'attendre à ce que la communication effectuée au su ou avec le consentement de l'intéressé compromettrait l'enquête;

d.2) elle est faite à une autre organisation et est raisonnable en vue de la détection d'une fraude ou de sa suppression ou en vue de la prévention d'une fraude dont la commission est vraisemblable, s'il est raisonnable de s'attendre à ce que la communication effectuée au su ou avec le consentement de l'intéressé compromettrait la capacité de prévenir la fraude, de la détecter ou d'y mettre fin;

d.3) elle est faite, à l'initiative de l'organisation, à une institution gouvernementale ou à une subdivision d'une telle institution, au plus proche parent de l'intéressé ou à son représentant autorisé, si les conditions ci-après sont remplies :

(i) l'organisation a des motifs raisonnables de croire que l'intéressé a été, est ou pourrait être victime d'exploitation financière,

(ii) la communication est faite uniquement à des fins liées à la prévention de l'exploitation ou à une enquête y ayant trait,

(iii) il est raisonnable de s'attendre à ce que la communication effectuée au su ou avec le consentement de l'intéressé compromettrait la capacité de prévenir l'exploitation ou d'enquêter sur celle-ci;

d.4) elle est nécessaire aux fins d'identification de l'intéressé qui est blessé, malade ou décédé et est faite

individual's next of kin or authorized representative and, if the individual is alive, the organization informs that individual in writing without delay of the disclosure;

(e) made to a person who needs the information because of an emergency that threatens the life, health or security of an individual and, if the individual whom the information is about is alive, the organization informs that individual in writing without delay of the disclosure;

(e.1) of information that is contained in a witness statement and the disclosure is necessary to assess, process or settle an insurance claim;

(e.2) of information that was produced by the individual in the course of their employment, business or profession and the disclosure is consistent with the purposes for which the information was produced;

(f) for statistical, or scholarly study or research, purposes that cannot be achieved without disclosing the information, it is impracticable to obtain consent and the organization informs the Commissioner of the disclosure before the information is disclosed;

(g) made to an institution whose functions include the conservation of records of historic or archival importance, and the disclosure is made for the purpose of such conservation;

(h) made after the earlier of

(i) one hundred years after the record containing the information was created, and

(ii) twenty years after the death of the individual whom the information is about;

(h.1) of information that is publicly available and is specified by the regulations; or

(h.2) [Repealed, 2015, c. 32, s. 6]

(i) required by law.

e) elle est faite à toute personne qui a besoin du renseignement en raison d'une situation d'urgence mettant en danger la vie, la santé ou la sécurité de toute personne et, dans le cas où la personne visée par le renseignement est vivante, l'organisation en informe par écrit et sans délai cette dernière;

e.1) il s'agit d'un renseignement contenu dans la déclaration d'un témoin et dont la communication est nécessaire en vue de l'évaluation d'une réclamation d'assurance, de son traitement ou de son règlement;

e.2) il s'agit d'un renseignement produit par l'intéressé dans le cadre de son emploi, de son entreprise, ou de sa profession, et dont la communication est compatible avec les fins auxquelles il a été produit;

f) la communication est faite à des fins statistiques ou à des fins d'étude ou de recherche érudites, ces fins ne peuvent être réalisées sans que le renseignement soit communiqué, le consentement est pratiquement impossible à obtenir et l'organisation informe le commissaire de la communication avant de la faire;

g) elle est faite à une institution dont les attributions comprennent la conservation de documents ayant une importance historique ou archivistique, en vue d'une telle conservation;

h) elle est faite cent ans ou plus après la constitution du document contenant le renseignement ou, en cas de décès de l'intéressé, vingt ans ou plus après le décès, dans la limite de cent ans;

h.1) il s'agit d'un renseignement réglementaire auquel le public a accès;

h.2) [Abrogé, 2015, ch. 32, art. 6]

i) la communication est exigée par la loi.

Use without consent

(4) Despite clause 4.5 of Schedule 1, an organization may use personal information for purposes other than those for which it was collected in any of the circumstances set out in subsection (2).

Disclosure without consent

(5) Despite clause 4.5 of Schedule 1, an organization may disclose personal information for purposes other than

Utilisation sans le consentement de l'intéressé

(4) Malgré l'article 4.5 de l'annexe 1, l'organisation peut, dans les cas visés au paragraphe (2), utiliser un renseignement personnel à des fins autres que celles auxquelles il a été recueilli.

Communication sans consentement

(5) Malgré l'article 4.5 de l'annexe 1, l'organisation peut, dans les cas visés aux alinéas (3)a) à h.1), communiquer

those for which it was collected in any of the circumstances set out in paragraphs (3)(a) to (h.1).

2000, c. 5, s. 7, c. 17, s. 97; 2001, c. 41, s. 81; 2004, c. 15, s. 98; 2015, c. 32, s. 6.

un renseignement personnel à des fins autres que celles auxquelles il a été recueilli.

2000, ch. 5, art. 7, ch. 17, art. 97; 2001, ch. 41, art. 81; 2004, ch. 15, art. 98; 2015, ch. 32, art. 6.

Definitions

7.1 (1) The following definitions apply in this section.

access means to program, to execute programs on, to communicate with, to store data in, to retrieve data from, or to otherwise make use of any resources, including data or programs on a computer system or a computer network. (*utiliser*)

computer program has the same meaning as in subsection 342.1(2) of the *Criminal Code*. (*programme d'ordinateur*)

computer system has the same meaning as in subsection 342.1(2) of the *Criminal Code*. (*ordinateur*)

electronic address means an address used in connection with

(a) an electronic mail account;

(b) an instant messaging account; or

(c) any similar account. (*adresse électronique*)

Définitions

7.1 (1) Les définitions qui suivent s'appliquent au présent article.

adresse électronique Toute adresse utilisée relativement à l'un des comptes suivants :

a) un compte courriel;

b) un compte messagerie instantanée;

c) tout autre compte similaire. (*electronic address*)

ordinateur S'entend au sens du paragraphe 342.1(2) du *Code criminel*. (*computer system*)

programme d'ordinateur S'entend au sens du paragraphe 342.1(2) du *Code criminel*. (*computer program*)

utiliser S'agissant d'un ordinateur ou d'un réseau informatique, le programmer, lui faire exécuter un programme, communiquer avec lui, y mettre en mémoire, ou en extraire, des données ou utiliser ses ressources de toute autre façon, notamment ses données et ses programmes. (*access*)

Collection of electronic addresses, etc.

(2) Paragraphs 7(1)(a) and (b.1) to (d) and (2)(a) to (c.1) and the exception set out in clause 4.3 of Schedule 1 do not apply in respect of

(a) the collection of an individual's electronic address, if the address is collected by the use of a computer program that is designed or marketed primarily for use in generating or searching for, and collecting, electronic addresses; or

(b) the use of an individual's electronic address, if the address is collected by the use of a computer program described in paragraph (a).

Collecte, utilisation et communication d'adresses électroniques

(2) Les alinéas 7(1)a) et b.1) à d) et (2)a) à c.1) et l'exception prévue à l'article 4.3 de l'annexe 1 ne s'appliquent pas :

a) à la collecte de l'adresse électronique d'un individu effectuée à l'aide d'un programme d'ordinateur conçu ou mis en marché principalement pour produire ou rechercher des adresses électroniques et les recueillir;

b) à l'utilisation d'une telle adresse recueillie à l'aide d'un programme d'ordinateur visé à l'alinéa a).

Accessing a computer system to collect personal information, etc.

(3) Paragraphs 7(1)(a) to (d) and (2)(a) to (c.1) and the exception set out in clause 4.3 of Schedule 1 do not apply in respect of

(a) the collection of personal information, through any means of telecommunication, if the collection is made by accessing a computer system or causing a

Collecte et utilisation de renseignements personnels

(3) Les alinéas 7(1)a) à d) et (2)a) à c.1) et l'exception prévue à l'article 4.3 de l'annexe 1 ne s'appliquent pas :

a) à la collecte de renseignements personnels, par tout moyen de télécommunication, dans le cas où l'organisation qui y procède le fait en utilisant ou faisant

computer system to be accessed in contravention of an Act of Parliament; or

(b) the use of personal information that is collected in a manner described in paragraph (a).

2010, c. 23, s. 82; 2015, c. 32, s. 26.

utiliser un ordinateur en contravention d'une loi fédérale;

b) à l'utilisation de renseignements personnels dont la collecte est visée à l'alinéa a).

2010, ch. 23, art. 82; 2015, ch. 32, art. 26.

Prospective business transaction

7.2 (1) In addition to the circumstances set out in subsections 7(2) and (3), for the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, organizations that are parties to a prospective business transaction may use and disclose personal information without the knowledge or consent of the individual if

(a) the organizations have entered into an agreement that requires the organization that receives the personal information

(i) to use and disclose that information solely for purposes related to the transaction,

(ii) to protect that information by security safeguards appropriate to the sensitivity of the information, and

(iii) if the transaction does not proceed, to return that information to the organization that disclosed it, or destroy it, within a reasonable time; and

(b) the personal information is necessary

(i) to determine whether to proceed with the transaction, and

(ii) if the determination is made to proceed with the transaction, to complete it.

Transaction commerciale éventuelle

7.2 (1) En plus des cas visés aux paragraphes 7(2) et (3), pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, les organisations qui sont parties à une éventuelle transaction commerciale peuvent utiliser et communiquer des renseignements personnels à l'insu de l'intéressé ou sans son consentement si, à la fois :

a) elles ont conclu un accord aux termes duquel l'organisation recevant des renseignements s'est engagée :

(i) à ne les utiliser et à ne les communiquer qu'à des fins liées à la transaction,

(ii) à les protéger au moyen de mesures de sécurité correspondant à leur degré de sensibilité,

(iii) si la transaction n'a pas lieu, à les remettre à l'organisation qui les lui a communiqués ou à les détruire, dans un délai raisonnable;

b) les renseignements sont nécessaires pour décider si la transaction aura lieu et, le cas échéant, pour l'effectuer.

Completed business transaction

(2) In addition to the circumstances set out in subsections 7(2) and (3), for the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, if the business transaction is completed, organizations that are parties to the transaction may use and disclose personal information, which was disclosed under subsection (1), without the knowledge or consent of the individual if

(a) the organizations have entered into an agreement that requires each of them

(i) to use and disclose the personal information under its control solely for the purposes for which the personal information was collected, permitted to be

Transaction commerciale effectuée

(2) En plus des cas visés aux paragraphes 7(2) et (3), pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, si la transaction commerciale est effectuée, les organisations y étant parties peuvent utiliser et communiquer les renseignements personnels, communiqués en vertu du paragraphe (1), à l'insu de l'intéressé ou sans son consentement dans le cas où :

a) elles ont conclu un accord aux termes duquel chacune d'entre elles s'est engagée :

(i) à n'utiliser et ne communiquer les renseignements dont elle a la gestion qu'aux fins auxquelles ils ont été recueillis ou auxquelles il était permis de les utiliser ou de les communiquer avant que la transaction ne soit effectuée,

used or disclosed before the transaction was completed,

(ii) to protect that information by security safeguards appropriate to the sensitivity of the information, and

(iii) to give effect to any withdrawal of consent made under clause 4.3.8 of Schedule 1;

(b) the personal information is necessary for carrying on the business or activity that was the object of the transaction; and

(c) one of the parties notifies the individual, within a reasonable time after the transaction is completed, that the transaction has been completed and that their personal information has been disclosed under subsection (1).

(ii) à les protéger au moyen de mesures de sécurité correspondant à leur degré de sensibilité,

(iii) à donner effet à tout retrait de consentement fait en conformité avec l'article 4.3.8 de l'annexe 1;

b) les renseignements sont nécessaires à la poursuite de l'entreprise ou des activités faisant l'objet de la transaction;

c) dans un délai raisonnable après que la transaction a été effectuée, l'une des parties avise l'intéressé du fait que la transaction a été effectuée et que ses renseignements personnels ont été communiqués en vertu du paragraphe (1).

Agreements binding

(3) An organization shall comply with the terms of any agreement into which it enters under paragraph (1)(a) or (2)(a).

Exception

(4) Subsections (1) and (2) do not apply to a business transaction of which the primary purpose or result is the purchase, sale or other acquisition or disposition, or lease, of personal information.

2015, c. 32, s. 7.

Valeur contraignante des accords

(3) L'organisation est tenue de se conformer aux modalités de tout accord conclu aux termes des alinéas (1)a) ou (2)a).

Exception

(4) Les paragraphes (1) et (2) ne s'appliquent pas à l'égard de la transaction commerciale dont l'objectif premier ou le résultat principal est l'achat, la vente ou toute autre forme d'acquisition ou de disposition de renseignements personnels, ou leur location.

2015, ch. 32, art. 7.

Employment relationship

7.3 In addition to the circumstances set out in section 7, for the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, a federal work, undertaking or business may collect, use and disclose personal information without the consent of the individual if

(a) the collection, use or disclosure is necessary to establish, manage or terminate an employment relationship between the federal work, undertaking or business and the individual; and

(b) the federal work, undertaking or business has informed the individual that the personal information will be or may be collected, used or disclosed for those purposes.

2015, c. 32, s. 7.

Relation d'emploi

7.3 En plus des cas visés à l'article 7, pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, une entreprise fédérale peut recueillir, utiliser ou communiquer des renseignements personnels sans le consentement de l'intéressé si cela est nécessaire pour établir ou gérer la relation d'emploi entre elle et lui, ou pour y mettre fin, et si elle a au préalable informé l'intéressé que ses renseignements personnels seront ou pourraient être recueillis, utilisés ou communiqués à ces fins.

2015, ch. 32, art. 7.

Use without consent

7.4 (1) Despite clause 4.5 of Schedule 1, an organization may use personal information for purposes other than

Utilisation sans le consentement de l'intéressé

7.4 (1) Malgré l'article 4.5 de l'annexe 1, l'organisation peut, dans les cas visés aux paragraphes 7.2(1) ou (2) ou à

those for which it was collected in any of the circumstances set out in subsection 7.2(1) or (2) or section 7.3.

Disclosure without consent

(2) Despite clause 4.5 of Schedule 1, an organization may disclose personal information for purposes other than those for which it was collected in any of the circumstances set out in subsection 7.2(1) or (2) or section 7.3.

2015, c. 32, s. 7.

Written request

8 (1) A request under clause 4.9 of Schedule 1 must be made in writing.

Assistance

(2) An organization shall assist any individual who informs the organization that they need assistance in preparing a request to the organization.

Time limit

(3) An organization shall respond to a request with due diligence and in any case not later than thirty days after receipt of the request.

Extension of time limit

(4) An organization may extend the time limit

(a) for a maximum of thirty days if

(i) meeting the time limit would unreasonably interfere with the activities of the organization, or

(ii) the time required to undertake any consultations necessary to respond to the request would make the time limit impracticable to meet; or

(b) for the period that is necessary in order to be able to convert the personal information into an alternative format.

In either case, the organization shall, no later than thirty days after the date of the request, send a notice of extension to the individual, advising them of the new time limit, the reasons for extending the time limit and of their right to make a complaint to the Commissioner in respect of the extension.

Deemed refusal

(5) If the organization fails to respond within the time limit, the organization is deemed to have refused the request.

Costs for responding

(6) An organization may respond to an individual's request at a cost to the individual only if

l'article 7.3, utiliser un renseignement personnel à des fins autres que celles auxquelles il a été recueilli.

Communication sans le consentement de l'intéressé

(2) Malgré l'article 4.5 de l'annexe 1, l'organisation peut, dans les cas visés aux paragraphes 7.2(1) ou (2) ou à l'article 7.3, communiquer un renseignement personnel à des fins autres que celles auxquelles il a été recueilli.

2015, ch. 32, art. 7.

Demande écrite

8 (1) La demande prévue à l'article 4.9 de l'annexe 1 est présentée par écrit.

Aide à fournir

(2) Sur requête de l'intéressé, l'organisation fournit à celui-ci l'aide dont il a besoin pour préparer sa demande.

Délai de réponse

(3) L'organisation saisie de la demande doit y donner suite avec la diligence voulue et, en tout état de cause, dans les trente jours suivant sa réception.

Prorogation du délai

(4) Elle peut toutefois proroger le délai visé au paragraphe (3) :

a) d'une période maximale de trente jours dans les cas où :

(i) l'observation du délai entraverait gravement l'activité de l'organisation,

(ii) toute consultation nécessaire pour donner suite à la demande rendrait pratiquement impossible l'observation du délai;

b) de la période nécessaire au transfert des renseignements visés sur support de substitution.

Dans l'un ou l'autre cas, l'organisation envoie au demandeur, dans les trente jours suivant la demande, un avis de prorogation l'informant du nouveau délai, des motifs de la prorogation et de son droit de déposer auprès du commissaire une plainte à propos de la prorogation.

Présomption

(5) Faute de répondre dans le délai, l'organisation est réputée avoir refusé d'acquiescer à la demande.

Coût

(6) Elle ne peut exiger de droits pour répondre à la demande que si, à la fois, elle informe le demandeur du

(a) the organization has informed the individual of the approximate cost; and

(b) the individual has advised the organization that the request is not being withdrawn.

(a) l'organisation l'a informé du montant approximatif de ceux-ci;

(b) l'individu l'a avisée qu'il ne retire pas sa demande.

Reasons

(7) An organization that responds within the time limit and refuses a request shall inform the individual in writing of the refusal, setting out the reasons and any recourse that they may have under this Part.

Refus motivé

(7) L'organisation qui refuse, dans le délai prévu, d'acquiescer à la demande notifie par écrit au demandeur son refus motivé et l'informe des recours que lui accorde la présente partie.

Retention of information

(8) Despite clause 4.5 of Schedule 1, an organization that has personal information that is the subject of a request shall retain the information for as long as is necessary to allow the individual to exhaust any recourse under this Part that they may have.

2000, c. 5, s. 8; 2015, c. 32, s. 8(F).

Conservation des renseignements

(8) Malgré l'article 4.5 de l'annexe 1, l'organisation qui détient un renseignement faisant l'objet d'une demande doit le conserver le temps nécessaire pour permettre au demandeur d'épuiser tous les recours qu'il a en vertu de la présente partie.

2000, ch. 5, art. 8; 2015, ch. 32, art. 8(F).

When access prohibited

9 (1) Despite clause 4.9 of Schedule 1, an organization shall not give an individual access to personal information if doing so would likely reveal personal information about a third party. However, if the information about the third party is severable from the record containing the information about the individual, the organization shall sever the information about the third party before giving the individual access.

Cas où la communication est interdite

9 (1) Malgré l'article 4.9 de l'annexe 1, l'organisation ne peut communiquer de renseignement à l'intéressé dans le cas où cette communication révélerait vraisemblablement un renseignement personnel sur un tiers. Toutefois, si ce dernier renseignement peut être retranché du document en cause, l'organisation est tenue de le retrancher puis de communiquer à l'intéressé le renseignement le concernant.

Limit

(2) Subsection (1) does not apply if the third party consents to the access or the individual needs the information because an individual's life, health or security is threatened.

Non-application

(2) Le paragraphe (1) ne s'applique pas si le tiers consent à la communication ou si l'intéressé a besoin du renseignement parce que la vie, la santé ou la sécurité d'un individu est en danger.

Information related to paragraphs 7(3)(c), (c.1) or (d)

(2.1) An organization shall comply with subsection (2.2) if an individual requests that the organization

(a) inform the individual about

(i) any disclosure of information to a government institution or a part of a government institution under paragraph 7(3)(c), subparagraph 7(3)(c.1)(i) or (ii) or paragraph 7(3)(c.2) or (d), or

(ii) the existence of any information that the organization has relating to a disclosure referred to in subparagraph (i), to a subpoena, warrant or order referred to in paragraph 7(3)(c) or to a request made by a government institution or a part of a government institution under subparagraph 7(3)(c.1)(i) or (ii); or

Renseignements relatifs aux al. 7(3)c), c.1) ou d)

(2.1) L'organisation est tenue de se conformer au paragraphe (2.2) si l'intéressé lui demande :

a) de l'aviser, selon le cas :

(i) de toute communication faite à une institution gouvernementale ou à une subdivision d'une telle institution en vertu de l'alinéa 7(3)c), des sous-alinéas 7(3)c.1) (i) ou (ii) ou des alinéas 7(3)c.2) ou d),

(ii) de l'existence de renseignements détenus par l'organisation et relatifs soit à toute telle communication, soit à une assignation, un mandat ou une ordonnance visés à l'alinéa 7(3)c), soit à une demande de communication faite par une institution gouvernementale ou une subdivision d'une telle institution en vertu de ces sous-alinéas;

(b) give the individual access to the information referred to in subparagraph (a)(ii).

b) de lui communiquer ces renseignements.

Notification and response

(2.2) An organization to which subsection (2.1) applies

(a) shall, in writing and without delay, notify the institution or part concerned of the request made by the individual; and

(b) shall not respond to the request before the earlier of

(i) the day on which it is notified under subsection (2.3), and

(ii) thirty days after the day on which the institution or part was notified.

Notification et réponse

(2.2) Le cas échéant, l'organisation :

a) notifie par écrit et sans délai la demande à l'institution gouvernementale ou à la subdivision d'une telle institution concernée;

b) ne peut donner suite à la demande avant le jour où elle reçoit l'avis prévu au paragraphe (2.3) ou, s'il est antérieur, le trentième jour suivant celui où l'institution ou la subdivision reçoit notification.

Objection

(2.3) Within thirty days after the day on which it is notified under subsection (2.2), the institution or part shall notify the organization whether or not the institution or part objects to the organization complying with the request. The institution or part may object only if the institution or part is of the opinion that compliance with the request could reasonably be expected to be injurious to

(a) national security, the defence of Canada or the conduct of international affairs;

(a.1) the detection, prevention or deterrence of money laundering or the financing of terrorist activities; or

(b) the enforcement of any law of Canada, a province or a foreign jurisdiction, an investigation relating to the enforcement of any such law or the gathering of intelligence for the purpose of enforcing any such law.

Opposition

(2.3) Dans les trente jours suivant celui où la demande lui est notifiée, l'institution ou la subdivision avise l'organisation du fait qu'elle s'oppose ou non à ce que celle-ci acquiesce à la demande. Elle ne peut s'y opposer que si elle est d'avis que faire droit à la demande risquerait vraisemblablement de nuire :

a) à la sécurité nationale, à la défense du Canada ou à la conduite des affaires internationales;

a.1) à la détection, à la prévention ou à la dissuasion du recyclage des produits de la criminalité ou du financement des activités terroristes;

b) au contrôle d'application du droit canadien, provincial ou étranger, à une enquête liée à ce contrôle d'application ou à la collecte de renseignements en matière de sécurité en vue de ce contrôle d'application.

Prohibition

(2.4) Despite clause 4.9 of Schedule 1, if an organization is notified under subsection (2.3) that the institution or part objects to the organization complying with the request, the organization

(a) shall refuse the request to the extent that it relates to paragraph (2.1)(a) or to information referred to in subparagraph (2.1)(a)(ii);

(b) shall notify the Commissioner, in writing and without delay, of the refusal; and

(c) shall not disclose to the individual

Refus d'acquiescer à la demande

(2.4) Malgré l'article 4.9 de l'annexe 1, si elle est informée que l'institution ou la subdivision s'oppose à ce qu'elle acquiesce à la demande, l'organisation :

a) refuse d'y acquiescer dans la mesure où la demande est visée à l'alinéa (2.1)a) ou se rapporte à des renseignements visés à cet alinéa;

b) en avise par écrit et sans délai le commissaire;

c) ne communique à l'intéressé :

(i) ni les renseignements détenus par l'organisation et relatifs à toute communication faite à une institution gouvernementale ou à une subdivision d'une

(i) any information that the organization has relating to a disclosure to a government institution or a part of a government institution under paragraph 7(3)(c), subparagraph 7(3)(c.1)(i) or (ii) or paragraph 7(3)(c.2) or (d) or to a request made by a government institution under either of those subparagraphs,

(ii) that the organization notified an institution or part under paragraph (2.2)(a) or the Commissioner under paragraph (b), or

(iii) that the institution or part objects.

When access may be refused

(3) Despite the note that accompanies clause 4.9 of Schedule 1, an organization is not required to give access to personal information only if

(a) the information is protected by solicitor-client privilege or the professional secrecy of advocates and notaries or by litigation privilege;

(b) to do so would reveal confidential commercial information;

(c) to do so could reasonably be expected to threaten the life or security of another individual;

(c.1) the information was collected under paragraph 7(1)(b);

(d) the information was generated in the course of a formal dispute resolution process; or

(e) the information was created for the purpose of making a disclosure under the *Public Servants Disclosure Protection Act* or in the course of an investigation into a disclosure under that Act.

However, in the circumstances described in paragraph (b) or (c), if giving access to the information would reveal confidential commercial information or could reasonably be expected to threaten the life or security of another individual, as the case may be, and that information is severable from the record containing any other information for which access is requested, the organization shall give the individual access after severing.

Limit

(4) Subsection (3) does not apply if the individual needs the information because an individual's life, health or security is threatened.

telle institution en vertu de l'alinéa 7(3)c), des sous-alinéas 7(3)c.1)(i) ou (ii) ou des alinéas 7(3)c.2) ou d) ou à une demande de communication faite par une institution gouvernementale ou une subdivision d'une telle institution en vertu de ces sous-alinéas.

(ii) ni le fait qu'il y a eu notification de la demande à l'institution gouvernementale ou à une subdivision en application de l'alinéa (2.2)a) ou que le commissaire en a été avisé en application de l'alinéa b),

(iii) ni le fait que l'institution ou la subdivision s'oppose à ce que l'organisation acquiesce à la demande.

Cas où la communication peut être refusée

(3) Malgré la note afférente à l'article 4.9 de l'annexe 1, l'organisation n'est pas tenue de communiquer à l'intéressé des renseignements personnels dans les cas suivants seulement :

a) les renseignements sont protégés par le secret professionnel de l'avocat ou du notaire ou par le privilège relatif au litige;

b) la communication révélerait des renseignements commerciaux confidentiels;

c) elle risquerait vraisemblablement de nuire à la vie ou la sécurité d'un autre individu;

c.1) les renseignements ont été recueillis au titre de l'alinéa 7(1)b);

d) les renseignements ont été fournis uniquement à l'occasion d'un règlement officiel des différends;

e) les renseignements ont été créés en vue de faire une divulgation au titre de la *Loi sur la protection des fonctionnaires divulgateurs d'actes répréhensibles* ou dans le cadre d'une enquête menée sur une divulgation en vertu de cette loi.

Toutefois, dans les cas visés aux alinéas b) ou c), si les renseignements commerciaux confidentiels ou les renseignements dont la communication risquerait vraisemblablement de nuire à la vie ou la sécurité d'un autre individu peuvent être retranchés du document en cause, l'organisation est tenue de faire la communication en retranchant ces renseignements.

Non-application

(4) Le paragraphe (3) ne s'applique pas si l'intéressé a besoin des renseignements parce que la vie, la santé ou la sécurité d'un individu est en danger.

Notice

(5) If an organization decides not to give access to personal information in the circumstances set out in paragraph (3)(c.1), the organization shall, in writing, so notify the Commissioner, and shall include in the notification any information that the Commissioner may specify.

2000, c. 5, s. 9, c. 17, s. 97; 2001, c. 41, s. 82; 2005, c. 46, s. 57; 2006, c. 9, s. 223; 2015, c. 32, s. 9; 2019, c. 18, s. 61.

Sensory disability

10 An organization shall give access to personal information in an alternative format to an individual with a sensory disability who has a right of access to personal information under this Part and who requests that it be transmitted in the alternative format if

(a) a version of the information already exists in that format; or

(b) its conversion into that format is reasonable and necessary in order for the individual to be able to exercise rights under this Part.

Avis

(5) Si elle décide de ne pas communiquer les renseignements dans le cas visé à l'alinéa (3)c.1), l'organisation en avise par écrit le commissaire et lui fournit les renseignements qu'il peut préciser.

2000, ch. 5, art. 9, ch. 17, art. 97; 2001, ch. 41, art. 82; 2005, ch. 46, art. 57; 2006, ch. 9, art. 223; 2015, ch. 32, art. 9; 2019, ch. 18, art. 61.

Déficience sensorielle

10 L'organisation communique les renseignements personnels sur support de substitution à toute personne ayant une déficience sensorielle qui y a droit sous le régime de la présente partie et qui en fait la demande, dans les cas suivants :

a) une version des renseignements visés existe déjà sur un tel support;

b) leur transfert sur un tel support est raisonnable et nécessaire pour que la personne puisse exercer les droits qui lui sont conférés sous le régime de la présente partie.

DIVISION 1.1

Breaches of Security Safeguards

Report to Commissioner

10.1 (1) An organization shall report to the Commissioner any breach of security safeguards involving personal information under its control if it is reasonable in the circumstances to believe that the breach creates a real risk of significant harm to an individual.

Report requirements

(2) The report shall contain the prescribed information and shall be made in the prescribed form and manner as soon as feasible after the organization determines that the breach has occurred.

Notification to individual

(3) Unless otherwise prohibited by law, an organization shall notify an individual of any breach of security safeguards involving the individual's personal information under the organization's control if it is reasonable in the circumstances to believe that the breach creates a real risk of significant harm to the individual.

Contents of notification

(4) The notification shall contain sufficient information to allow the individual to understand the significance to

SECTION 1.1

Atteintes aux mesures de sécurité

Déclaration au commissaire

10.1 (1) L'organisation déclare au commissaire toute atteinte aux mesures de sécurité qui a trait à des renseignements personnels dont elle a la gestion, s'il est raisonnable de croire, dans les circonstances, que l'atteinte présente un risque réel de préjudice grave à l'endroit d'un individu.

Modalités de la déclaration

(2) La déclaration contient les renseignements prévus par règlement et est faite, selon les modalités réglementaires, le plus tôt possible après que l'organisation a conclu qu'il y a eu atteinte.

Avis à l'intéressé

(3) À moins qu'une règle de droit ne l'interdise, l'organisation est tenue d'aviser l'intéressé de toute atteinte aux mesures de sécurité qui a trait à des renseignements personnels le concernant et dont elle a la gestion, s'il est raisonnable de croire, dans les circonstances, que l'atteinte présente un risque réel de préjudice grave à son endroit.

Contenu de l'avis

(4) L'avis contient suffisamment d'information pour permettre à l'intéressé de comprendre l'importance, pour

them of the breach and to take steps, if any are possible, to reduce the risk of harm that could result from it or to mitigate that harm. It shall also contain any other prescribed information.

Form and manner

(5) The notification shall be conspicuous and shall be given directly to the individual in the prescribed form and manner, except in prescribed circumstances, in which case it shall be given indirectly in the prescribed form and manner.

Time to give notification

(6) The notification shall be given as soon as feasible after the organization determines that the breach has occurred.

Definition of *significant harm*

(7) For the purpose of this section, ***significant harm*** includes bodily harm, humiliation, damage to reputation or relationships, loss of employment, business or professional opportunities, financial loss, identity theft, negative effects on the credit record and damage to or loss of property.

Real risk of significant harm — factors

(8) The factors that are relevant to determining whether a breach of security safeguards creates a real risk of significant harm to the individual include

(a) the sensitivity of the personal information involved in the breach;

(b) the probability that the personal information has been, is being or will be misused; and

(c) any other prescribed factor.

2015, c. 32, s. 10.

Notification to organizations

10.2 (1) An organization that notifies an individual of a breach of security safeguards under subsection 10.1(3) shall notify any other organization, a government institution or a part of a government institution of the breach if the notifying organization believes that the other organization or the government institution or part concerned may be able to reduce the risk of harm that could result from it or mitigate that harm, or if any of the prescribed conditions are satisfied.

lui, de l'atteinte et de prendre, si cela est possible, des mesures pour réduire le risque de préjudice qui pourrait en résulter ou pour atténuer un tel préjudice. Il contient aussi tout autre renseignement réglementaire.

Modalités de l'avis

(5) L'avis est manifeste et est donné à l'intéressé directement, selon les modalités réglementaires. Dans les circonstances prévues par règlement, il est donné indirectement, selon les modalités réglementaires.

Délai de l'avis

(6) L'avis est donné le plus tôt possible après que l'organisation a conclu qu'il y a eu atteinte.

Définition de *préjudice grave*

(7) Pour l'application du présent article, ***préjudice grave*** vise notamment la lésion corporelle, l'humiliation, le dommage à la réputation ou aux relations, la perte financière, le vol d'identité, l'effet négatif sur le dossier de crédit, le dommage aux biens ou leur perte, et la perte de possibilités d'emploi ou d'occasions d'affaires ou d'activités professionnelles.

Risque réel de préjudice grave : facteurs

(8) Les éléments servant à établir si une atteinte aux mesures de sécurité présente un risque réel de préjudice grave à l'endroit de l'intéressé sont notamment le degré de sensibilité des renseignements personnels en cause, la probabilité que les renseignements aient été mal utilisés ou soient en train ou sur le point de l'être et tout autre élément prévu par règlement.

2015, ch. 32, art. 10.

Avis à une organisation

10.2 (1) L'organisation qui, en application du paragraphe 10.1(3), avise un individu d'une atteinte aux mesures de sécurité est tenue d'en aviser toute autre organisation, ou toute institution gouvernementale ou subdivision d'une telle institution, si elle croit que l'autre organisation, l'institution ou la subdivision peut être en mesure de réduire le risque de préjudice pouvant résulter de l'atteinte ou d'atténuer ce préjudice, ou s'il est satisfait à des conditions précisées par règlement.

Time to give notification

(2) The notification shall be given as soon as feasible after the organization determines that the breach has occurred.

Disclosure of personal information

(3) In addition to the circumstances set out in subsection 7(3), for the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual if

(a) the disclosure is made to the other organization, the government institution or the part of a government institution that was notified of the breach under subsection (1); and

(b) the disclosure is made solely for the purposes of reducing the risk of harm to the individual that could result from the breach or mitigating that harm.

Disclosure without consent

(4) Despite clause 4.5 of Schedule 1, an organization may disclose personal information for purposes other than those for which it was collected in the circumstance set out in subsection (3).

2015, c. 32, s. 10.

Records

10.3 (1) An organization shall, in accordance with any prescribed requirements, keep and maintain a record of every breach of security safeguards involving personal information under its control.

Provision to Commissioner

(2) An organization shall, on request, provide the Commissioner with access to, or a copy of, a record.

2015, c. 32, s. 10.

Délai de l'avis

(2) Elle le fait le plus tôt possible après avoir conclu qu'il y a eu atteinte.

Communication de renseignements personnels

(3) En plus des cas visés au paragraphe 7(3), pour l'application de l'article 4.3 de l'annexe 1 et malgré la note afférente, l'organisation peut communiquer des renseignements personnels à l'insu de l'intéressé ou sans son consentement si :

a) d'une part, la communication est faite à l'autre organisation, ou à l'institution gouvernementale ou la subdivision d'une telle institution qui a été avisée de l'atteinte en application du paragraphe (1);

b) d'autre part, elle n'est faite que pour réduire le risque de préjudice pour l'intéressé qui pourrait résulter de l'atteinte ou atténuer ce préjudice.

Communication sans consentement

(4) Malgré l'article 4.5 de l'annexe 1, l'organisation peut, dans le cas visé au paragraphe (3), communiquer un renseignement personnel à des fins autres que celles auxquelles il a été recueilli.

2015, ch. 32, art. 10.

Registre

10.3 (1) L'organisation tient et conserve, conformément aux règlements, un registre de toutes les atteintes aux mesures de sécurité qui ont trait à des renseignements personnels dont elle a la gestion.

Accès au registre ou copie

(2) Sur demande du commissaire, l'organisation lui donne accès à son registre ou lui en remet copie.

2015, ch. 32, art. 10.

DIVISION 2

Remedies

Filing of Complaints

Contravention

11 (1) An individual may file with the Commissioner a written complaint against an organization for contravening a provision of Division 1 or 1.1 or for not following a recommendation set out in Schedule 1.

SECTION 2

Recours

Dépôt des plaintes

Violation

11 (1) Tout intéressé peut déposer auprès du commissaire une plainte contre une organisation qui contrevient à l'une des dispositions des sections 1 ou 1.1, ou qui omet de mettre en œuvre une recommandation énoncée dans l'annexe 1.

Commissioner may initiate complaint

(2) If the Commissioner is satisfied that there are reasonable grounds to investigate a matter under this Part, the Commissioner may initiate a complaint in respect of the matter.

Time limit

(3) A complaint that results from the refusal to grant a request under section 8 must be filed within six months, or any longer period that the Commissioner allows, after the refusal or after the expiry of the time limit for responding to the request, as the case may be.

Notice

(4) The Commissioner shall give notice of a complaint to the organization against which the complaint was made.

2000, c. 5, s. 11; 2015, c. 32, s. 11.

Investigations of Complaints

Examination of complaint by Commissioner

12 (1) The Commissioner shall conduct an investigation in respect of a complaint, unless the Commissioner is of the opinion that

(a) the complainant ought first to exhaust grievance or review procedures otherwise reasonably available;

(b) the complaint could more appropriately be dealt with, initially or completely, by means of a procedure provided for under the laws of Canada, other than this Part, or the laws of a province; or

(c) the complaint was not filed within a reasonable period after the day on which the subject matter of the complaint arose.

Exception

(2) Despite subsection (1), the Commissioner is not required to conduct an investigation in respect of an act alleged in a complaint if the Commissioner is of the opinion that the act, if proved, would constitute a contravention of any of sections 6 to 9 of *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* or section 52.01 of the *Competition Act* or would constitute conduct that is reviewable under section 74.011 of that Act.

Plaintes émanant du commissaire

(2) Le commissaire peut lui-même prendre l'initiative d'une plainte s'il a des motifs raisonnables de croire qu'une enquête devrait être menée sur une question relative à l'application de la présente partie.

Délai

(3) Lorsqu'elle porte sur le refus d'acquiescer à une demande visée à l'article 8, la plainte doit être déposée dans les six mois suivant, selon le cas, le refus ou l'expiration du délai pour répondre à la demande, à moins que le commissaire n'accorde un délai supplémentaire.

Avis

(4) Le commissaire donne avis de la plainte à l'organisation visée par celle-ci.

2000, ch. 5, art. 11; 2015, ch. 32, art. 11.

Examen des plaintes

Examen des plaintes par le commissaire

12 (1) Le commissaire procède à l'examen de toute plainte dont il est saisi à moins qu'il estime celle-ci irrecevable pour un des motifs suivants :

a) le plaignant devrait d'abord épuiser les recours internes ou les procédures d'appel ou de règlement des griefs qui lui sont normalement ouverts;

b) la plainte pourrait avantageusement être instruite, dans un premier temps ou à toutes les étapes, selon des procédures prévues par le droit fédéral — à l'exception de la présente partie — ou le droit provincial;

c) la plainte n'a pas été déposée dans un délai raisonnable après que son objet a pris naissance.

Exception

(2) Malgré le paragraphe (1), le commissaire n'a pas à examiner tout acte allégué dans la plainte qui, à son avis, constituerait, s'il était prouvé, une contravention à l'un des articles 6 à 9 de la *Loi visant à promouvoir l'efficacité et la capacité d'adaptation de l'économie canadienne par la réglementation de certaines pratiques qui découragent l'exercice des activités commerciales par voie électronique et modifiant la Loi sur le Conseil de la radiodiffusion et des télécommunications canadiennes, la Loi sur la concurrence, la Loi sur la protection des renseignements personnels et les documents électroniques et la Loi sur les télécommunications* ou à l'article 52.01 de la *Loi sur la concurrence* ou un comportement susceptible d'examen visé à l'article 74.011 de cette loi.

Notification

(3) The Commissioner shall notify the complainant and the organization that the Commissioner will not investigate the complaint or any act alleged in the complaint and give reasons.

Compelling reasons

(4) The Commissioner may reconsider a decision not to investigate under subsection (1), if the Commissioner is satisfied that the complainant has established that there are compelling reasons to investigate.

2000, c. 5, s. 12; 2010, c. 23, s. 83.

Powers of Commissioner

12.1 (1) In the conduct of an investigation of a complaint, the Commissioner may

(a) summon and enforce the appearance of persons before the Commissioner and compel them to give oral or written evidence on oath and to produce any records and things that the Commissioner considers necessary to investigate the complaint, in the same manner and to the same extent as a superior court of record;

(b) administer oaths;

(c) receive and accept any evidence and other information, whether on oath, by affidavit or otherwise, that the Commissioner sees fit, whether or not it is or would be admissible in a court of law;

(d) at any reasonable time, enter any premises, other than a dwelling-house, occupied by an organization on satisfying any security requirements of the organization relating to the premises;

(e) converse in private with any person in any premises entered under paragraph (d) and otherwise carry out in those premises any inquiries that the Commissioner sees fit; and

(f) examine or obtain copies of or extracts from records found in any premises entered under paragraph (d) that contain any matter relevant to the investigation.

Dispute resolution mechanisms

(2) The Commissioner may attempt to resolve complaints by means of dispute resolution mechanisms such as mediation and conciliation.

Delegation

(3) The Commissioner may delegate any of the powers set out in subsection (1) or (2).

Avis aux parties

(3) S'il décide de ne pas procéder à l'examen de la plainte ou de tout acte allégué dans celle-ci, le commissaire avise le plaignant et l'organisation de sa décision et des motifs qui la justifient.

Raisons impérieuses

(4) Le commissaire peut réexaminer sa décision de ne pas examiner la plainte aux termes du paragraphe (1) si le plaignant le convainc qu'il existe des raisons impérieuses pour ce faire.

2000, ch. 5, art. 12; 2010, ch. 23, art. 83.

Pouvoirs du commissaire

12.1 (1) Le commissaire peut, dans le cadre de l'examen des plaintes :

a) assigner et contraindre des témoins à comparaître devant lui, à déposer verbalement ou par écrit sous la foi du serment et à produire les documents ou pièces qu'il juge nécessaires pour examiner la plainte dont il est saisi, de la même façon et dans la même mesure qu'une cour supérieure d'archives;

b) faire prêter serment;

c) recevoir les éléments de preuve ou les renseignements — fournis notamment par déclaration verbale ou écrite sous serment — qu'il estime indiqués, indépendamment de leur admissibilité devant les tribunaux;

d) visiter, à toute heure convenable, tout local — autre qu'une maison d'habitation — occupé par l'organisation, à condition de satisfaire aux normes de sécurité établies par elle pour ce local;

e) s'entretenir en privé avec toute personne se trouvant dans le local visé à l'alinéa d) et y mener les enquêtes qu'il estime nécessaires;

f) examiner ou se faire remettre des copies ou des extraits des documents contenant des éléments utiles à l'examen de la plainte et trouvés dans le local visé à l'alinéa d).

Mode de règlement des différends

(2) Il peut tenter de parvenir au règlement de la plainte en ayant recours à un mode de règlement des différends, notamment la médiation et la conciliation.

Délégation

(3) Il peut déléguer les pouvoirs que les paragraphes (1) et (2) lui confèrent.

Return of records

(4) The Commissioner or the delegate shall return to a person or an organization any record or thing that they produced under this section within 10 days after they make a request to the Commissioner or the delegate, but nothing precludes the Commissioner or the delegate from again requiring that the record or thing be produced.

Certificate of delegation

(5) Any person to whom powers set out in subsection (1) are delegated shall be given a certificate of the delegation and the delegate shall produce the certificate, on request, to the person in charge of any premises to be entered under paragraph (1)(d).

2010, c. 23, s. 83.

Discontinuance of Investigation

Reasons

12.2 (1) The Commissioner may discontinue the investigation of a complaint if the Commissioner is of the opinion that

(a) there is insufficient evidence to pursue the investigation;

(b) the complaint is trivial, frivolous or vexatious or is made in bad faith;

(c) the organization has provided a fair and reasonable response to the complaint;

(c.1) the matter is the object of a compliance agreement entered into under subsection 17.1(1);

(d) the matter is already the object of an ongoing investigation under this Part;

(e) the matter has already been the subject of a report by the Commissioner;

(f) any of the circumstances mentioned in paragraph 12(1)(a), (b) or (c) apply; or

(g) the matter is being or has already been addressed under a procedure referred to in paragraph 12(1)(a) or (b).

Other reason

(2) The Commissioner may discontinue an investigation in respect of an act alleged in a complaint if the Commissioner is of the opinion that the act, if proved, would constitute a contravention of any of sections 6 to 9 of *An Act to promote the efficiency and adaptability of the*

Renvoi des documents

(4) Le commissaire ou son délégué renvoie les documents ou pièces demandés en vertu du présent article aux personnes ou organisations qui les ont produits dans les dix jours suivant la requête que celles-ci lui présentent à cette fin, mais rien n'empêche le commissaire ou son délégué d'en réclamer une nouvelle production.

Certificat

(5) Chaque personne à qui les pouvoirs visés au paragraphe (1) sont délégués reçoit un certificat attestant sa qualité, qu'il présente, sur demande, au responsable du local qui sera visité en application de l'alinéa (1)d).

2010, ch. 23, art. 83.

Fin de l'examen

Motifs

12.2 (1) Le commissaire peut mettre fin à l'examen de la plainte s'il estime, selon le cas :

a) qu'il n'existe pas suffisamment d'éléments de preuve pour le poursuivre;

b) que la plainte est futile, vexatoire ou entachée de mauvaise foi;

c) que l'organisation a apporté une réponse juste et équitable à la plainte;

c.1) que la question qui a donné lieu à la plainte fait l'objet d'un accord de conformité conclu en vertu du paragraphe 17.1(1);

d) que la plainte fait déjà l'objet d'une enquête au titre de la présente partie;

e) qu'il a déjà dressé un rapport sur l'objet de la plainte;

f) que les circonstances visées à l'un des alinéas 12(1)a) à c) existent;

g) que la plainte fait ou a fait l'objet d'un recours ou d'une procédure visés à l'alinéa 12(1)a) ou est ou a été instruite selon des procédures visées à l'alinéa 12(1)b).

Autre motif

(2) Le commissaire peut mettre fin à l'examen de tout acte allégué dans la plainte qui, à son avis, constituerait, s'il était prouvé, une contravention à l'un des articles 6 à 9 de la *Loi visant à promouvoir l'efficacité et la capacité d'adaptation de l'économie canadienne par la*

Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act or section 52.01 of the *Competition Act* or would constitute conduct that is reviewable under section 74.011 of that Act.

Notification

(3) The Commissioner shall notify the complainant and the organization that the investigation has been discontinued and give reasons.

2010, c. 23, s. 83; 2015, c. 32, s. 12.

Commissioner's Report

Contents

13 (1) The Commissioner shall, within one year after the day on which a complaint is filed or is initiated by the Commissioner, prepare a report that contains

(a) the Commissioner's findings and recommendations;

(b) any settlement that was reached by the parties;

(c) if appropriate, a request that the organization give the Commissioner, within a specified time, notice of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken; and

(d) the recourse, if any, that is available under section 14.

(2) [Repealed, 2010, c. 23, s. 84]

Report to parties

(3) The report shall be sent to the complainant and the organization without delay.

2000, c. 5, s. 13; 2010, c. 23, s. 84.

Hearing by Court

Application

14 (1) A complainant may, after receiving the Commissioner's report or being notified under subsection 12.2(3) that the investigation of the complaint has been discontinued, apply to the Court for a hearing in respect of any matter in respect of which the complaint was made, or that is referred to in the Commissioner's report, and that

réglementation de certaines pratiques qui découragent l'exercice des activités commerciales par voie électronique et modifiant la Loi sur le Conseil de la radiodiffusion et des télécommunications canadiennes, la Loi sur la concurrence, la Loi sur la protection des renseignements personnels et les documents électroniques et la Loi sur les télécommunications ou à l'article 52.01 de la *Loi sur la concurrence* ou un comportement susceptible d'examen visé à l'article 74.011 de cette loi.

Avis aux parties

(3) Le commissaire avise le plaignant et l'organisation de la fin de l'examen et des motifs qui la justifient.

2010, ch. 23, art. 83; 2015, ch. 32, art. 12.

Rapport du commissaire

Contenu

13 (1) Dans l'année suivant, selon le cas, la date du dépôt de la plainte ou celle où il en a pris l'initiative, le commissaire dresse un rapport où :

a) il présente ses conclusions et recommandations;

b) il fait état de tout règlement intervenu entre les parties;

c) il demande, s'il y a lieu, à l'organisation de lui donner avis, dans un délai déterminé, soit des mesures prises ou envisagées pour la mise en œuvre de ses recommandations, soit des motifs invoqués pour ne pas y donner suite;

d) mentionne, s'il y a lieu, l'existence du recours prévu à l'article 14.

(2) [Abrogé, 2010, ch. 23, art. 84]

Transmission aux parties

(3) Le rapport est transmis sans délai au plaignant et à l'organisation.

2000, ch. 5, art. 13; 2010, ch. 23, art. 84.

Audience de la Cour

Demande

14 (1) Après avoir reçu le rapport du commissaire ou l'avis l'informant de la fin de l'examen de la plainte au titre du paragraphe 12.2(3), le plaignant peut demander que la Cour entende toute question qui a fait l'objet de la plainte — ou qui est mentionnée dans le rapport — et qui est visée aux articles 4.1.3, 4.2, 4.3.3, 4.4, 4.6, 4.7 ou 4.8 de

is referred to in clause 4.1.3, 4.2, 4.3.3, 4.4, 4.6, 4.7 or 4.8 of Schedule 1, in clause 4.3, 4.5 or 4.9 of that Schedule as modified or clarified by Division 1 or 1.1, in subsection 5(3) or 8(6) or (7), in section 10 or in Division 1.1.

Time for application

(2) A complainant shall make an application within one year after the report or notification is sent or within any longer period that the Court may, either before or after the expiry of that year, allow.

For greater certainty

(3) For greater certainty, subsections (1) and (2) apply in the same manner to complaints referred to in subsection 11(2) as to complaints referred to in subsection 11(1).

2000, c. 5, s. 14; 2010, c. 23, s. 85; 2015, c. 32, s. 13.

Commissioner may apply or appear

15 The Commissioner may, in respect of a complaint that the Commissioner did not initiate,

(a) apply to the Court, within the time limited by section 14, for a hearing in respect of any matter described in that section, if the Commissioner has the consent of the complainant;

(b) appear before the Court on behalf of any complainant who has applied for a hearing under section 14; or

(c) with leave of the Court, appear as a party to any hearing applied for under section 14.

Remedies

16 The Court may, in addition to any other remedies it may give,

(a) order an organization to correct its practices in order to comply with Divisions 1 and 1.1;

(b) order an organization to publish a notice of any action taken or proposed to be taken to correct its practices, whether or not ordered to correct them under paragraph (a); and

(c) award damages to the complainant, including damages for any humiliation that the complainant has suffered.

2000, c. 5, s. 16; 2015, c. 32, s. 14.

l'annexe 1, aux articles 4.3, 4.5 ou 4.9 de cette annexe tels qu'ils sont modifiés ou clarifiés par les sections 1 ou 1.1, aux paragraphes 5(3) ou 8(6) ou (7), à l'article 10 ou à la section 1.1.

Délai de la demande

(2) La demande est faite dans l'année suivant la transmission du rapport ou de l'avis ou dans le délai supérieur que la Cour autorise avant ou après l'expiration de l'année.

Précision

(3) Il est entendu que les paragraphes (1) et (2) s'appliquent de la même façon aux plaintes visées au paragraphe 11(2) qu'à celles visées au paragraphe 11(1).

2000, ch. 5, art. 14; 2010, ch. 23, art. 85; 2015, ch. 32, art. 13.

Exercice du recours par le commissaire

15 S'agissant d'une plainte dont il n'a pas pris l'initiative, le commissaire a qualité pour :

a) demander lui-même, dans le délai prévu à l'article 14, l'audition de toute question visée à cet article, avec le consentement du plaignant;

b) comparaître devant la Cour au nom du plaignant qui a demandé l'audition de la question;

c) comparaître, avec l'autorisation de la Cour, comme partie à la procédure.

Réparations

16 La Cour peut, en sus de toute autre réparation qu'elle accorde :

a) ordonner à l'organisation de revoir ses pratiques en vue de se conformer aux sections 1 et 1.1;

b) lui ordonner de publier un avis énonçant les mesures prises ou envisagées pour corriger ses pratiques, que ces dernières aient ou non fait l'objet d'une ordonnance visée à l'alinéa a);

c) accorder au plaignant des dommages-intérêts, notamment en réparation de l'humiliation subie.

2000, ch. 5, art. 16; 2015, ch. 32, art. 14.

Summary hearings

17 (1) An application made under section 14 or 15 shall be heard and determined without delay and in a summary way unless the Court considers it inappropriate to do so.

Precautions

(2) In any proceedings arising from an application made under section 14 or 15, the Court shall take every reasonable precaution, including, when appropriate, receiving representations ex parte and conducting hearings in camera, to avoid the disclosure by the Court or any person of any information or other material that the organization would be authorized to refuse to disclose if it were requested under clause 4.9 of Schedule 1.

Compliance Agreements

Compliance agreement

17.1 (1) If the Commissioner believes on reasonable grounds that an organization has committed, is about to commit or is likely to commit an act or omission that could constitute a contravention of a provision of Division 1 or 1.1 or a failure to follow a recommendation set out in Schedule 1, the Commissioner may enter into a compliance agreement, aimed at ensuring compliance with this Part, with that organization.

Terms

(2) A compliance agreement may contain any terms that the Commissioner considers necessary to ensure compliance with this Part.

Effect of compliance agreement — no application

(3) When a compliance agreement is entered into, the Commissioner, in respect of any matter covered under the agreement,

(a) shall not apply to the Court for a hearing under subsection 14(1) or paragraph 15(a); and

(b) shall apply to the court for the suspension of any pending applications that were made by the Commissioner under those provisions.

For greater certainty

(4) For greater certainty, a compliance agreement does not preclude

(a) an individual from applying for a hearing under section 14; or

Procédure sommaire

17 (1) Le recours prévu aux articles 14 ou 15 est entendu et jugé sans délai et selon une procédure sommaire, à moins que la Cour ne l'estime contre-indiqué.

Précautions à prendre

(2) À l'occasion des procédures relatives au recours prévu aux articles 14 ou 15, la Cour prend toutes les précautions possibles, notamment, si c'est indiqué, par la tenue d'audiences à huis clos et l'audition d'arguments en l'absence d'une partie, pour éviter que ne soient divulgués, de par son propre fait ou celui de quiconque, des renseignements qui justifient un refus de communication de renseignements personnels demandés en vertu de l'article 4.9 de l'annexe 1.

Accord de conformité

Conclusion d'un accord de conformité

17.1 (1) Le commissaire peut, s'il a des motifs raisonnables de croire à l'existence, à l'imminence ou à la probabilité d'un fait — acte ou omission — pouvant constituer une contravention à l'une des dispositions des sections 1 ou 1.1 ou une omission de mettre en œuvre une recommandation énoncée dans l'annexe 1, conclure avec l'organisation intéressée un accord, appelé « accord de conformité », visant à faire respecter la présente partie.

Conditions

(2) L'accord de conformité est assorti des conditions que le commissaire estime nécessaires pour faire respecter la présente partie.

Effet de l'accord de conformité

(3) Lorsqu'un accord de conformité a été conclu, le commissaire :

a) ne peut demander à la Cour, aux termes du paragraphe 14(1) ou de l'alinéa 15a), une audition à l'égard de toute question visée par l'accord;

b) demande la suspension de toute demande d'audition d'une question visée par l'accord qu'il a faite et qui est pendante au moment de la conclusion de l'accord.

Précision

(4) Il est entendu que la conclusion de l'accord n'a pas pour effet d'empêcher les poursuites pour infraction à la présente loi, ou d'empêcher un plaignant — autre que le

(b) the prosecution of an offence under the Act.

2015, c. 32, s. 15.

commissaire — de faire une demande d'audition de la question aux termes de l'article 14.

2015, ch. 32, art. 15.

Agreement complied with

17.2 (1) If the Commissioner is of the opinion that a compliance agreement has been complied with, the Commissioner shall provide written notice to that effect to the organization and withdraw any applications that were made under subsection 14(1) or paragraph 15(a) in respect of any matter covered under the agreement.

Accord respecté

17.2 (1) S'il estime que l'accord de conformité a été respecté, le commissaire en fait part à l'organisation intéressée par avis écrit et il retire toute demande d'audition, faite aux termes du paragraphe 14(1) ou de l'alinéa 15a), d'une question visée par l'accord.

Agreement not complied with

(2) If the Commissioner is of the opinion that an organization is not complying with the terms of a compliance agreement, the Commissioner shall notify the organization and may apply to the Court for

(a) an order requiring the organization to comply with the terms of the agreement, in addition to any other remedies it may give; or

(b) a hearing under subsection 14(1) or paragraph 15(a) or to reinstate proceedings that have been suspended as a result of an application made under paragraph 17.1(3)(b).

Accord non respecté

(2) S'il estime que l'accord de conformité n'a pas été respecté, le commissaire envoie à l'organisation intéressée un avis de défaut. Il peut alors demander à la Cour :

a) soit une ordonnance enjoignant à l'organisation de se conformer aux conditions de l'accord de conformité, en sus de toute autre réparation que la Cour peut accorder;

b) soit une audition de la question, aux termes du paragraphe 14(1) ou de l'alinéa 15a) ou, en cas de suspension de l'audition à la suite d'une demande faite en application de l'alinéa 17.1(3)b), le rétablissement de l'audition.

Time for application

(3) Despite subsection 14(2), the application shall be made within one year after notification is sent or within any longer period that the Court may, either before or after the expiry of that year, allow.

2015, c. 32, s. 15.

Délai de la demande

(3) Malgré le paragraphe 14(2), la demande est faite dans l'année suivant l'envoi de l'avis de défaut ou dans le délai supérieur que la Cour autorise avant ou après l'expiration de l'année.

2015, ch. 32, art. 15.

DIVISION 3

Audits

SECTION 3

Vérifications

To ensure compliance

18 (1) The Commissioner may, on reasonable notice and at any reasonable time, audit the personal information management practices of an organization if the Commissioner has reasonable grounds to believe that the organization has contravened a provision of Division 1 or 1.1 or is not following a recommendation set out in Schedule 1, and for that purpose may

(a) summon and enforce the appearance of persons before the Commissioner and compel them to give oral or written evidence on oath and to produce any records and things that the Commissioner considers necessary for the audit, in the same manner and to the same extent as a superior court of record;

Contrôle d'application

18 (1) Le commissaire peut, sur préavis suffisant et à toute heure convenable, procéder à la vérification des pratiques de l'organisation en matière de gestion des renseignements personnels s'il a des motifs raisonnables de croire que celle-ci a contrevenu à l'une des dispositions des sections 1 ou 1.1 ou n'a pas mis en œuvre une recommandation énoncée dans l'annexe 1; il a, à cette fin, le pouvoir :

a) d'assigner et de contraindre des témoins à comparaître devant lui, à déposer verbalement ou par écrit sous la foi du serment et à produire les documents ou

(b) administer oaths;

(c) receive and accept any evidence and other information, whether on oath, by affidavit or otherwise, that the Commissioner sees fit, whether or not it is or would be admissible in a court of law;

(d) at any reasonable time, enter any premises, other than a dwelling-house, occupied by the organization on satisfying any security requirements of the organization relating to the premises;

(e) converse in private with any person in any premises entered under paragraph (d) and otherwise carry out in those premises any inquiries that the Commissioner sees fit; and

(f) examine or obtain copies of or extracts from records found in any premises entered under paragraph (d) that contain any matter relevant to the audit.

b) de faire prêter serment;

c) de recevoir les éléments de preuve ou les renseignements — fournis notamment par déclaration verbale ou écrite sous serment — qu'il estime indiqués, indépendamment de leur admissibilité devant les tribunaux;

d) de visiter, à toute heure convenable, tout local — autre qu'une maison d'habitation — occupé par l'organisation, à condition de satisfaire aux normes de sécurité établies par elle pour ce local;

e) de s'entretenir en privé avec toute personne se trouvant dans le local visé à l'alinéa d) et d'y mener les enquêtes qu'il estime nécessaires;

f) d'examiner ou de se faire remettre des copies ou des extraits des documents contenant des éléments utiles à la vérification et trouvés dans le local visé à l'alinéa d).

Delegation

(2) The Commissioner may delegate any of the powers set out in subsection (1).

Délégation

(2) Il peut déléguer les pouvoirs que le paragraphe (1) lui confère.

Return of records

(3) The Commissioner or the delegate shall return to a person or an organization any record or thing they produced under this section within ten days after they make a request to the Commissioner or the delegate, but nothing precludes the Commissioner or the delegate from again requiring that the record or thing be produced.

Renvoi des documents

(3) Le commissaire ou son délégué renvoie les documents ou pièces demandés en vertu du présent article aux personnes ou organisations qui les ont produits dans les dix jours suivant la requête que celles-ci lui présentent à cette fin, mais rien n'empêche le commissaire ou son délégué d'en réclamer une nouvelle production.

Certificate of delegation

(4) Any person to whom powers set out in subsection (1) are delegated shall be given a certificate of the delegation and the delegate shall produce the certificate, on request, to the person in charge of any premises to be entered under paragraph (1)(d).

2000, c. 5, s. 18; 2015, c. 32, s. 16.

Certificat

(4) Chaque personne à qui les pouvoirs visés au paragraphe (1) sont délégués reçoit un certificat attestant sa qualité, qu'il présente, sur demande, au responsable du local qui sera visité en application de l'alinéa (1)d).

2000, ch. 5, art. 18; 2015, ch. 32, art. 16.

Report of findings and recommendations

19 (1) After an audit, the Commissioner shall provide the audited organization with a report that contains the findings of the audit and any recommendations that the Commissioner considers appropriate.

Rapport des conclusions et recommandations du commissaire

19 (1) À l'issue de la vérification, le commissaire adresse à l'organisation en cause un rapport où il présente ses conclusions ainsi que les recommandations qu'il juge indiquées.

Reports may be included in annual reports

(2) The report may be included in a report made under section 25.

Incorporation du rapport

(2) Ce rapport peut être incorporé dans le rapport visé à l'article 25.

DIVISION 4

General

Confidentiality

20 (1) Subject to subsections (2) to (7), 12(3), 12.2(3), 13(3), 19(1), 23(3) and 23.1(1) and section 25, the Commissioner or any person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge as a result of the performance or exercise of any of the Commissioner's duties or powers under this Part other than those referred to in subsection 10.1(1) or 10.3(2).

Confidentiality — reports and records

(1.1) Subject to subsections (2) to (7), 12(3), 12.2(3), 13(3), 19(1), 23(3) and 23.1(1) and section 25, the Commissioner or any person acting on behalf or under the direction of the Commissioner shall not disclose any information contained in a report made under subsection 10.1(1) or in a record obtained under subsection 10.3(2).

Public interest

(2) The Commissioner may, if the Commissioner considers that it is in the public interest to do so, make public any information that comes to his or her knowledge in the performance or exercise of any of his or her duties or powers under this Part.

Disclosure of necessary information

(3) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information that in the Commissioner's opinion is necessary to

(a) conduct an investigation or audit under this Part; or

(b) establish the grounds for findings and recommendations contained in any report under this Part.

Disclosure in the course of proceedings

(4) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information in the course of

(a) a prosecution for an offence under section 28;

SECTION 4

Dispositions générales

Secret

20 (1) Sous réserve des paragraphes (2) à (7), 12(3), 12.2(3), 13(3), 19(1), 23(3) et 23.1(1) et de l'article 25, le commissaire et les personnes agissant en son nom ou sous son autorité sont tenus au secret en ce qui concerne les renseignements dont ils prennent connaissance par suite de l'exercice des attributions que la présente partie confère au commissaire, à l'exception de celles visées aux paragraphes 10.1(1) ou 10.3(2).

Secret — déclarations et registre

(1.1) Sous réserve des paragraphes (2) à (7), 12(3), 12.2(3), 13(3), 19(1), 23(3) et 23.1(1) et de l'article 25, le commissaire et les personnes agissant en son nom ou sous son autorité sont tenus au secret en ce qui concerne les renseignements figurant dans une déclaration obtenue en application du paragraphe 10.1(1) ou dans un registre obtenu en application du paragraphe 10.3(2).

Intérêt public

(2) Le commissaire peut rendre publique toute information dont il prend connaissance par suite de l'exercice des attributions que la présente partie lui confère, s'il estime que cela est dans l'intérêt public.

Communication de renseignements nécessaires

(3) Il peut communiquer — ou autoriser les personnes agissant en son nom ou sous son autorité à communiquer — les renseignements qui, à son avis, sont nécessaires pour :

a) examiner une plainte ou procéder à une vérification en vertu de la présente partie;

b) motiver les conclusions et recommandations contenues dans les rapports prévus par la présente partie.

Communication dans le cadre de certaines procédures

(4) Il peut également communiquer — ou autoriser les personnes agissant en son nom ou sous son autorité à communiquer — des renseignements :

a) dans le cadre des procédures intentées pour l'infraction visée à l'article 28;

(b) a prosecution for an offence under section 132 of the *Criminal Code* (perjury) in respect of a statement made under this Part;

(c) a hearing before the Court under this Part;

(d) an appeal from a decision of the Court; or

(e) a judicial review in relation to the performance or exercise of any of the Commissioner's duties or powers under this Part.

b) dans le cadre des procédures intentées pour l'infraction visée à l'article 132 du *Code criminel* (parjure) se rapportant à une déclaration faite en vertu de la présente partie;

c) lors d'une audience de la Cour prévue par cette partie;

d) lors de l'appel de la décision rendue par la Cour;

e) dans le cadre d'un contrôle judiciaire à l'égard de l'exercice des attributions que la présente partie confère au commissaire.

Disclosure of offence authorized

(5) The Commissioner may disclose to the Attorney General of Canada or of a province, as the case may be, information relating to the commission of an offence against any law of Canada or a province on the part of an officer or employee of an organization if, in the Commissioner's opinion, there is evidence of an offence.

Dénonciation autorisée

(5) Dans les cas où, à son avis, il existe des éléments de preuve touchant la perpétration d'infractions au droit fédéral ou provincial par un cadre ou employé d'une organisation, le commissaire peut faire part au procureur général du Canada ou d'une province, selon le cas, des renseignements qu'il détient à cet égard.

Disclosure of breach of security safeguards

(6) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose to a government institution or a part of a government institution, any information contained in a report made under subsection 10.1(1) or in a record obtained under subsection 10.3(2) if the Commissioner has reasonable grounds to believe that the information could be useful in the investigation of a contravention of the laws of Canada or a province that has been, is being or is about to be committed.

Communication — atteinte aux mesures de sécurité

(6) Le commissaire peut communiquer — ou autoriser les personnes agissant en son nom ou sous son autorité à communiquer — tout renseignement figurant dans une déclaration obtenue en application du paragraphe 10.1(1) ou dans un registre obtenu en application du paragraphe 10.3(2) à une institution gouvernementale ou à une subdivision d'une telle institution, si le commissaire a des motifs raisonnables de croire qu'il pourrait être utile à une enquête sur une contravention au droit fédéral ou provincial qui a été commise ou est en train ou sur le point de l'être.

Disclosure

(7) The Commissioner may disclose information, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose information, in the course of proceedings in which the Commissioner has intervened under paragraph 50(c) of *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act* or in accordance with subsection 58(3) or 60(1) of that Act.

2000, c. 5, s. 20; 2010, c. 23, s. 86; 2015, c. 32, ss. 17, 26.

Communication de renseignements

(7) Le commissaire peut communiquer — ou autoriser les personnes agissant en son nom ou sous son autorité à communiquer — des renseignements soit dans le cadre des procédures où il est intervenu au titre de l'alinéa 50c) de la *Loi visant à promouvoir l'efficacité et la capacité d'adaptation de l'économie canadienne par la réglementation de certaines pratiques qui découragent l'exercice des activités commerciales par voie électronique et modifiant la Loi sur le Conseil de la radiodiffusion et des télécommunications canadiennes, la Loi sur la concurrence, la Loi sur la protection des renseignements personnels et les documents électroniques et la Loi sur les télécommunications*, soit en conformité avec les paragraphes 58(3) ou 60(1) de cette loi.

2000, ch. 5, art. 20; 2010, ch. 23, art. 86; 2015, ch. 32, art. 17 et 26.

Not competent witness

21 The Commissioner or person acting on behalf or under the direction of the Commissioner is not a competent

Qualité pour témoigner

21 En ce qui concerne les questions venues à leur connaissance par suite de l'exercice des attributions que

witness in respect of any matter that comes to their knowledge as a result of the performance or exercise of any of the Commissioner's duties or powers under this Part in any proceeding other than

(a) a prosecution for an offence under section 28;

(b) a prosecution for an offence under section 132 of the *Criminal Code* (perjury) in respect of a statement made under this Part;

(c) a hearing before the Court under this Part; or

(d) an appeal from a decision of the Court.

la présente partie confère au commissaire, le commissaire et les personnes agissant en son nom ou sous son autorité n'ont qualité pour témoigner que dans le cadre des procédures intentées pour l'infraction visée à l'article 28 ou pour l'infraction visée à l'article 132 du *Code criminel* (parjure) se rapportant à une déclaration faite en vertu de la présente partie, lors d'une audience de la Cour prévue par cette partie ou lors de l'appel de la décision rendue par celle-ci.

Protection of Commissioner

22 (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith as a result of the performance or exercise or purported performance or exercise of any duty or power of the Commissioner under this Part.

Immunité du commissaire

22 (1) Le commissaire et les personnes agissant en son nom ou sous son autorité bénéficient de l'immunité en matière civile ou pénale pour les actes accomplis, les rapports établis et les paroles prononcées de bonne foi par suite de l'exercice effectif ou censé tel des attributions que la présente partie confère au commissaire.

Defamation

(2) No action lies in defamation with respect to

(a) anything said, any information supplied or any record or thing produced in good faith in the course of an investigation or audit carried out by or on behalf of the Commissioner under this Part; and

(b) any report made in good faith by the Commissioner under this Part and any fair and accurate account of the report made in good faith for the purpose of news reporting.

2000, c. 5, s. 22; 2015, c. 32, s. 18.

Diffamation

(2) Ne peuvent donner lieu à poursuites pour diffamation :

a) les paroles prononcées, les renseignements fournis ou les documents ou pièces produits de bonne foi au cours d'une vérification ou de l'examen d'une plainte effectué par le commissaire ou en son nom dans le cadre de la présente partie;

b) les rapports établis de bonne foi par le commissaire dans le cadre de la présente partie, ainsi que les relations qui en sont faites de bonne foi pour des comptes rendus d'événements d'actualités.

2000, ch. 5, art. 22; 2015, ch. 32, art. 18.

Consultations with provinces

23 (1) If the Commissioner considers it appropriate to do so, or on the request of an interested person, the Commissioner may, in order to ensure that personal information is protected in as consistent a manner as possible, consult with any person who, under provincial legislation, has functions and duties similar to those of the Commissioner with respect to the protection of such information.

Consultation

23 (1) S'il l'estime indiqué ou si tout intéressé le lui demande, le commissaire peut, pour veiller à ce que les renseignements personnels soient protégés de la façon la plus uniforme possible, consulter toute personne ayant, au titre d'une loi provinciale, des attributions semblables à celles du commissaire en matière de protection de tels renseignements.

Agreements or arrangements with provinces

(2) The Commissioner may enter into agreements or arrangements with any person referred to in subsection (1) in order to

Accords ou ententes avec les provinces

(2) Il peut conclure des accords ou ententes avec toute personne visée au paragraphe (1) en vue :

(a) coordinate the activities of their offices and the office of the Commissioner, including to provide for mechanisms for the handling of any complaint in which they are mutually interested;

(b) undertake and publish research or develop and publish guidelines or other instruments related to the protection of personal information;

(c) develop model contracts or other instruments for the protection of personal information that is collected, used or disclosed interprovincially or internationally; and

(d) develop procedures for sharing information referred to in subsection (3).

a) de coordonner l'activité de leurs bureaux respectifs, notamment de prévoir des mécanismes pour instruire les plaintes dans lesquelles ils ont un intérêt mutuel;

b) d'effectuer des recherches ou d'élaborer des lignes directrices ou d'autres documents en matière de protection des renseignements personnels et de publier ces lignes directrices ou autres documents ou les résultats de ces recherches;

c) d'élaborer des contrats ou autres documents types portant sur la protection des renseignements personnels recueillis, utilisés ou communiqués d'une province à l'autre ou d'un pays à l'autre;

d) d'élaborer la procédure à suivre pour la communication des renseignements au titre du paragraphe (3).

Sharing of information with provinces

(3) The Commissioner may, in accordance with any procedure established under paragraph (2)(d), share information with any person referred to in subsection (1), if the information

(a) could be relevant to an ongoing or potential investigation of a complaint or audit under this Part or provincial legislation that has objectives that are similar to this Part; or

(b) could assist the Commissioner or that person in the exercise of their functions and duties with respect to the protection of personal information.

Communication de renseignements aux provinces

(3) Le commissaire peut, conformément à toute procédure élaborée au titre de l'alinéa (2)d), communiquer des renseignements à toute personne visée au paragraphe (1) dans le cas où ceux-ci :

a) soit pourraient être utiles à l'examen d'une plainte ou à une vérification — en cours ou éventuelle — au titre de la présente partie ou d'une loi provinciale dont les objectifs sont similaires à ceux de la présente loi;

b) soit pourraient aider la personne ou le commissaire à exercer ses attributions en matière de protection des renseignements personnels.

Purpose and confidentiality

(4) The procedures referred to in paragraph (2)(d) shall

(a) restrict the use of the information to the purpose for which it was originally shared; and

(b) stipulate that the information be treated in a confidential manner and not be further disclosed without the express consent of the Commissioner.

2000, c. 5, s. 23; 2010, c. 23, s. 87.

Fins d'utilisation et confidentialité

(4) La procédure visée à l'alinéa (2)d) :

a) précise que les renseignements ne peuvent être utilisés qu'aux fins auxquelles ils ont été communiqués;

b) prévoit que les renseignements seront traités de manière confidentielle et ne seront pas autrement communiqués sans le consentement exprès du commissaire.

2000, ch. 5, art. 23; 2010, ch. 23, art. 87.

Disclosure of information to foreign state

23.1 (1) Subject to subsection (3), the Commissioner may, in accordance with any procedure established under paragraph (4)(b), disclose information referred to in subsection (2) that has come to the Commissioner's knowledge as a result of the performance or exercise of any of the Commissioner's duties or powers under this Part to any person or body who, under the legislation of a foreign state, has

Communication de renseignements à des États étrangers

23.1 (1) Sous réserve du paragraphe (3), le commissaire peut, conformément à toute procédure établie au titre de l'alinéa (4)b), communiquer les renseignements mentionnés au paragraphe (2) dont il a pris connaissance à la suite de l'exercice des attributions que lui confère la présente partie à toute personne ou à tout organisme qui, au titre d'une loi d'un État étranger :

(a) functions and duties similar to those of the Commissioner with respect to the protection of personal information; or

(b) responsibilities that relate to conduct that is substantially similar to conduct that would be in contravention of this Part.

a) soit a des attributions semblables à celles du commissaire en matière de protection de renseignements personnels;

b) soit est chargé de réprimer des comportements essentiellement semblables à ceux qui constituent des contraventions au titre de la présente partie.

Information that can be shared

(2) The information that the Commissioner is authorized to disclose under subsection (1) is information that the Commissioner believes

(a) would be relevant to an ongoing or potential investigation or proceeding in respect of a contravention of the laws of a foreign state that address conduct that is substantially similar to conduct that would be in contravention of this Part; or

(b) is necessary to disclose in order to obtain from the person or body information that may be useful to an ongoing or potential investigation or audit under this Part.

Renseignements

(2) Les renseignements que le commissaire est autorisé à communiquer au titre du paragraphe (1) sont les suivants :

a) ceux qui, selon lui, pourraient être utiles à une enquête ou à une poursuite — en cours ou éventuelle — relative à une contravention à une loi de l'État étranger visant des comportements essentiellement semblables à ceux qui constituent des contraventions au titre de la présente partie;

b) ceux dont il croit que la communication est nécessaire afin d'obtenir de la personne ou de l'organisme des renseignements qui pourraient être utiles à l'examen d'une plainte ou à une vérification — en cours ou éventuelle — au titre de la présente partie.

Written arrangements

(3) The Commissioner may only disclose information to the person or body referred to in subsection (1) if the Commissioner has entered into a written arrangement with that person or body that

(a) limits the information to be disclosed to that which is necessary for the purpose set out in paragraph (2)(a) or (b);

(b) restricts the use of the information to the purpose for which it was originally shared; and

(c) stipulates that the information be treated in a confidential manner and not be further disclosed without the express consent of the Commissioner.

Ententes écrites

(3) Le commissaire ne peut communiquer les renseignements à la personne ou à l'organisme visé au paragraphe (1) que s'il a conclu avec la personne ou l'organisme une entente écrite qui, à la fois :

a) précise que seuls les renseignements nécessaires aux fins prévues aux alinéas (2)a) et b) peuvent être communiqués;

b) précise que les renseignements ne peuvent être utilisés qu'aux fins auxquelles ils ont été communiqués;

c) prévoit que les renseignements seront traités de manière confidentielle et ne seront pas autrement communiqués sans le consentement exprès du commissaire.

Arrangements

(4) The Commissioner may enter into arrangements with one or more persons or bodies referred to in subsection (1) in order to

(a) provide for cooperation with respect to the enforcement of laws protecting personal information, including the sharing of information referred to in subsection (2) and the provision of mechanisms for the handling of any complaint in which they are mutually interested;

Conclusion d'ententes

(4) Le commissaire peut conclure des ententes avec toute personne ou tout organisme visés au paragraphe (1), ou avec plusieurs d'entre eux, en vue :

a) d'assurer une coopération en matière de contrôle d'application des lois portant sur la protection des renseignements personnels, notamment la communication des renseignements visés au paragraphe (2) et la mise en place de mécanismes pour l'instruction des plaintes dans lesquelles ils ont un intérêt mutuel;

(b) establish procedures for sharing information referred to in subsection (2);

(c) develop recommendations, resolutions, rules, standards or other instruments with respect to the protection of personal information;

(d) undertake and publish research related to the protection of personal information;

(e) share knowledge and expertise by different means, including through staff exchanges; or

(f) identify issues of mutual interest and determine priorities pertaining to the protection of personal information.

2010, c. 23, s. 87.

b) d'établir la procédure à suivre pour communiquer les renseignements mentionnés au paragraphe (2);

c) d'élaborer des documents — recommandations, résolutions, règles, normes ou autres — relativement à la protection des renseignements personnels;

d) d'effectuer des recherches en matière de protection des renseignements personnels et d'en publier les résultats;

e) de partager les connaissances et l'expertise, notamment par l'échange de personnel;

f) de préciser des questions d'intérêt commun et de fixer des priorités en matière de protection des renseignements personnels.

2010, ch. 23, art. 87.

Promoting the purposes of the Part

24 The Commissioner shall

(a) develop and conduct information programs to foster public understanding, and recognition of the purposes, of this Part;

(b) undertake and publish research that is related to the protection of personal information, including any such research that is requested by the Minister of Industry;

(c) encourage organizations to develop detailed policies and practices, including organizational codes of practice, to comply with Divisions 1 and 1.1; and

(d) promote, by any means that the Commissioner considers appropriate, the purposes of this Part.

2000, c. 5, s. 24; 2015, c. 32, s. 19.

Promotion de l'objet de la partie

24 Le commissaire :

a) offre au grand public des programmes d'information destinés à lui faire mieux comprendre la présente partie et son objet;

b) fait des recherches liées à la protection des renseignements personnels — et en publie les résultats —, notamment toutes telles recherches que le ministre de l'Industrie demande;

c) encourage les organisations à élaborer des politiques détaillées — notamment des codes de pratiques — en vue de se conformer aux sections 1 et 1.1;

d) prend toute autre mesure indiquée pour la promotion de l'objet de la présente partie.

2000, ch. 5, art. 24; 2015, ch. 32, art. 19.

Annual report

25 (1) The Commissioner shall, within three months after the end of each financial year, submit to Parliament a report concerning the application of this Part, the extent to which the provinces have enacted legislation that is substantially similar to this Part and the application of any such legislation.

Consultation

(2) Before preparing the report, the Commissioner shall consult with those persons in the provinces who, in the Commissioner's opinion, are in a position to assist the Commissioner in making a report respecting personal information that is collected, used or disclosed interprovincially or internationally.

2000, c. 5, s. 25; 2015, c. 32, s. 20.

Rapport annuel

25 (1) Dans les trois mois suivant la fin de chaque exercice, le commissaire dépose devant le Parlement son rapport sur l'application de la présente partie, sur la mesure dans laquelle les provinces ont édicté des lois essentiellement similaires à celle-ci et sur l'application de ces lois.

Consultation

(2) Avant de rédiger son rapport, le commissaire consulte les personnes dans les provinces qui, à son avis, sont en mesure de l'aider à faire un rapport concernant les renseignements personnels recueillis, utilisés ou communiqués d'une province à l'autre ou d'un pays à l'autre.

2000, ch. 5, art. 25; 2015, ch. 32, art. 20.

Regulations

26 (1) The Governor in Council may make regulations for carrying out the purposes and provisions of this Part, including regulations

(a) specifying, by name or by class, what is a government institution or part of a government institution for the purposes of any provision of this Part;

(a.01) [Repealed, 2015, c. 32, s. 21]

(a.1) specifying information or classes of information for the purpose of paragraph 7(1)(d), (2)(c.1) or (3)(h.1);

(b) specifying information to be kept and maintained under subsection 10.3(1); and

(c) prescribing anything that by this Part is to be prescribed.

Orders

(2) The Governor in Council may, by order,

(a) provide that this Part is binding on any agent of Her Majesty in right of Canada to which the *Privacy Act* does not apply;

(b) if satisfied that legislation of a province that is substantially similar to this Part applies to an organization, a class of organizations, an activity or a class of activities, exempt the organization, activity or class from the application of this Part in respect of the collection, use or disclosure of personal information that occurs within that province; and

(c) amend Schedule 4.

2000, c. 5, s. 26; 2015, c. 32, s. 21, c. 36, s. 165.

Whistleblowing

27 (1) Any person who has reasonable grounds to believe that a person has contravened or intends to contravene a provision of Division 1 or 1.1 may notify the Commissioner of the particulars of the matter and may request that their identity be kept confidential with respect to the notification.

Confidentiality

(2) The Commissioner shall keep confidential the identity of a person who has notified the Commissioner under

Règlements

26 (1) Le gouverneur en conseil peut, par règlement, prendre toute mesure d'application de la présente partie, notamment :

a) préciser, pour l'application de toute disposition de la présente partie, les institutions gouvernementales et les subdivisions d'institutions gouvernementales, à titre particulier ou par catégorie;

a.01) [Abrogé, 2015, ch. 32, art. 21]

a.1) préciser tout renseignement ou toute catégorie de renseignements pour l'application des alinéas 7(1)d), (2)c.1) ou (3)h.1);

b) préciser les renseignements qui doivent être tenus et conservés au titre du paragraphe 10.3(1);

c) prendre toute mesure d'ordre réglementaire prévue par la présente partie.

Décret

(2) Il peut par décret :

a) prévoir que la présente partie lie tout mandataire de Sa Majesté du chef du Canada qui n'est pas assujetti à la *Loi sur la protection des renseignements personnels*;

b) s'il est convaincu qu'une loi provinciale essentiellement similaire à la présente partie s'applique à une organisation — ou catégorie d'organisations — ou à une activité — ou catégorie d'activités —, exclure l'organisation, l'activité ou la catégorie de l'application de la présente partie à l'égard de la collecte, de l'utilisation ou de la communication de renseignements personnels qui s'effectue à l'intérieur de la province en cause;

c) modifier l'annexe 4.

2000, ch. 5, art. 26; 2015, ch. 32, art. 21, ch. 36, art. 165.

Dénonciation

27 (1) Toute personne qui a des motifs raisonnables de croire qu'une autre personne a contrevenu à l'une des dispositions des sections 1 ou 1.1, ou a l'intention d'y contrevenir, peut notifier au commissaire des détails sur la question et exiger l'anonymat relativement à cette dénonciation.

Caractère confidentiel

(2) Le commissaire est tenu de garder confidentielle l'identité du dénonciateur auquel il donne l'assurance de l'anonymat.

2000, ch. 5, art. 27; 2015, ch. 32, art. 22.

subsection (1) and to whom an assurance of confidentiality has been provided by the Commissioner.

2000, c. 5, s. 27; 2015, c. 32, s. 22.

Prohibition

27.1 (1) No employer shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee, or deny an employee a benefit of employment, by reason that

(a) the employee, acting in good faith and on the basis of reasonable belief, has disclosed to the Commissioner that the employer or any other person has contravened or intends to contravene a provision of Division 1 or 1.1;

(b) the employee, acting in good faith and on the basis of reasonable belief, has refused or stated an intention of refusing to do anything that is a contravention of a provision of Division 1 or 1.1;

(c) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order that a provision of Division 1 or 1.1 not be contravened; or

(d) the employer believes that the employee will do anything referred to in paragraph (a), (b) or (c).

Saving

(2) Nothing in this section impairs any right of an employee either at law or under an employment contract or collective agreement.

Definitions

(3) In this section, ***employee*** includes an independent contractor and ***employer*** has a corresponding meaning.

2000, c. 5, s. 27.1; 2015, c. 32, s. 23.

Offence and punishment

28 Every organization that knowingly contravenes subsection 8(8), section 10.1 or subsection 10.3(1) or 27.1(1) or that obstructs the Commissioner or the Commissioner's delegate in the investigation of a complaint or in conducting an audit is guilty of

(a) an offence punishable on summary conviction and liable to a fine not exceeding $10,000; or

Interdiction

27.1 (1) Il est interdit à l'employeur de congédier un employé, de le suspendre, de le rétrograder, de le punir, de le harceler ou de lui faire subir tout autre inconvénient, ou de le priver d'un avantage lié à son emploi parce que :

a) l'employé, agissant de bonne foi et se fondant sur des motifs raisonnables, a informé le commissaire que l'employeur ou une autre personne a contrevenu à l'une des dispositions des sections 1 ou 1.1, ou a l'intention d'y contrevenir;

b) l'employé, agissant de bonne foi et se fondant sur des motifs raisonnables, a refusé ou a fait part de son intention de refuser d'accomplir un acte qui constitue une contravention à l'une des dispositions des sections 1 ou 1.1;

c) l'employé, agissant de bonne foi et se fondant sur des motifs raisonnables, a accompli ou a fait part de son intention d'accomplir un acte nécessaire pour empêcher la contravention à l'une des dispositions des sections 1 ou 1.1;

d) l'employeur croit que l'employé accomplira un des actes prévus aux alinéas a), b) ou c).

Précision

(2) Le présent article n'a pas pour effet de restreindre les droits d'un employé, que ce soit en général ou dans le cadre d'un contrat de travail ou d'une convention collective.

Définitions

(3) Dans le présent article, ***employé*** s'entend notamment d'un travailleur autonome et ***employeur*** a un sens correspondant.

2000, ch. 5, art. 27.1; 2015, ch. 32, art. 23.

Infraction et peine

28 Quiconque contrevient sciemment au paragraphe 8(8), à l'article 10.1 ou aux paragraphes 10.3(1) ou 27.1(1) ou entrave l'action du commissaire — ou de son délégué — dans le cadre d'une vérification ou de l'examen d'une plainte commet une infraction et encourt, sur déclaration de culpabilité :

a) par procédure sommaire, une amende maximale de 10 000 $;

(b) an indictable offence and liable to a fine not exceeding $100,000.

2000, c. 5, s. 28; 2015, c. 32, s. 24.

b) par mise en accusation, une amende maximale de 100 000 $.

2000, ch. 5, art. 28; 2015, ch. 32, art. 24.

Review of Part by parliamentary committee

***29 (1)** The administration of this Part shall, every five years after this Part comes into force, be reviewed by the committee of the House of Commons, or of both Houses of Parliament, that may be designated or established by Parliament for that purpose.

* [Note: Part 1 in force January 1, 2001, *see* SI/2000-29.]

Review and report

(2) The committee shall undertake a review of the provisions and operation of this Part and shall, within a year after the review is undertaken or within any further period that the House of Commons may authorize, submit a report to Parliament that includes a statement of any changes to this Part or its administration that the committee recommends.

Examen par un comité parlementaire

***29 (1)** Le Parlement désigne ou constitue un comité, soit de la Chambre des communes, soit mixte, chargé spécialement de l'examen, tous les cinq ans suivant l'entrée en vigueur de la présente partie, de l'application de celle-ci.

* [Note : Partie 1 en vigueur le 1er janvier 2001, *voir* TR/2000-29.]

Rapport

(2) Le comité examine les dispositions de la présente partie ainsi que les conséquences de son application en vue de la présentation, dans un délai d'un an à compter du début de l'examen ou tout délai supérieur autorisé par la Chambre des communes, d'un rapport au Parlement où seront consignées ses conclusions ainsi que ses recommandations, s'il y a lieu, quant aux modifications de la présente partie ou de ses modalités d'application qui seraient souhaitables.

DIVISION 5

Transitional Provisions

Application

30 (1) This Part does not apply to any organization in respect of personal information that it collects, uses or discloses within a province whose legislature has the power to regulate the collection, use or disclosure of the information, unless the organization does it in connection with the operation of a federal work, undertaking or business or the organization discloses the information outside the province for consideration.

Application

(1.1) This Part does not apply to any organization in respect of personal health information that it collects, uses or discloses.

Expiry date

***(2)** Subsection (1) ceases to have effect three years after the day on which this section comes into force.

* [Note: Section 30 in force January 1, 2001, *see* SI/2000-29.]

SECTION 5

Dispositions transitoires

Application

30 (1) La présente partie ne s'applique pas à une organisation à l'égard des renseignements personnels qu'elle recueille, utilise ou communique dans une province dont la législature a le pouvoir de régir la collecte, l'utilisation ou la communication de tels renseignements, sauf si elle le fait dans le cadre d'une entreprise fédérale ou qu'elle communique ces renseignements pour contrepartie à l'extérieur de cette province.

Application

(1.1) La présente partie ne s'applique pas à une organisation à l'égard des renseignements personnels sur la santé qu'elle recueille, utilise ou communique.

Cessation d'effet

***(2)** Le paragraphe (1) cesse d'avoir effet trois ans après l'entrée en vigueur du présent article.

* [Note : Article 30 en vigueur le 1er janvier 2001, *voir* TR/2000-29.]

Expiry date

***(2.1)** Subsection (1.1) ceases to have effect one year after the day on which this section comes into force.

* [Note: Section 30 in force January 1, 2001, *see* SI/2000-29.]

Cessation d'effet

***(2.1)** Le paragraphe (1.1) cesse d'avoir effet un an après l'entrée en vigueur du présent article.

* [Note : Article 30 en vigueur le 1er janvier 2001, *voir* TR/2000-29.]

PART 2

Electronic Documents

Interpretation

PARTIE 2

Documents électroniques

Définitions

Definitions

31 (1) The definitions in this subsection apply in this Part.

data means representations of information or concepts, in any form. (*données*)

electronic document means data that is recorded or stored on any medium in or by a computer system or other similar device and that can be read or perceived by a person or a computer system or other similar device. It includes a display, printout or other output of that data. (*document électronique*)

electronic signature means a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an electronic document. (*signature électronique*)

federal law means an Act of Parliament or an instrument, regardless of its name, issued, made or established under an Act of Parliament or a prerogative of the Crown, other than an instrument issued, made or established under the *Yukon Act*, the *Northwest Territories Act* or the *Nunavut Act*. (*texte législatif*)

responsible authority, in respect of a provision of a federal law, means

(a) if the federal law is an Act of Parliament, the minister responsible for that provision;

(b) if the federal law is an instrument issued, made or established under an Act of Parliament or a prerogative of the Crown, the person or body who issued, made or established the instrument; or

(c) despite paragraph (a) or (b), the person or body designated by the Governor in Council under subsection (2). (*autorité responsable*)

Définitions

31 (1) Les définitions qui suivent s'appliquent à la présente partie.

autorité responsable S'agissant d'une disposition d'un texte législatif, s'entend de ce qui suit :

a) si le texte législatif est une loi fédérale, le ministre responsable de la disposition;

b) si le texte législatif est un texte pris sous le régime d'une loi fédérale ou en vertu d'une prérogative royale, la personne ou l'organisme qui l'a pris;

c) malgré les alinéas a) et b), toute personne ou tout organisme désigné par le gouverneur en conseil en vertu du paragraphe (2). (*responsible authority*)

document électronique Ensemble de données enregistrées ou mises en mémoire sur quelque support que ce soit par un système informatique ou un dispositif semblable et qui peuvent être lues ou perçues par une personne ou par un tel système ou dispositif. Sont également visés tout affichage et toute sortie imprimée ou autre de ces données. (*electronic document*)

données Toute forme de représentation d'informations ou de notions. (*data*)

signature électronique Signature constituée d'une ou de plusieurs lettres, ou d'un ou de plusieurs caractères, nombres ou autres symboles sous forme numérique incorporée, jointe ou associée à un document électronique. (*electronic signature*)

signature électronique sécurisée Signature électronique qui résulte de l'application de toute technologie ou de tout procédé prévu par règlement pris en vertu du paragraphe 48(1). (*secure electronic signature*)

texte législatif Loi fédérale ou tout texte, quelle que soit son appellation, pris sous le régime d'une loi fédérale ou

secure electronic signature means an electronic signature that results from the application of a technology or process prescribed by regulations made under subsection 48(1). (*signature électronique sécurisée*)

Designation

(2) The Governor in Council may, by order, for the purposes of this Part, designate any person, including any member of the Queen's Privy Council for Canada, or body to be the responsible authority in respect of a provision of a federal law if the Governor in Council is of the opinion that it is appropriate to do so in the circumstances.

Purpose

Purpose

32 The purpose of this Part is to provide for the use of electronic alternatives in the manner provided for in this Part where federal laws contemplate the use of paper to record or communicate information or transactions.

Electronic Alternatives

Collection, storage, etc.

33 A minister of the Crown and any department, branch, office, board, agency, commission, corporation or body for the administration of affairs of which a minister of the Crown is accountable to the Parliament of Canada may use electronic means to create, collect, receive, store, transfer, distribute, publish or otherwise deal with documents or information whenever a federal law does not specify the manner of doing so.

Electronic payment

34 A payment that is required to be made to the Government of Canada may be made in electronic form in any manner specified by the Receiver General.

Electronic version of statutory form

35 (1) If a provision of an Act of Parliament establishes a form, the responsible authority in respect of that provision may make regulations respecting an electronic form that is substantially the same as the form established in the provision, and the electronic form may be used for the same purposes as the form established in the provision.

Statutory manner of filing documents

(2) If a non-electronic manner of filing a document is set out in a provision of an Act of Parliament, the responsible authority in respect of that provision may make

en vertu d'une prérogative royale, à l'exception d'un texte pris sous le régime de la *Loi sur le Yukon*, de la *Loi sur les Territoires du Nord-Ouest* ou de la *Loi sur le Nunavut*. (*federal law*)

Désignation

(2) Le gouverneur en conseil peut par décret, pour l'application de la présente partie, désigner toute personne, notamment un membre du Conseil privé de la Reine pour le Canada, ou tout organisme comme autorité responsable d'une disposition d'un texte législatif, s'il est d'avis que les circonstances le justifient.

Objet

Objet

32 La présente partie a pour objet de prévoir l'utilisation de moyens électroniques, de la manière prévue dans la présente partie, dans les cas où les textes législatifs envisagent l'utilisation d'un support papier pour enregistrer ou communiquer de l'information ou des transactions.

Moyens électroniques

Collecte, mise en mémoire, etc.

33 Tout ministre, ministère, direction, bureau, conseil, commission, office, service, personne morale ou autre organisme dont un ministre est responsable devant le Parlement peut faire usage d'un moyen électronique pour créer, recueillir, recevoir, mettre en mémoire, transférer, diffuser, publier ou traiter de quelque autre façon des documents ou de l'information, si aucun moyen particulier n'est prévu à l'égard de ces actes par un texte législatif.

Paiements par voie électronique

34 Tout paiement qui doit être remis au gouvernement du Canada peut être fait sous forme électronique, de la manière que le receveur général précise.

Version électronique des formulaires d'origine législative

35 (1) L'autorité responsable, à l'égard de toute disposition d'une loi fédérale dans laquelle figure un formulaire, peut prendre des règlements prévoyant une version électronique essentiellement semblable, qui peut être utilisée aux mêmes fins que le formulaire figurant dans la disposition.

Mode de dépôt électronique d'origine législative

(2) L'autorité responsable, à l'égard de toute disposition d'une loi fédérale qui prévoit un mode de dépôt non électronique d'un document, peut prendre des règlements

regulations respecting the filing of an electronic version of the document, and an electronic version of the document filed in accordance with those regulations is to be considered as a document filed in accordance with the provision.

prévoyant le dépôt d'une version électronique du document. La version électronique du document déposée conformément à ces règlements est assimilée au document déposé conformément à la disposition.

Statutory manner of submitting information

(3) If a non-electronic manner of submitting information is set out in a provision of an Act of Parliament, the responsible authority in respect of that provision may make regulations respecting the manner of submitting the information using electronic means, and information submitted in accordance with those regulations is to be considered as information submitted in accordance with the provision.

Mode de transmission de l'information d'origine législative

(3) L'autorité responsable, à l'égard de toute disposition d'une loi fédérale qui prévoit un mode de transmission non électronique de l'information, peut prendre des règlements en prévoyant un mode de transmission électronique. L'information transmise conformément à ces règlements est assimilée à l'information transmise conformément à la disposition.

Authority to prescribe form, etc.

(4) The authority under a federal law to issue, prescribe or in any other manner establish a form, or to establish the manner of filing a document or submitting information, includes the authority to issue, prescribe or establish an electronic form, or to establish an electronic manner of filing the document or submitting information, as the case may be.

Pouvoir de prescrire des formulaires

(4) Le pouvoir conféré par un texte législatif de publier, de prescrire ou d'établir un formulaire, ou d'établir un mode de dépôt d'un document ou un mode de transmission de l'information comprend le pouvoir de publier, de prescrire ou d'établir une version électronique du formulaire, ou d'établir un mode de dépôt électronique du document ou un mode de transmission électronique de l'information, selon le cas.

Meaning of *filing*

(5) In this section, ***filing*** includes all manner of submitting, regardless of how it is designated.

Définition de *dépôt*

(5) Au présent article, est assimilée au dépôt toute forme de transmission, quelle que soit la désignation de celle-ci.

Documents as evidence or proof

36 A provision of a federal law that provides that a certificate or other document signed by a minister or public officer is proof of any matter or thing, or is admissible in evidence, is, subject to the federal law, satisfied by an electronic version of the certificate or other document if the electronic version is signed by the minister or public officer with that person's secure electronic signature.

Preuve par documents

36 La disposition d'un texte législatif qui prévoit qu'un certificat ou autre document portant la signature d'un ministre ou d'un fonctionnaire public fait foi de son contenu et est admissible en preuve vise également, sous réserve du texte législatif, la version électronique du certificat ou autre document si la version électronique porte la signature électronique sécurisée du ministre ou du fonctionnaire public.

Retention of documents

37 A requirement under a provision of a federal law to retain a document for a specified period is satisfied, with respect to an electronic document, by the retention of the electronic document if

(a) the electronic document is retained for the specified period in the format in which it was made, sent or received, or in a format that does not change the information contained in the electronic document that was originally made, sent or received;

Conservation des documents

37 Dans le cas où une disposition d'un texte législatif exige la conservation d'un document pour une période déterminée, à l'égard d'un document électronique, la conservation du document électronique satisfait à l'obligation si les conditions suivantes sont réunies :

a) le document électronique est conservé pour la période déterminée sous la forme dans laquelle il a été fait, envoyé ou reçu, ou sous une forme qui ne modifie en rien l'information qu'il contient;

(b) the information in the electronic document will be readable or perceivable by any person who is entitled to have access to the electronic document or who is authorized to require the production of the electronic document; and

(c) if the electronic document was sent or received, any information that identifies the origin and destination of the electronic document and the date and time when it was sent or received is also retained.

b) cette information sera lisible ou perceptible par quiconque a accès au document électronique et est autorisé à exiger la production de celui-ci;

c) si le document électronique est envoyé ou reçu, l'information qui permet de déterminer son origine et sa destination, ainsi que la date et l'heure d'envoi ou de réception, doit être conservée.

Notarial act

38 A reference in a provision of a federal law to a document recognized as a notarial act in the province of Quebec is deemed to include an electronic version of the document if

(a) the electronic version of the document is recognized as a notarial act under the laws of the province of Quebec; and

(b) the federal law or the provision is listed in Schedule 2 or 3.

Actes notariés

38 La mention, dans une disposition d'un texte législatif, d'un document reconnu dans la province de Québec comme un acte notarié vaut également mention de la version électronique du document si les conditions suivantes sont réunies :

a) la version électronique du document est reconnue par les lois de la province de Québec comme un acte notarié;

b) la disposition ou le texte législatif est inscrit sur la liste figurant à l'annexe 2 ou 3.

Seals

39 A requirement under a provision of a federal law for a person's seal is satisfied by a secure electronic signature that identifies the secure electronic signature as the person's seal if the federal law or the provision is listed in Schedule 2 or 3.

Sceaux

39 Dans le cas où une disposition d'un texte législatif exige l'apposition du sceau d'une personne, la signature électronique sécurisée qui s'identifie comme le sceau de cette personne satisfait à l'obligation si la disposition ou le texte législatif est inscrit sur la liste figurant à l'annexe 2 ou 3.

Requirements to provide documents or information

40 A provision of a federal law requiring a person to provide another person with a document or information, other than a provision referred to in any of sections 41 to 47, is satisfied by the provision of the document or information in electronic form if

(a) the federal law or the provision is listed in Schedule 2 or 3;

(b) both persons have agreed to the document or information being provided in electronic form; and

(c) the document or information in electronic form will be under the control of the person to whom it is provided and will be readable or perceivable so as to be usable for subsequent reference.

Obligation de fournir des documents ou de l'information

40 Dans le cas où une disposition d'un texte législatif — à l'exclusion d'une disposition visée aux articles 41 à 47 — exige qu'une personne fournisse à une autre un document ou de l'information, la fourniture du document ou de l'information sous forme électronique satisfait à l'obligation si les conditions suivantes sont réunies :

a) la disposition ou le texte législatif est inscrit sur la liste figurant à l'annexe 2 ou 3;

b) les intéressés ont convenu de la fourniture du document ou de l'information sous forme électronique;

c) le document ou l'information sous forme électronique sera mis à la disposition exclusive de la personne à qui le document ou l'information est fourni et sera lisible ou perceptible de façon à pouvoir servir à la consultation ultérieure.

Writing requirements

41 A requirement under a provision of a federal law for a document to be in writing is satisfied by an electronic document if

(a) the federal law or the provision is listed in Schedule 2 or 3; and

(b) the regulations respecting the application of this section to the provision have been complied with.

Original documents

42 A requirement under a provision of a federal law for a document to be in its original form is satisfied by an electronic document if

(a) the federal law or the provision is listed in Schedule 2 or 3;

(b) the electronic document contains a secure electronic signature that was added when the electronic document was first generated in its final form and that can be used to verify that the electronic document has not been changed since that time; and

(c) the regulations respecting the application of this section to the provision have been complied with.

Signatures

43 Subject to sections 44 to 46, a requirement under a provision of a federal law for a signature is satisfied by an electronic signature if

(a) the federal law or the provision is listed in Schedule 2 or 3; and

(b) the regulations respecting the application of this section to the provision have been complied with.

Statements made under oath

44 A statement required to be made under oath or solemn affirmation under a provision of a federal law may be made in electronic form if

(a) the person who makes the statement signs it with that person's secure electronic signature;

(b) the person before whom the statement was made, and who is authorized to take statements under oath or solemn affirmation, signs it with that person's secure electronic signature;

Documents sous forme écrite

41 Dans le cas où une disposition d'un texte législatif exige qu'un document soit fait par écrit, un document électronique satisfait à l'obligation si les conditions suivantes sont réunies :

a) la disposition ou le texte législatif est inscrit sur la liste figurant à l'annexe 2 ou 3;

b) les règlements visant l'application du présent article à la disposition ont été observés.

Documents originaux

42 Dans le cas où une disposition d'un texte législatif exige l'original d'un document, un document électronique satisfait à l'obligation si les conditions suivantes sont réunies :

a) la disposition ou le texte législatif est inscrit sur la liste figurant à l'annexe 2 ou 3;

b) le document électronique comporte une signature électronique sécurisée, ajoutée lors de la production originale du document électronique dans sa forme définitive, pouvant être utilisée pour établir que le document électronique n'a pas été modifié depuis;

c) les règlements visant l'application du présent article à la disposition ont été observés.

Signatures

43 Sous réserve des articles 44 à 46, dans le cas où une disposition d'un texte législatif exige une signature, la signature électronique satisfait à l'obligation si les conditions suivantes sont réunies :

a) la disposition ou le texte législatif est inscrit sur la liste figurant à l'annexe 2 ou 3;

b) les règlements visant l'application du présent article à la disposition ont été observés.

Déclarations sous serment

44 Dans le cas où une disposition d'un texte législatif exige une déclaration sous serment ou une affirmation solennelle, celle-ci peut être faite sous forme électronique si les conditions suivantes sont réunies :

a) l'auteur appose à la déclaration ou à l'affirmation sa signature électronique sécurisée;

b) le commissaire aux serments devant qui a été faite la déclaration ou l'affirmation appose à celle-ci sa signature électronique sécurisée;

(c) the federal law or the provision is listed in Schedule 2 or 3; and

(d) the regulations respecting the application of this section to the provision have been complied with.

c) la disposition ou le texte législatif est inscrit sur la liste figurant à l'annexe 2 ou 3;

d) les règlements visant l'application du présent article à la disposition ont été observés.

Statements declaring truth, etc.

45 A statement required to be made under a provision of a federal law declaring or certifying that any information given by a person making the statement is true, accurate or complete may be made in electronic form if

(a) the person signs it with that person's secure electronic signature;

(b) the federal law or the provision is listed in Schedule 2 or 3; and

(c) the regulations respecting the application of this section to the provision have been complied with.

Déclarations

45 Dans le cas où une disposition d'un texte législatif exige une déclaration attestant la véracité, l'exactitude ou l'intégralité d'une information fournie par le déclarant, la déclaration peut être faite sous forme électronique si les conditions suivantes sont réunies :

a) le déclarant y appose sa signature électronique sécurisée;

b) la disposition ou le texte législatif est inscrit sur la liste figurant à l'annexe 2 ou 3;

c) les règlements visant l'application du présent article à la disposition ont été observés.

Witnessed signatures

46 A requirement under a provision of a federal law for a signature to be witnessed is satisfied with respect to an electronic document if

(a) each signatory and each witness signs the electronic document with their secure electronic signature;

(b) the federal law or the provision is listed in Schedule 2 or 3; and

(c) the regulations respecting the application of this section to the provision have been complied with.

Signatures devant témoin

46 Dans le cas où une disposition d'un texte législatif exige la signature d'un témoin, un document électronique satisfait à l'obligation si les conditions suivantes sont réunies :

a) chacun des signataires et témoins appose au document électronique sa signature électronique sécurisée;

b) la disposition ou le texte législatif est inscrit sur la liste figurant à l'annexe 2 ou 3;

c) les règlements visant l'application du présent article à la disposition ont été observés.

Copies

47 A requirement under a provision of a federal law for one or more copies of a document to be submitted is satisfied by the submission of an electronic document if

(a) the federal law or the provision is listed in Schedule 2 or 3; and

(b) the regulations respecting the application of this section to the provision have been complied with.

Exemplaires

47 Dans le cas où une disposition d'un texte législatif exige la transmission d'un ou de plusieurs exemplaires d'un document, la transmission d'un document électronique satisfait à l'obligation si les conditions suivantes sont réunies :

a) la disposition ou le texte législatif est inscrit sur la liste figurant à l'annexe 2 ou 3;

b) les règlements visant l'application du présent article à la disposition ont été observés.

Regulations and Orders

Regulations

48 (1) Subject to subsection (2), the Governor in Council may, on the recommendation of the Treasury Board,

Règlements et décrets

Règlements

48 (1) Sous réserve du paragraphe (2), le gouverneur en conseil peut, sur recommandation du Conseil du Trésor,

make regulations prescribing technologies or processes for the purpose of the definition ***secure electronic signature*** in subsection 31(1).

Characteristics

(2) The Governor in Council may prescribe a technology or process only if the Governor in Council is satisfied that it can be proved that

(a) the electronic signature resulting from the use by a person of the technology or process is unique to the person;

(b) the use of the technology or process by a person to incorporate, attach or associate the person's electronic signature to an electronic document is under the sole control of the person;

(c) the technology or process can be used to identify the person using the technology or process; and

(d) the electronic signature can be linked with an electronic document in such a way that it can be used to determine whether the electronic document has been changed since the electronic signature was incorporated in, attached to or associated with the electronic document.

Effect of amendment or repeal

(3) An amendment to or repeal of any provision of a regulation made under subsection (1) that has the effect of removing a prescribed technology or process from the regulation does not, by itself, affect the validity of any electronic signature resulting from the use of that technology or process while it was prescribed.

Amendment of schedules

49 For the purposes of sections 38 to 47, the responsible authority in respect of a provision of a federal law may, by order, amend Schedule 2 or 3 by adding or striking out a reference to that federal law or provision.

Regulations

50 (1) For the purposes of sections 41 to 47, the responsible authority in respect of a provision of a federal law may make regulations respecting the application of those sections to the provision.

Contents

(2) Without restricting the generality of subsection (1), the regulations that may be made may include rules respecting any of the following:

prendre des règlements pour prévoir des technologies ou des procédés pour l'application de la définition de ***signature électronique sécurisée*** au paragraphe 31(1).

Critères

(2) Le gouverneur en conseil ne peut prévoir une technologie ou un procédé que s'il est convaincu qu'il peut être établi ce qui suit :

a) la signature électronique résultant de l'utilisation de la technologie ou du procédé est propre à l'utilisateur;

b) l'utilisation de la technologie ou du procédé pour l'incorporation, l'adjonction ou l'association de la signature électronique de l'utilisateur au document électronique se fait sous la seule responsabilité de ce dernier;

c) la technologie ou le procédé permet d'identifier l'utilisateur;

d) la signature électronique peut être liée au document électronique de façon à permettre de vérifier si le document a été modifié depuis que la signature électronique a été incorporée, jointe ou associée au document.

Effet d'une disposition modifiée ou abrogée

(3) La modification ou l'abrogation d'une disposition d'un règlement pris en vertu du paragraphe (1) qui a pour effet de supprimer une technologie ou un procédé du règlement n'a pas pour effet d'invalider la signature électronique résultant de l'utilisation de la technologie ou du procédé qui était mentionné dans le règlement.

Modification des annexes

49 Pour l'application des articles 38 à 47, l'autorité responsable, à l'égard d'une disposition d'un texte législatif, peut par décret modifier l'annexe 2 ou 3 par adjonction ou suppression de la mention du texte législatif ou de la disposition.

Règlements

50 (1) Pour l'application des articles 41 à 47, l'autorité responsable, à l'égard d'une disposition d'un texte législatif, peut prendre des règlements visant l'application de ces articles à la disposition.

Contenu

(2) Sans que soit limitée la portée générale du paragraphe (1), les règlements qui y sont prévus peuvent comprendre des règles visant notamment :

(a) the technology or process that must be used to make or send an electronic document;

(b) the format of an electronic document;

(c) the place where an electronic document is to be made or sent;

(d) the time and circumstances when an electronic document is to be considered to be sent or received and the place where it is considered to have been sent or received;

(e) the technology or process to be used to make or verify an electronic signature and the manner in which it is to be used; and

(f) any matter necessary for the purposes of the application of sections 41 to 47.

a) la technologie ou le procédé à utiliser pour faire ou envoyer le document électronique;

b) le format du document électronique;

c) le lieu où le document électronique est fait ou envoyé;

d) les délais et les circonstances dans lesquels le document électronique est présumé avoir été envoyé ou reçu, ainsi que le lieu où le document est présumé avoir été envoyé ou reçu;

e) la technologie ou le procédé à utiliser pour faire ou vérifier une signature électronique et la manière d'utiliser cette signature;

f) tout ce qui est utile à l'application des articles 41 à 47.

Minimum rules

(3) Without restricting the generality of subsection (1), if a provision referred to in any of sections 41 to 47 requires a person to provide another person with a document or information, the rules set out in the regulations respecting the application of that section to the provision may be that

(a) both persons have agreed to the document or information being provided in electronic form; and

(b) the document or information in electronic form will be under the control of the person to whom it is provided and will be readable or perceivable so as to be usable for subsequent reference.

Règles minimales

(3) Sans que soit limitée la portée générale du paragraphe (1), si une disposition visée à l'un des articles 41 à 47 exige qu'une personne fournisse à une autre un document ou une information, les règles établies dans les règlements visant l'application de cet article à la disposition peuvent exiger que :

a) les intéressés aient convenu de la fourniture du document ou de l'information sous forme électronique;

b) le document ou l'information sous forme électronique soit mis à la disposition de la personne à qui le document ou l'information est fourni et soit lisible ou perceptible de façon à pouvoir servir à la consultation ultérieure.

Incorporation by reference

(4) Regulations may incorporate by reference the standards or specifications of any government, person or organization, either as they read at a fixed time or as they are amended from time to time.

Incorporation par renvoi

(4) Les règlements peuvent incorporer par renvoi une version déterminée dans le temps ou la dernière version modifiée des normes ou spécifications adoptées par des personnes physiques ou morales, de droit privé ou de droit public.

Effect of striking out listed provision

51 The striking out of a reference to a federal law or provision in Schedule 2 or 3 does not affect the validity of anything done in compliance with any regulation made under section 50 that relates to that federal law or provision while it was listed in that Schedule.

Effet d'une disposition supprimée de la liste

51 La suppression de l'inscription d'une disposition ou d'un texte législatif sur la liste figurant à l'annexe 2 ou 3 n'a pas pour effet d'invalider un acte accompli conformément aux règlements relatifs à cette disposition ou à ce texte législatif, pris en vertu de l'article 50, alors que la disposition ou le texte était inscrit sur la liste figurant à l'annexe.

PART 3

Amendments to the Canada Evidence Act

52 to 57 [Amendments]

PART 4

Amendments to the Statutory Instruments Act

58 and 59 [Amendments]

PART 5

Amendments to the Statute Revision Act

60 to 71 [Amendments]

PART 6

Coming into Force

Coming into force

***72 Parts 1 to 5 or any provision of those Parts come into force on a day or days to be fixed by order of the Governor in Council made on the recommendation of**

(a) in the case of Parts 1 and 2 or any provision of those Parts, the Minister of Industry; and

(b) in the case of Parts 3 to 5 or any provision of those Parts, the Minister of Justice.

*** [Note: Parts 2, 3 and 4 in force May 1, 2000; Part 1 in force January 1, 2001, *see* SI/2000-29; Part 5 in force June 1, 2009, *see* SI/2009-42.]**

PARTIE 3

Modification de la Loi sur la preuve au Canada

52 à 57 [Modifications]

PARTIE 4

Modification de la Loi sur les textes réglementaires

58 et 59 [Modifications]

PARTIE 5

Modification de la Loi sur la révision des lois

60 à 71 [Modifications]

PARTIE 6

Entrée en vigueur

Entrée en vigueur

***72 Les parties 1 à 5 ou telle de leurs dispositions entrent en vigueur à la date ou aux dates fixées par décret, sur la recommandation :**

a) dans le cas des parties 1 et 2 ou de telle de leurs dispositions, du ministre de l'Industrie;

b) dans le cas des parties 3 à 5 ou de telle de leurs dispositions, du ministre de la Justice.

*** [Note : Parties 2, 3 et 4 en vigueur le 1er mai 2000; partie 1 en vigueur le 1er janvier 2001, *voir* TR/2000-29; partie 5 en vigueur le 1er juin 2009, *voir* TR/2009-42.]**

SCHEDULE 1

(Section 5)

Principles Set Out in the National Standard of Canada Entitled Model Code for the Protection of Personal Information, CAN/CSA-Q830-96

4.1 Principle 1 — Accountability

An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the following principles.

4.1.1

Accountability for the organization's compliance with the principles rests with the designated individual(s), even though other individuals within the organization may be responsible for the day-to-day collection and processing of personal information. In addition, other individuals within the organization may be delegated to act on behalf of the designated individual(s).

4.1.2

The identity of the individual(s) designated by the organization to oversee the organization's compliance with the principles shall be made known upon request.

4.1.3

An organization is responsible for personal information in its possession or custody, including information that has been transferred to a third party for processing. The organization shall use contractual or other means to provide a comparable level of protection while the information is being processed by a third party.

4.1.4

Organizations shall implement policies and practices to give effect to the principles, including

(a) implementing procedures to protect personal information;

(b) establishing procedures to receive and respond to complaints and inquiries;

(c) training staff and communicating to staff information about the organization's policies and practices; and

(d) developing information to explain the organization's policies and procedures.

ANNEXE 1

(article 5)

Principes énoncés dans la norme nationale du Canada intitulée Code type sur la protection des renseignements personnels, CAN/CSA-Q830-96

4.1 Premier principe — Responsabilité

Une organisation est responsable des renseignements personnels dont elle a la gestion et doit désigner une ou des personnes qui devront s'assurer du respect des principes énoncés ci-dessous.

4.1.1

Il incombe à la ou aux personnes désignées de s'assurer que l'organisation respecte les principes même si d'autres membres de l'organisation peuvent être chargés de la collecte et du traitement quotidiens des renseignements personnels. D'autres membres de l'organisation peuvent aussi être délégués pour agir au nom de la ou des personnes désignées.

4.1.2

Il doit être possible de connaître sur demande l'identité des personnes que l'organisation a désignées pour s'assurer que les principes sont respectés.

4.1.3

Une organisation est responsable des renseignements personnels qu'elle a en sa possession ou sous sa garde, y compris les renseignements confiés à une tierce partie aux fins de traitement. L'organisation doit, par voie contractuelle ou autre, fournir un degré comparable de protection aux renseignements qui sont en cours de traitement par une tierce partie.

4.1.4

Les organisations doivent assurer la mise en œuvre des politiques et des pratiques destinées à donner suite aux principes, y compris :

a) la mise en œuvre des procédures pour protéger les renseignements personnels;

b) la mise en place des procédures pour recevoir les plaintes et les demandes de renseignements et y donner suite;

c) la formation du personnel et la transmission au personnel de l'information relative aux politiques et pratiques de l'organisation; et

d) la rédaction des documents explicatifs concernant leurs politiques et procédures.

4.2 Principle 2 — Identifying Purposes

The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.

4.2.1

The organization shall document the purposes for which personal information is collected in order to comply with the Openness principle (Clause 4.8) and the Individual Access principle (Clause 4.9).

4.2.2

Identifying the purposes for which personal information is collected at or before the time of collection allows organizations to determine the information they need to collect to fulfil these purposes. The Limiting Collection principle (Clause 4.4) requires an organization to collect only that information necessary for the purposes that have been identified.

4.2.3

The identified purposes should be specified at or before the time of collection to the individual from whom the personal information is collected. Depending upon the way in which the information is collected, this can be done orally or in writing. An application form, for example, may give notice of the purposes.

4.2.4

When personal information that has been collected is to be used for a purpose not previously identified, the new purpose shall be identified prior to use. Unless the new purpose is required by law, the consent of the individual is required before information can be used for that purpose. For an elaboration on consent, please refer to the Consent principle (Clause 4.3).

4.2.5

Persons collecting personal information should be able to explain to individuals the purposes for which the information is being collected.

4.2.6

This principle is linked closely to the Limiting Collection principle (Clause 4.4) and the Limiting Use, Disclosure, and Retention principle (Clause 4.5).

4.3 Principle 3 - Consent

The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

Note: In certain circumstances personal information can be collected, used, or disclosed without the knowledge and consent of the individual. For example, legal, medical, or security reasons may make it impossible or impractical to seek consent. When information is being collected for the

4.2 Deuxième principe — Détermination des fins de la collecte des renseignements

Les fins auxquelles des renseignements personnels sont recueillis doivent être déterminées par l'organisation avant la collecte ou au moment de celle-ci.

4.2.1

L'organisation doit documenter les fins auxquelles les renseignements personnels sont recueillis afin de se conformer au principe de la transparence (article 4.8) et au principe de l'accès aux renseignements personnels (article 4.9).

4.2.2

Le fait de préciser les fins de la collecte de renseignements personnels avant celle-ci ou au moment de celle-ci permet à l'organisation de déterminer les renseignements dont elle a besoin pour réaliser les fins mentionnées. Suivant le principe de la limitation en matière de collecte (article 4.4), l'organisation ne doit recueillir que les renseignements nécessaires aux fins mentionnées.

4.2.3

Il faudrait préciser à la personne auprès de laquelle on recueille des renseignements, avant la collecte ou au moment de celle-ci, les fins auxquelles ils sont destinés. Selon la façon dont se fait la collecte, cette précision peut être communiquée de vive voix ou par écrit. Par exemple, on peut indiquer ces fins sur un formulaire de demande de renseignements.

4.2.4

Avant de se servir de renseignements personnels à des fins non précisées antérieurement, les nouvelles fins doivent être précisées avant l'utilisation. À moins que les nouvelles fins auxquelles les renseignements sont destinés ne soient prévues par une loi, il faut obtenir le consentement de la personne concernée avant d'utiliser les renseignements à cette nouvelle fin. Pour obtenir plus de précisions sur le consentement, se reporter au principe du consentement (article 4.3).

4.2.5

Les personnes qui recueillent des renseignements personnels devraient être en mesure d'expliquer à la personne concernée à quelles fins sont destinés ces renseignements.

4.2.6

Ce principe est étroitement lié au principe de la limitation de la collecte (article 4.4) et à celui de la limitation de l'utilisation, de la communication et de la conservation (article 4.5).

4.3 Troisième principe — Consentement

Toute personne doit être informée de toute collecte, utilisation ou communication de renseignements personnels qui la concernent et y consentir, à moins qu'il ne soit pas approprié de le faire.

Note : Dans certaines circonstances, il est possible de recueillir, d'utiliser et de communiquer des renseignements à

detection and prevention of fraud or for law enforcement, seeking the consent of the individual might defeat the purpose of collecting the information. Seeking consent may be impossible or inappropriate when the individual is a minor, seriously ill, or mentally incapacitated. In addition, organizations that do not have a direct relationship with the individual may not always be able to seek consent. For example, seeking consent may be impractical for a charity or a direct-marketing firm that wishes to acquire a mailing list from another organization. In such cases, the organization providing the list would be expected to obtain consent before disclosing personal information.

l'insu de la personne concernée et sans son consentement. Par exemple, pour des raisons d'ordre juridique ou médical ou pour des raisons de sécurité, il peut être impossible ou peu réaliste d'obtenir le consentement de la personne concernée. Lorsqu'on recueille des renseignements aux fins du contrôle d'application de la loi, de la détection d'une fraude ou de sa prévention, on peut aller à l'encontre du but visé si l'on cherche à obtenir le consentement de la personne concernée. Il peut être impossible ou inopportun de chercher à obtenir le consentement d'un mineur, d'une personne gravement malade ou souffrant d'incapacité mentale. De plus, les organisations qui ne sont pas en relation directe avec la personne concernée ne sont pas toujours en mesure d'obtenir le consentement prévu. Par exemple, il peut être peu réaliste pour une œuvre de bienfaisance ou une entreprise de marketing direct souhaitant acquérir une liste d'envoi d'une autre organisation de chercher à obtenir le consentement des personnes concernées. On s'attendrait, dans de tels cas, à ce que l'organisation qui fournit la liste obtienne le consentement des personnes concernées avant de communiquer des renseignements personnels.

4.3.1

Consent is required for the collection of personal information and the subsequent use or disclosure of this information. Typically, an organization will seek consent for the use or disclosure of the information at the time of collection. In certain circumstances, consent with respect to use or disclosure may be sought after the information has been collected but before use (for example, when an organization wants to use information for a purpose not previously identified).

4.3.1

Il faut obtenir le consentement de la personne concernée avant de recueillir des renseignements personnels à son sujet et d'utiliser ou de communiquer les renseignements recueillis. Généralement, une organisation obtient le consentement des personnes concernées relativement à l'utilisation et à la communication des renseignements personnels au moment de la collecte. Dans certains cas, une organisation peut obtenir le consentement concernant l'utilisation ou la communication des renseignements après avoir recueilli ces renseignements, mais avant de s'en servir, par exemple, quand elle veut les utiliser à des fins non précisées antérieurement.

4.3.2

The principle requires "knowledge and consent". Organizations shall make a reasonable effort to ensure that the individual is advised of the purposes for which the information will be used. To make the consent meaningful, the purposes must be stated in such a manner that the individual can reasonably understand how the information will be used or disclosed.

4.3.2

Suivant ce principe, il faut informer la personne au sujet de laquelle on recueille des renseignements et obtenir son consentement. Les organisations doivent faire un effort raisonnable pour s'assurer que la personne est informée des fins auxquelles les renseignements seront utilisés. Pour que le consentement soit valable, les fins doivent être énoncées de façon que la personne puisse raisonnablement comprendre de quelle manière les renseignements seront utilisés ou communiqués.

4.3.3

An organization shall not, as a condition of the supply of a product or service, require an individual to consent to the collection, use, or disclosure of information beyond that required to fulfil the explicitly specified, and legitimate purposes.

4.3.3

Une organisation ne peut pas, pour le motif qu'elle fournit un bien ou un service, exiger d'une personne qu'elle consente à la collecte, à l'utilisation ou à la communication de renseignements autres que ceux qui sont nécessaires pour réaliser les fins légitimes et explicitement indiquées.

4.3.4

The form of the consent sought by the organization may vary, depending upon the circumstances and the type of information. In determining the form of consent to use, organizations shall take into account the sensitivity of the information. Although some information (for example, medical records and income records) is almost always considered to be sensitive, any information can be sensitive, depending on the context. For example, the names and addresses of subscribers to a newsmagazine would generally not be considered sensitive information. However, the names and addresses of

4.3.4

La forme du consentement que l'organisation cherche à obtenir peut varier selon les circonstances et la nature des renseignements. Pour déterminer la forme que prendra le consentement, les organisations doivent tenir compte de la sensibilité des renseignements. Si certains renseignements sont presque toujours considérés comme sensibles, par exemple les dossiers médicaux et le revenu, tous les renseignements peuvent devenir sensibles suivant le contexte. Par exemple, les nom et adresse des abonnés d'une revue d'information ne seront généralement pas considérés comme des renseignements

subscribers to some special-interest magazines might be considered sensitive.

4.3.5

In obtaining consent, the reasonable expectations of the individual are also relevant. For example, an individual buying a subscription to a magazine should reasonably expect that the organization, in addition to using the individual's name and address for mailing and billing purposes, would also contact the person to solicit the renewal of the subscription. In this case, the organization can assume that the individual's request constitutes consent for specific purposes. On the other hand, an individual would not reasonably expect that personal information given to a health-care professional would be given to a company selling health-care products, unless consent were obtained. Consent shall not be obtained through deception.

4.3.6

The way in which an organization seeks consent may vary, depending on the circumstances and the type of information collected. An organization should generally seek express consent when the information is likely to be considered sensitive. Implied consent would generally be appropriate when the information is less sensitive. Consent can also be given by an authorized representative (such as a legal guardian or a person having power of attorney).

4.3.7

Individuals can give consent in many ways. For example:

(a) an application form may be used to seek consent, collect information, and inform the individual of the use that will be made of the information. By completing and signing the form, the individual is giving consent to the collection and the specified uses;

(b) a checkoff box may be used to allow individuals to request that their names and addresses not be given to other organizations. Individuals who do not check the box are assumed to consent to the transfer of this information to third parties;

(c) consent may be given orally when information is collected over the telephone; or

(d) consent may be given at the time that individuals use a product or service.

4.3.8

An individual may withdraw consent at any time, subject to legal or contractual restrictions and reasonable notice. The organization shall inform the individual of the implications of such withdrawal.

sensibles. Toutefois, les nom et adresse des abonnés de certains périodiques spécialisés pourront l'être.

4.3.5

Dans l'obtention du consentement, les attentes raisonnables de la personne sont aussi pertinentes. Par exemple, une personne qui s'abonne à un périodique devrait raisonnablement s'attendre à ce que l'entreprise, en plus de se servir de son nom et de son adresse à des fins de postage et de facturation, communique avec elle pour lui demander si elle désire que son abonnement soit renouvelé. Dans ce cas, l'organisation peut présumer que la demande de la personne constitue un consentement à ces fins précises. D'un autre côté, il n'est pas raisonnable qu'une personne s'attende à ce que les renseignements personnels qu'elle fournit à un professionnel de la santé soient donnés sans son consentement à une entreprise qui vend des produits de soins de santé. Le consentement ne doit pas être obtenu par un subterfuge.

4.3.6

La façon dont une organisation obtient le consentement peut varier selon les circonstances et la nature des renseignements recueillis. En général, l'organisation devrait chercher à obtenir un consentement explicite si les renseignements sont susceptibles d'être considérés comme sensibles. Lorsque les renseignements sont moins sensibles, un consentement implicite serait normalement jugé suffisant. Le consentement peut également être donné par un représentant autorisé (détenteur d'une procuration, tuteur).

4.3.7

Le consentement peut revêtir différentes formes, par exemple :

a) on peut se servir d'un formulaire de demande de renseignements pour obtenir le consentement, recueillir des renseignements et informer la personne de l'utilisation qui sera faite des renseignements. En remplissant le formulaire et en le signant, la personne donne son consentement à la collecte de renseignements et aux usages précisés;

b) on peut prévoir une case où la personne pourra indiquer en cochant qu'elle refuse que ses nom et adresse soient communiqués à d'autres organisations. Si la personne ne coche pas la case, il sera présumé qu'elle consent à ce que les renseignements soient communiqués à des tiers;

c) le consentement peut être donné de vive voix lorsque les renseignements sont recueillis par téléphone; ou

d) le consentement peut être donné au moment où le produit ou le service est utilisé.

4.3.8

Une personne peut retirer son consentement en tout temps, sous réserve de restrictions prévues par une loi ou un contrat et d'un préavis raisonnable. L'organisation doit informer la personne des conséquences d'un tel retrait.

4.4 Principle 4 — Limiting Collection

The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.

4.4.1

Organizations shall not collect personal information indiscriminately. Both the amount and the type of information collected shall be limited to that which is necessary to fulfil the purposes identified. Organizations shall specify the type of information collected as part of their information-handling policies and practices, in accordance with the Openness principle (Clause 4.8).

4.4.2

The requirement that personal information be collected by fair and lawful means is intended to prevent organizations from collecting information by misleading or deceiving individuals about the purpose for which information is being collected. This requirement implies that consent with respect to collection must not be obtained through deception.

4.4.3

This principle is linked closely to the Identifying Purposes principle (Clause 4.2) and the Consent principle (Clause 4.3).

4.5 Principle 5 —Limiting Use, Disclosure, and Retention

Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfilment of those purposes.

4.5.1

Organizations using personal information for a new purpose shall document this purpose (see Clause 4.2.1).

4.5.2

Organizations should develop guidelines and implement procedures with respect to the retention of personal information. These guidelines should include minimum and maximum retention periods. Personal information that has been used to make a decision about an individual shall be retained long enough to allow the individual access to the information after the decision has been made. An organization may be subject to legislative requirements with respect to retention periods.

4.4 Quatrième principe — Limitation de la collecte

L'organisation ne peut recueillir que les renseignements personnels nécessaires aux fins déterminées et doit procéder de façon honnête et licite.

4.4.1

Les organisations ne doivent pas recueillir des renseignements de façon arbitraire. On doit restreindre tant la quantité que la nature des renseignements recueillis à ce qui est nécessaire pour réaliser les fins déterminées. Conformément au principe de la transparence (article 4.8), les organisations doivent préciser la nature des renseignements recueillis comme partie intégrante de leurs politiques et pratiques concernant le traitement des renseignements.

4.4.2

L'exigence selon laquelle les organisations sont tenues de recueillir des renseignements personnels de façon honnête et licite a pour objet de les empêcher de tromper les gens et de les induire en erreur quant aux fins auxquelles les renseignements sont recueillis. Cette obligation suppose que le consentement à la collecte de renseignements ne doit pas être obtenu par un subterfuge.

4.4.3

Ce principe est étroitement lié au principe de détermination des fins auxquelles la collecte est destinée (article 4.2) et à celui du consentement (article 4.3).

4.5 Cinquième principe — Limitation de l'utilisation, de la communication et de la conservation

Les renseignements personnels ne doivent pas être utilisés ou communiqués à des fins autres que celles auxquelles ils ont été recueillis à moins que la personne concernée n'y consente ou que la loi ne l'exige. On ne doit conserver les renseignements personnels qu'aussi longtemps que nécessaire pour la réalisation des fins déterminées.

4.5.1

Les organisations qui se servent de renseignements personnels à des fins nouvelles doivent documenter ces fins (voir article 4.2.1).

4.5.2

Les organisations devraient élaborer des lignes directrices et appliquer des procédures pour la conservation des renseignements personnels. Ces lignes directrices devraient préciser les durées minimales et maximales de conservation. On doit conserver les renseignements personnels servant à prendre une décision au sujet d'une personne suffisamment longtemps pour permettre à la personne concernée d'exercer son droit d'accès à l'information après que la décision a été prise.

4.5.3

Personal information that is no longer required to fulfil the identified purposes should be destroyed, erased, or made anonymous. Organizations shall develop guidelines and implement procedures to govern the destruction of personal information.

4.5.4

This principle is closely linked to the Consent principle (Clause 4.3), the Identifying Purposes principle (Clause 4.2), and the Individual Access principle (Clause 4.9).

4.6 Principle 6 — Accuracy

Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.

4.6.1

The extent to which personal information shall be accurate, complete, and up-to-date will depend upon the use of the information, taking into account the interests of the individual. Information shall be sufficiently accurate, complete, and up-to-date to minimize the possibility that inappropriate information may be used to make a decision about the individual.

4.6.2

An organization shall not routinely update personal information, unless such a process is necessary to fulfil the purposes for which the information was collected.

4.6.3

Personal information that is used on an ongoing basis, including information that is disclosed to third parties, should generally be accurate and up-to-date, unless limits to the requirement for accuracy are clearly set out.

4.7 Principle 7 — Safeguards

Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.

4.7.1

The security safeguards shall protect personal information against loss or theft, as well as unauthorized access, disclosure, copying, use, or modification. Organizations shall protect personal information regardless of the format in which it is held.

Une organisation peut être assujettie à des exigences prévues par la loi en ce qui concerne les périodes de conservation.

4.5.3

On devrait détruire, effacer ou dépersonnaliser les renseignements personnels dont on n'a plus besoin aux fins précisées. Les organisations doivent élaborer des lignes directrices et appliquer des procédures régissant la destruction des renseignements personnels.

4.5.4

Ce principe est étroitement lié au principe du consentement (article 4.3), à celui de la détermination des fins auxquelles la collecte est destinée (article 4.2), ainsi qu'à celui de l'accès individuel (article 4.9).

4.6 Sixième principe — Exactitude

Les renseignements personnels doivent être aussi exacts, complets et à jour que l'exigent les fins auxquelles ils sont destinés.

4.6.1

Le degré d'exactitude et de mise à jour ainsi que le caractère complet des renseignements personnels dépendront de l'usage auquel ils sont destinés, compte tenu des intérêts de la personne. Les renseignements doivent être suffisamment exacts, complets et à jour pour réduire au minimum la possibilité que des renseignements inappropriés soient utilisés pour prendre une décision à son sujet.

4.6.2

Une organisation ne doit pas systématiquement mettre à jour les renseignements personnels à moins que cela ne soit nécessaire pour atteindre les fins auxquelles ils ont été recueillis.

4.6.3

Les renseignements personnels qui servent en permanence, y compris les renseignements qui sont communiqués à des tiers, devraient normalement être exacts et à jour à moins que des limites se rapportant à l'exactitude de ces renseignements ne soient clairement établies.

4.7 Septième principe — Mesures de sécurité

Les renseignements personnels doivent être protégés au moyen de mesures de sécurité correspondant à leur degré de sensibilité.

4.7.1

Les mesures de sécurité doivent protéger les renseignements personnels contre la perte ou le vol ainsi que contre la consultation, la communication, la copie, l'utilisation ou la modification non autorisées. Les organisations doivent protéger les renseignements personnels quelle que soit la forme sous laquelle ils sont conservés.

4.7.2

The nature of the safeguards will vary depending on the sensitivity of the information that has been collected, the amount, distribution, and format of the information, and the method of storage. More sensitive information should be safeguarded by a higher level of protection. The concept of sensitivity is discussed in Clause 4.3.4.

4.7.3

The methods of protection should include

(a) physical measures, for example, locked filing cabinets and restricted access to offices;

(b) organizational measures, for example, security clearances and limiting access on a "need-to-know" basis; and

(c) technological measures, for example, the use of passwords and encryption.

4.7.4

Organizations shall make their employees aware of the importance of maintaining the confidentiality of personal information.

4.7.5

Care shall be used in the disposal or destruction of personal information, to prevent unauthorized parties from gaining access to the information (see Clause 4.5.3).

4.8 Principle 8 — Openness

An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

4.8.1

Organizations shall be open about their policies and practices with respect to the management of personal information. Individuals shall be able to acquire information about an organization's policies and practices without unreasonable effort. This information shall be made available in a form that is generally understandable.

4.8.2

The information made available shall include

(a) the name or title, and the address, of the person who is accountable for the organization's policies and practices and to whom complaints or inquiries can be forwarded;

(b) the means of gaining access to personal information held by the organization;

(c) a description of the type of personal information held by the organization, including a general account of its use;

(d) a copy of any brochures or other information that explain the organization's policies, standards, or codes; and

(e) what personal information is made available to related organizations (e.g., subsidiaries).

4.7.2

La nature des mesures de sécurité variera en fonction du degré de sensibilité des renseignements personnels recueillis, de la quantité, de la répartition et du format des renseignements personnels ainsi que des méthodes de conservation. Les renseignements plus sensibles devraient être mieux protégés. La notion de sensibilité est présentée à l'article 4.3.4.

4.7.3

Les méthodes de protection devraient comprendre :

a) des moyens matériels, par exemple le verrouillage des classeurs et la restriction de l'accès aux bureaux;

b) des mesures administratives, par exemple des autorisations sécuritaires et un accès sélectif; et

c) des mesures techniques, par exemple l'usage de mots de passe et du chiffrement.

4.7.4

Les organisations doivent sensibiliser leur personnel à l'importance de protéger le caractère confidentiel des renseignements personnels.

4.7.5

Au moment du retrait ou de la destruction des renseignements personnels, on doit veiller à empêcher les personnes non autorisées d'y avoir accès (article 4.5.3).

4.8 Huitième principe — Transparence

Une organisation doit faire en sorte que des renseignements précis sur ses politiques et ses pratiques concernant la gestion des renseignements personnels soient facilement accessibles à toute personne.

4.8.1

Les organisations doivent faire preuve de transparence au sujet de leurs politiques et pratiques concernant la gestion des renseignements personnels. Une personne doit pouvoir obtenir sans efforts déraisonnables de l'information au sujet des politiques et des pratiques d'une organisation. Ces renseignements doivent être fournis sous une forme généralement compréhensible.

4.8.2

Les renseignements fournis doivent comprendre :

a) le nom ou la fonction de même que l'adresse de la personne responsable de la politique et des pratiques de l'organisation et à qui il faut acheminer les plaintes et les demandes de renseignements;

b) la description du moyen d'accès aux renseignements personnels que possède l'organisation;

c) la description du genre de renseignements personnels que possède l'organisation, y compris une explication générale de l'usage auquel ils sont destinés;

d) une copie de toute brochure ou autre document d'information expliquant la politique, les normes ou les codes de l'organisation; et

4.8.3

An organization may make information on its policies and practices available in a variety of ways. The method chosen depends on the nature of its business and other considerations. For example, an organization may choose to make brochures available in its place of business, mail information to its customers, provide online access, or establish a toll-free telephone number.

4.9 Principle 9 — Individual Access

Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

Note: In certain situations, an organization may not be able to provide access to all the personal information it holds about an individual. Exceptions to the access requirement should be limited and specific. The reasons for denying access should be provided to the individual upon request. Exceptions may include information that is prohibitively costly to provide, information that contains references to other individuals, information that cannot be disclosed for legal, security, or commercial proprietary reasons, and information that is subject to solicitor-client or litigation privilege.

4.9.1

Upon request, an organization shall inform an individual whether or not the organization holds personal information about the individual. Organizations are encouraged to indicate the source of this information. The organization shall allow the individual access to this information. However, the organization may choose to make sensitive medical information available through a medical practitioner. In addition, the organization shall provide an account of the use that has been made or is being made of this information and an account of the third parties to which it has been disclosed.

4.9.2

An individual may be required to provide sufficient information to permit an organization to provide an account of the existence, use, and disclosure of personal information. The information provided shall only be used for this purpose.

4.9.3

In providing an account of third parties to which it has disclosed personal information about an individual, an

e) la définition de la nature des renseignements personnels communiqués aux organisations connexes (par exemple, les filiales).

4.8.3

Une organisation peut rendre l'information concernant sa politique et ses pratiques accessibles de diverses façons. La méthode choisie est fonction de la nature des activités de l'organisation et d'autres considérations. Par exemple, une organisation peut offrir des brochures à son établissement, poster des renseignements à ses clients, offrir un accès en ligne ou établir un numéro de téléphone sans frais.

4.9 Neuvième principe — Accès aux renseignements personnels

Une organisation doit informer toute personne qui en fait la demande de l'existence de renseignements personnels qui la concernent, de l'usage qui en est fait et du fait qu'ils ont été communiqués à des tiers, et lui permettre de les consulter. Il sera aussi possible de contester l'exactitude et l'intégralité des renseignements et d'y faire apporter les corrections appropriées.

Note : Dans certains cas, il peut être impossible à une organisation de communiquer tous les renseignements personnels qu'elle possède au sujet d'une personne. Les exceptions aux exigences en matière d'accès aux renseignements personnels devraient être restreintes et précises. On devrait informer la personne, sur demande, des raisons pour lesquelles on lui refuse l'accès aux renseignements. Ces raisons peuvent comprendre le coût exorbitant de la fourniture de l'information, le fait que les renseignements personnels contiennent des détails sur d'autres personnes, l'existence de raisons d'ordre juridique, de raisons de sécurité ou de raisons d'ordre commercial exclusives et le fait que les renseignements sont protégés par le secret professionnel ou dans le cours d'une procédure de nature judiciaire.

4.9.1

Une organisation doit informer la personne qui en fait la demande du fait qu'elle possède des renseignements personnels à son sujet, le cas échéant. Les organisations sont invitées à indiquer la source des renseignements. L'organisation doit permettre à la personne concernée de consulter ces renseignements. Dans le cas de renseignements médicaux sensibles, l'organisation peut préférer que ces renseignements soient communiqués par un médecin. En outre, l'organisation doit informer la personne concernée de l'usage qu'elle fait ou a fait des renseignements et des tiers à qui ils ont été communiqués.

4.9.2

Une organisation peut exiger que la personne concernée lui fournisse suffisamment de renseignements pour qu'il lui soit possible de la renseigner sur l'existence, l'utilisation et la communication de renseignements personnels. L'information ainsi fournie doit servir à cette seule fin.

4.9.3

L'organisation qui fournit le relevé des tiers à qui elle a communiqué des renseignements personnels au sujet d'une

organization should attempt to be as specific as possible. When it is not possible to provide a list of the organizations to which it has actually disclosed information about an individual, the organization shall provide a list of organizations to which it may have disclosed information about the individual.

4.9.4

An organization shall respond to an individual's request within a reasonable time and at minimal or no cost to the individual. The requested information shall be provided or made available in a form that is generally understandable. For example, if the organization uses abbreviations or codes to record information, an explanation shall be provided.

4.9.5

When an individual successfully demonstrates the inaccuracy or incompleteness of personal information, the organization shall amend the information as required. Depending upon the nature of the information challenged, amendment involves the correction, deletion, or addition of information. Where appropriate, the amended information shall be transmitted to third parties having access to the information in question.

4.9.6

When a challenge is not resolved to the satisfaction of the individual, the substance of the unresolved challenge shall be recorded by the organization. When appropriate, the existence of the unresolved challenge shall be transmitted to third parties having access to the information in question.

4.10 Principle 10 — Challenging Compliance

An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.

4.10.1

The individual accountable for an organization's compliance is discussed in Clause 4.1.1.

4.10.2

Organizations shall put procedures in place to receive and respond to complaints or inquiries about their policies and practices relating to the handling of personal information. The complaint procedures should be easily accessible and simple to use.

4.10.3

Organizations shall inform individuals who make inquiries or lodge complaints of the existence of relevant complaint procedures. A range of these procedures may exist. For example,

personne devrait être la plus précise possible. S'il lui est impossible de fournir une liste des organisations à qui elle a effectivement communiqué des renseignements au sujet d'une personne, l'organisation doit fournir une liste des organisations à qui elle pourrait avoir communiqué de tels renseignements.

4.9.4

Une organisation qui reçoit une demande de communication de renseignements doit répondre dans un délai raisonnable et ne peut exiger, pour ce faire, que des droits minimes. Les renseignements demandés doivent être fournis sous une forme généralement compréhensible. Par exemple, l'organisation qui se sert d'abréviations ou de codes pour l'enregistrement des renseignements doit fournir les explications nécessaires.

4.9.5

Lorsqu'une personne démontre que des renseignements personnels sont inexacts ou incomplets, l'organisation doit apporter les modifications nécessaires à ces renseignements. Selon la nature des renseignements qui font l'objet de la contestation, l'organisation doit corriger, supprimer ou ajouter des renseignements. S'il y a lieu, l'information modifiée doit être communiquée à des tiers ayant accès à l'information en question.

4.9.6

Lorsqu'une contestation n'est pas réglée à la satisfaction de la personne concernée, l'organisation prend note de l'objet de la contestation. S'il y a lieu, les tierces parties ayant accès à l'information en question doivent être informées du fait que la contestation n'a pas été réglée.

4.10 Dixième principe — Possibilité de porter plainte à l'égard du non-respect des principes

Toute personne doit être en mesure de se plaindre du non-respect des principes énoncés ci-dessus en communiquant avec le ou les personnes responsables de les faire respecter au sein de l'organisation concernée.

4.10.1

La question de la désignation de la personne responsable du respect des principes dans l'organisation fait l'objet de l'article 4.1.1.

4.10.2

Les organisations doivent établir des procédures pour recevoir les plaintes et les demandes de renseignements concernant leurs politiques et pratiques de gestion des renseignements personnels et y donner suite. Les procédures relatives aux plaintes devraient être facilement accessibles et simples à utiliser.

4.10.3

Les organisations doivent informer les personnes qui présentent une demande de renseignements ou déposent une plainte de l'existence des procédures pertinentes. Il peut exister un éventail de ces procédures. Par exemple, certaines

some regulatory bodies accept complaints about the personal-information handling practices of the companies they regulate.

4.10.4

An organization shall investigate all complaints. If a complaint is found to be justified, the organization shall take appropriate measures, including, if necessary, amending its policies and practices.

autorités réglementaires acceptent les plaintes concernant les pratiques de gestion des renseignements personnels des entreprises relevant de leur compétence.

4.10.4

Une organisation doit faire enquête sur toutes les plaintes. Si une plainte est jugée fondée, l'organisation doit prendre les mesures appropriées, y compris la modification de ses politiques et de ses pratiques au besoin.

SCHEDULE 2

(Sections 38 to 47, 49 and 51)

Acts of Parliament

Item	Column 1 Act of Parliament	Column 2 Provisions
1	*Federal Real Property and Federal Immovables Act*	Sections 3, 5 to 7, 11 and 16
2	*Canada Labour Code*	Subsection 254(1)
3	*Canada Lands Surveys Act*	Subsection 3(2)

2000, c. 5, Sch. 2; SOR/2004-309, s. 1; SOR/2008-114; SOR/2019-84, s. 1.

ANNEXE 2

(articles 38 à 47, 49 et 51)

Lois fédérales

Article	Colonne 1 Loi fédérale	Colonne 2 Dispositions
1	*Loi sur les immeubles fédéraux et les biens réels fédéraux*	Articles 3, 5 à 7, 11 et 16
2	*Code canadien du travail*	Paragraphe 254(1)
3	*Loi sur l'arpentage des terres du Canada*	Paragraphe 3(2)

2000, ch. 5, ann. 2; DORS/2004-309, art. 1; DORS/2008-114; DORS/2019-84, art. 1.

SCHEDULE 3

(Sections 38 to 47, 49 and 51)

Regulations and Other Instruments

Item	Column 1 Regulations or Other Instrument	Column 2 Provisions
1	*Federal Real Property Regulations*	Sections 9 and 11 **[SOR/2005-407]**
1	*Federal Real Property Regulations*	Sections 9 and 11 **[SOR/2004-309, s. 2]**

2000, c. 5, Sch. 3; SOR/2004-309, s. 2; SOR/2005-407.

ANNEXE 3

(articles 38 à 47, 49 et 51)

Règlements et autres textes

Article	Colonne 1 Règlement ou autre texte	Colonne 2 Dispositions
1	*Règlement concernant les immeubles fédéraux*	Articles 9 et 11 **[DORS/2005-407]**
1	*Règlement concernant les immeubles fédéraux*	Articles 9 et 11 **[DORS/2004-309, art. 2]**

2000, ch. 5, ann. 3; DORS/2004-309, art. 2; DORS/2005-407.

SCHEDULE 4

(Subsection 4(1.1) and paragraph 26(2)(c))

Organizations

Item	Column 1 Organization	Column 2 Personal Information
1	World Anti-Doping Agency *Agence mondiale antidopage*	Personal information that the organization collects, uses or discloses in the course of its interprovincial or international activities

2015, c. 36, s. 166.

ANNEXE 4

(paragraphe 4(1.1) et alinéa 26(2)c))

Organisations

Article	Colonne 1 Organisation	Colonne 2 Renseignements personnels
1	Agence mondiale antidopage *World Anti-Doping Agency*	Renseignements personnels recueillis, utilisés ou communiqués par l'organisation dans le cadre de ses activités interprovinciales ou internationales

2015, ch. 36, art. 166.

What Every Dental Technologist Needs to Know About Privacy Legislation

Implications for Dental Technologists and their Laboratories

by Richard Steinecke

Over the past few years, there has been a lot of confusion about privacy legislation. Who does it apply to? When is it really coming? How much impact will it have? Busy dental technologists need to know what privacy legislation means for them. While there remains a fair degree of uncertainty, the outlines of what is going to happen are now becoming clearer.

When Does Privacy Legislation Take Effect?

On January 1, 2004, the *Personal Information Protection and Electronic Documents Act* comes fully into force. All dental technologists supervising and/or operating dental laboratories will have to comply with this very complex piece of federal legislation, unless the Ontario government enacts a privacy legislation that is "substantially similar" to PIPEDA before January. This is not likely to happen. Dental Technologists are therefore covered by the federal act and need to have their policies and procedures in place by then.

Who Does Privacy Legislation Apply To?

The privacy act is intended to cover the entire private sector. With very few exceptions, the privacy act **applies to anyone who carries on "commercial activities". That will include most dental technologists**. Even if the government pays for the goods or services (e.g. social services), the privacy act will likely apply. Only dental technologists employed by a government body or a non-profit agency (e.g. a public hospital) that does not sell goods or services will be exempt.

The privacy act applies to any collection, use or disclosure of personal information. "Personal information" means any information about an identifiable individual that relates to their personal characteristics (e.g., gender, age, colour, ethnic background, education, family status), their health (e.g., health history, health conditions, health services received by them) or their activities and views (e.g., dealings with the dental technologist, opinions expressed by an individual, religion, political involvement, a dental technologist's view or evaluation of an individual). Personal information is to be contrasted with business information (e.g., an individual's business address and telephone number), which is not protected by the privacy act.

What Has To Be Done?

Each organization must appoint an Information Officer and develop and publish its privacy policy. The Information Officer should be a senior person in the organization. The Information Officer can be an outsider hired by an organization to perform this role, but that may make it more difficult for the organization to develop a privacy policy that fits its office or practice.

The Information Officer is responsible for overseeing an organization's compliance with its privacy obligations. This privacy policy would cover the following issues:

- reviewing the organization's policies and practices for collecting, using and disclosing personal information (including conducting an audit of the current personal information practices of the organization);
- implementing procedures to safeguard personal information;
- ensuring individuals have the right to access and correct any personal information about themselves held by the organization;
- implementing a retention and destruction of information policy;
- training the organization's staff;
- acting as a contact person for inquiries from the public or clients; and
- ensuring there is a process for handling complaints made about the organization's information practices.

Dental technologists must also make sure that their organization has privacy policies dealing with all of these issues. These policies must be made available to the public. This public access obligation might be met by posting the policy on the organization's website or in its reception area. Alternatively, a copy can be provided to new clients on their first visit and to anyone else upon request. The policies have to be understandable.

Privacy policies apply on an "organizational" level. Often the identity of the organization is obvious because the sole practitioner, partnership or corporation is well defined. However, where a group of people or entities work together in a loose affiliation, there may be more than one way to define the organization. Dental technologists and their business associates can then decide who their organization will be. For example, every practitioner can have his or her own privacy policy. Or, dental technologists working with others can join together to form a broader organization with one privacy policy covering them all. It just depends on what is most convenient for everyone. Everyone within an organization has to agree to be monitored by the Information Officer. Also organizations will need special consent to disclose personal information outside of the organization.

What Are The Restrictions On The Collection, Use And Disclosure Of Personal Information?

As a general rule, dental technologists need to obtain informed consent for the collection, use and disclosure of personal information. This consent is distinct from the consent for providing services. Like any consent, it can be obtained in writing, verbally or by implied consent. In the traditional circumstance of a practitioner collecting information directly from the client solely for

the purpose of providing services to the client, consent may be implied. However, any departure from this simple approach creates some new obligations for obtaining informed consent. In real life, the simple approach is not usually enough.

Areas in which some change may be required include the following:

- Where the practitioner collects information about other individuals (e.g., about the client's family members or his or her own clients).
- Where the practitioner collects information about the client from other persons (e.g., from previous dental technologists for the client, from family members of the client, from the client's business contacts).
- Where the practitioner collects information to be shared with others who are also advising or providing services to the client (i.e., a team approach).
- Where there is the likelihood of an ongoing relationship and the information will be used for ongoing services, especially if this is not obvious to the client (e.g., collecting a broad background of a client's health, family or financial situation to ensure that one can provide broader services later on).
- Where third parties will have access to the information (e.g., for a legal, billing or financing purposes).
- Where the practitioner will use the information for related purposes (e.g., for billing the client or a third party later).
- Where the practitioner will use or disclose the information for secondary purposes (quality control by the organization, regulatory accountability, research).
- Where the practitioner might sell the practice or business later on and will need to provide prospective purchasers with access to client information to help the purchaser conduct a due diligence review.

In any of these circumstances, the practitioner should at a minimum explain the purposes for which the information is being collected and obtain some form of consent. Often the consent process can be a brief oral discussion with the client. Giving the client a handout setting out the practitioner's usual information practices and checking with the client that he or she understands the handout would often be sufficient. Alternatively, obtaining a written consent at a client's first visit may work in many circumstances. While the Information and Privacy Commissioner is leery of obtaining blanket consents, it may be that, for the usual private practice, this may be appropriate and sufficient.

There are some exceptions that permit dental technologists to collect information without consent. The most common example is where the purpose is to investigate a breach of law or contract and obtaining consent would compromise the investigation (e.g., a fraud by a client; helping a client deal with a third party). Certain emergency situations (e.g., medical crisis) may permit the collection, use or disclosure of information without consent as well.

Dental technologists are also obliged to collect the least amount of personal information that is consistent with the purposes for which it was collected. For example, collecting an individual's Social Insurance Number is usually not necessary. One should not routinely collect a client's

home address (unless the client wants something to be sent there). Dental technologists should not collect financial information about a client who pays the full account at the time of service.

What Kind Of Safeguards Are Needed?

Most dental technologists are already careful to preserve their client's confidentiality. However, when setting out the safeguard policies in writing, dental technologists may wish to review some of his or her practices. For example, can people see confidential files or computer screens when walking through the office or business? Is all personal information shredded before being put in the recycling box? The Information and Privacy Commissioner strongly disapproves of sending personal information through regular email over the internet.

What Are Access And Correction Rights?

A fundamental principle of the privacy act is that any individual has the right to request and see any personal information dental technologists hold about them. In fact, dental technologists are required to help individuals make such a request (e.g., explain the filing system so the person knows what to ask for) and to assist them in understanding the information (e.g., explain abbreviations and technical terms). There are a few exceptions where access can be restricted (e.g., where the disclosure will reveal personal information about another individual or will reveal trade secrets), but these are narrow. Dental technologists will also have to tell individuals to whom the organization has disclosed the personal information about them.

If the individual believes any of the personal information is wrong, he or she can ask that it be corrected. The organization must correct any information it agrees is wrong. The organization must also notify any third parties who received the wrong information of the correction. Where the client and the organization cannot agree that an error has been made then the organization must record the disagreement and notify any third parties who received the contested information. Disagreements about corrections can be taken to the Information and Privacy Commissioner who may review the situation.

What Should An Internal Complaint System Look Like?

Organizations must also have an internal complaints system to handle concerns about their privacy practices. The internal complaints system should have the following features:

- a designated individual in the organization (perhaps the Information Officer) to receive and ensure the prompt investigation and response to all complaints;
- an easily accessible and simple to use complaints procedure that at a minimum includes:
    - acknowledging receipt of the complaint,
    - investigating it, and
    - providing a decision with reasons;
- a process for the organization to respond appropriately to complaints that are justified including making changes to its privacy policies; and
- notifying the public of external recourses including the practitioner's regulatory body and the federal Information and Privacy Commissioner.

Who Ensures Compliance With The Privacy Legislation?

Dental technologists will be held accountable to both the federal Information and Privacy Commissioner and, to a lesser extent, their own regulatory body, in respect of their compliance with the privacy act.

The federal Information and Privacy Commissioner has oversight of the privacy act and functions as an ombudsman. The Commissioner has the following responsibilities:

- investigating complaints about an organization's personal information handling practices including entering the organization's premises and summonsing documents and witnesses;
- mediating and conciliating such complaints;
- auditing the personal information handling practices of an organization;
- making a public report of poor personal information practices by an organization;
- seeking remedies for a breach of the privacy act in the Federal Court of Canada.

Once the Commissioner has issued a report, either the complainant or the Commissioner can then apply to the Federal Court of Canada for one or more of the following remedies:

- an order for the organization to correct its personal information handling practices;
- an order for the organization to publish a notice of corrective action; or
- an award of damages for any humiliation of the complainant.

All indications are that the current Information and Privacy Commissioner tends to be educational rather than punitive in his enforcement style. However, it is still better to avoid a complaint than having to deal with one.

Professional regulators may also hold the practitioner accountable for his or her privacy practices. Where the conduct involves a breach of core professional values, regulators will have an additional reason to take regulatory action. Even where core professional values are not breached, every practitioner is generally obliged to comply with the law, especially those designed to protect the public or which reflect on the practitioner's suitability to be a member of the profession. Many breaches of the privacy act by a practitioner may warrant some regulatory action.

Where To Start?

The privacy act may seem like a lot of work. However, the key is for dental technologists to develop a privacy policy. A privacy policy provides a process for dental technologists to review and revise their organization's practices and to obtain the consent from clients in the future. With a few adjustments to existing practices and informed consent from clients, most dental technologists will be ready for the new privacy era.

Richard Steinecke will be a presenter at a seminar on getting ready for the new privacy legislation on November 7, 2003. The seminar will be held in Toronto and will include a step-by-step workbook that will assist dental technologists in developing and implementing privacy policies. See www.sml-law.com/privacyseminarfor registration details.

- Steinecke Maciura LeBlanc, Barristers & Solicitors
Law Chambers - University Centre - 393 University Avenue, Suite 2000, Toronto, ON M5G 1E6
(416) 599-2200 ~ Fax: (416) 593-7867 ~ info@sml-law.com
www.sml-law.com

COMMUNIQUE COLLEGE OF DENTAL TECHNOLOGISTS OF ONTARIO

FROM HEALTH CANADA

MEDICAL DEVICES REGULATIONS

The College has recently received enquiries from concerned RDTs regarding the *Medical Devices Regulations*. In this article we bring to you a summary of the key requirements of the *Regulations*.

The **Medical Devices Regulations** under the *Food and Drugs Act* came into effect in 1998 on the recommendation of the Minister of Health Canada. The regulations set out the requirements for the sale, import and distribution of safe and effective medical devices in Canada.

Classification
The Regulations classify medical devices into four classes with Class I representing the lowest risk devices and Class IV the highest risk. Denture materials, components and orthodontic appliances are classified as Class II or III, depending on their potential risk.

Safety and Effectiveness and Labeling Requirements
All classified devices must meet safety, effectiveness and labeling requirements in order to be imported or sold in Canada.

Medical Device Licensing
Manufacturers must hold a medical device licence to sell Class II, III or IV medical devices in Canada. Sale of devices without a licence is illegal. The licence has to be renewed every year.

Establishment Licensing
Importers and distributors of Class I, II, III and IV devices must hold an establishment licence which has to be renewed every year.

Post-market Surveillance
Manufacturers, importers and distributors are required to keep distribution records and written procedures to (a) handle and investigate complaints, and (b) to recall defective devices.

Custom-made Devices and Devices for Special Access
There are provisions to exempt custom-made devices and devices sold under a special access program from most of the requirements of the *Regulations.*

Quality System Requirements
Manufacturers of Class II devices will be required to meet international standard ISO 13488 by January 1, 2003. As proof of compliance, a manufacturer must have its quality system audited by a qualified independent third-party registrar accredited by the Standard Council of Canada.

Impact on Dental Technology Practice
The College is of the opinion that RDTs as users of Class II and III devices, i.e. denture materials and orthodontic appliances, and their accessories should ensure that the materials and devices they purchase meet the safety and labeling requirements and that any manufacturer they work with meet the quality system requirements.

In regards to whether RDTs' dental laboratories need to comply with the Quality System requirements, the College refers RDTs to the definition of "custom-made device" under the Regulations:

"Custom-made device" means a medical device other than a mass-produced medical device that

a) in manufactured in accordance with a health care professional 's written direction giving its design characteristics;
b) differs from medical devices generally available for sale or from a dispenser; and
c) is
   (i) for the sole use of a particular patient of that professional, or
   (ii) for use by that professional to meet special needs arising in the course of his or her practice.

On the other hand, RDTs who import, distribute and sell Class II devices are advised to comply with the various requirements of the *Regulations*.

Website: http://www.hc-sc.gc.ca/dhp-mps/md-im/index-eng.php

Medical Devices Program Description

Background

Health Canada has had as bureau with responsibility for medical devices since 1974. Originally named the Bureau of Medical Devices, it was merged in 1986 with the Radiation Protection Bureau to create the Bureau of Radiation and Medical Devices. The Medical Device Review Committee was established in 1991 to formulate recommendations to the Minister of Health concerning the regulation of medical devices and associated activities. The committee released its report in 1992 entitled "1992 Medical Device Review Committees Report (Hearn Report)". This report was used to prepare the Development Plan for an Improved Medical Devices Regulatory Program. This Plan and the consultation with the stakeholders that followed formed the basis of a new Medical Devices Program that began with the introduction of new *Medical Devices Regulations* in 1998.

Need and Rationale

Equal and timely access to quality health care is a priority for Canadians. This includes both services provided by health care professionals and therapeutic products such as medical devices. Medical devices play an important role in all stages of the delivery of quality health care.

The manufacture and sale of medical devices are subject to the Food and Drugs Act and the Medical Devices Regulations. According to the Food and Drugs Act, a medical device is defined as "any article, instrument, apparatus or contrivance, including and component, part or accessory thereof, manufactured ,sold or represented for use in human beings and animals for:

I. the diagnosis, treatment, mitigation or prevention of a disease, disorder or abnormal
physical state, or its symptoms,
II. restoring, correcting or modifying a body function or the body structure,
III. diagnosis of pregnancy, or
IV. care during pregnancy and at, and after birth of the offspring, including care of the offspring, and includes a contraceptive device but does not include a drug.

The Medical Devices Regulations apply only to devices intended for human use. The Regulations categorize medical devices into four risk classes based on potential to cause harm. Class I represents the lowest-risk, class IV represents the highest-risk. All manufacturers of class I devices, all importers and all distributors require an establishment licence to sell their products in Canada. Manufacturers of class II, III, and IV devices require a device licence for each device or grouping of devices to sell their products either to importers and distributors or directly to purchasers in Canada. All establishment and device licenses must be renewed annually.

In 2004, more than 100 licenses for new class IV devices, 600 licenses for new class III devices, and 2,700 licenses for new class II were issued in Canada. If a device is changed, Health Canada must authorize the changes. In 2004 Health Canada authorized amendments to nearly 400 licenses for class IV, 1,550 for class III, and 3,500 for class II devices. It recently reported that over 48,000 class IV devices, 220,000 class III devices, and 330,000 class II devices are currently licensed for sale in Canada. Health Canada has also issued approximately 1,300 establishment licenses to manufacturers of class I devices, importers, and distributors.

Canadians consume $5 billion in medical devices annually. Every Canadian who visits a doctor or dentist for an examination, has a diagnostic test, or undergoes surgery will encounter many devices. The general public also purchases numerous medical devices for their personal use. These include a wide range of products, such as thermometer, bandages, contact lenses and blood pressure machines. The public relies on Health Canada to regulate the safety of these products and the accompanying information on product use.

Medical devices are largely based on technology. As advances are made in technology, the number of devices and their complexity increase. For these reasons, it is expected that the medical devices industry will continue to grow in the future, both in size, importance and complexity.

Medical Devices Mandate, Goal and Objective

Health Canada is responsible for delivering programs to protect the health and safety of Canadians in relation to all therapeutic products, including medical devices. The Department's Health Products and Food Branch is responsible for the Medical Devices Program. The authority for this Program comes from the Food and Drugs Act and the Medical Devices Regulation.

The federal government, as federal regulator, has a legislated responsibility that is outlined in the Food and Drugs Act to protect the health and safety of Canadians. In delivering on these responsibilities, the federal government, through Health Canada, helps ensure that the public has timely access to all available safe and effective devices; it also helps ensure the continued protection of the public by informing those who need to know of any safety concerns on a timely basis.

The safety of any therapeutic product including medical devices can never be absolutely guaranteed. Given this, the role of Health Canada is to assess the benefits derived from the use of a device against the associated risks. Based on this assessment, the federal government decides whether the health and safety of Canadians would be compromised by using the device.

The goal of the Medical Devices Program is to ensure that medical devices available in Canada are safe, effective, and of high quality. This is done through a regulatory framework, whereby the level of effort given to a device is dependent upon the risk class of the device, and whereby the safety and effectiveness of medical devices are assessed through a balance of pre-market activities, and post-market activities.

Medical Devices Program Key Roles Commitments

Pre-Market activities consist of those activities conducted prior to granting establishment and device license, and focus on reducing problems associated with poor design or management controls.

Key commitments for Pre-Market medical devices include:

I. Managing, and administering the Medical Device Regulations for the marketing of medical products in Canada. These regulations setout the standards for which industry must comply with respect to the products safety, efficacy and quality, as well as, the manufacturing , packaging , labeling importing or distributing of medical device products.

II. Managing the Medical Devices Special Access Program which provides access to unlicensed medical devices for compassionate grounds on a patient-by-patient basis.

III. Conducting Clinical Trial/Investigational Testing Application Reviews;

IV. Confirming product classification and conducting Medical Device Pre-market Reviews to assess product safety, efficacy and quality including the review of labeling and product information to determine whether to issue a device license and device identifier number; a indicator that a product has been authorized for sale in Canada.

V. In partnership with the Standards Council of Canada, accredits international audit organizations to carry out certification audits of quality systems on the Medical Devices Bureau's behalf to ensure quality device design and management.

VI. Conducting research and laboratory analysis of medical devices.

VII. Providing product-specific advice and providing industry communication regarding product license status advisories.

Post-market activities consist of those activities conducted following the introduction of devices into the market, and focus on monitoring and reporting of potential problems and adverse events observed with device use and exposure.

Key commitments for post-market medical devices include:

I. To conduct ongoing inspection, compliance, verifications and investigations of the medical devices industry to ensure compliance with the Medical Devices Regulations;

II. To conduct ongoing surveillance or marketed medical devices safety and effectiveness outcomes for the purpose of identifying marketed medical devices safety and effectiveness problems (i.e. signal generation) that warrant the further attention of Health Canada;

III. To evaluate safety and effectiveness data pertaining to marketed medical devices once a safety or effectiveness issue has been identified for the purpose of making recommendations concerning the need for regulatory action;

IV. To communicate risk information associated with marketed medical devices to health care providers and the Canadian public in a timely and effective manner;

V. To take appropriate regulatory action when safety and/or effectiveness problems are identified; regulatory action includes device recall monitoring and the provision of guidance.

VI. To manager the regulatory actions that are taken once management decisions have been made.

MDP Activities/Outputs and Immediate Outcomes

1) Regulation, Policy Standards and Guidance Development:
Medical device regulation, policies, guidance and standards are completed, come into effect and represent the immediate outcomes of these activities. In addition, guidance is also provided to manufacturers in order to properly understand the standards set by the Canadian Medical Devices Conformity Assessment Scheme (CMDCAS), The CMDCAS is an accreditation unit of quality systems registrar under which a manufacturer must be registered if it sells class II, III, and IV devices.

2) Process and Review of the Medical Device License Applications:
Manufacturers submit applications for medical devices for licensing and authorization of sale in the marketplace. These license applications are reviewed and assessed for the risk of product failure of a medical device or the risk in its use. The decision to grant a license for a medical device is the output of this activity. As for its immediate outcome, this activity relies on the timeliness and the level of quality in the revision of the license applications.

3) CMDCAS Registrar Accreditation:
The Medical Device Program has the responsibility to recognize the registrars that are accredited for quality systems. The purpose for this activity and the CMDCAS is to ensure that a manufacturer submitting a license application for a medical device is an establishment registered by a quality system registrar. The program acts as a witness to audits which verify compliance to the set standards of quality for establishments manufacturing a medical device. The immediate outcome from these accreditations is an effective application of CMDCAS quality standards.

4) Port Market Evaluation:
This activity is dependent on the retroaction from post market inspections and incident reporting to redefine risk assessments of medical devices in the marketplace. These evaluations include Health Hazard Evaluations and section 39 letters which contribute to intervention strategies as well as enhanced prevention. The direct impact for this activity is a greater industry compliance where regulation, policy, standards and guidelines for the industry's pre-market product development.

5) Consultation & Communication:
Expert correspondence, public advisories and regulatory interpretation comprise this activity where the program draws from external sources to understand and transmit stakeholder issues

surrounding the granting a medical device access to the marketplace. This activity contributes to overall stakeholder awareness and allows for greater transparency in the regulation of medical devices.

6) Compliance:

Inspections of manufacturers, importers and distributors are conducted at the post- market stage to verify that they are complying with the Medical Devices Regulations Compliance, verifications and investigations are also conducted of significant adverse events arising from marketed medical devices. Both "proactive" inspections and "reactive" investigations can lead to enforcement actions. The outputs from these compliance activities are inspection and investigation reports, and the resulting enforcement actions. The compliance function also includes a review of the audit findings from audits conducted by external registrars, which can result in the revoking of a manufacturer's license.

7) Monitoring:

Monitoring of adverse events refers to the collection of information on the safety and therapeutic effectiveness of medical devices in the "real life" marketplace. This builds on the information about safety and therapeutic effectiveness established during the pre-market phase. Once the product is available to a much longer period of time, new information on the safety and therapeutic effectiveness becomes available.

Information on adverse events in Canada comes to Health Canada from two main sources: from industry; and from health care professionals, institutions and other users. The Regulations make it mandatory for manufacturers and importers to report all significant adverse events to Health Canada, thus the quality of data from industry depends on their compliance with the Regulations – an immediate outcome of compliance activities.

Health care professionals are often the first to observe adverse events, but their reporting of these Events is voluntary. They can report adverse events either to manufacturers or directly to Health Canada. Because this reporting is voluntary, the MMDP must undertake activities aimed at promoting better reporting by health care professionals and other users of the medical devices. These activities can be aimed at increasing awareness of the need to report and making it easy for users to report. Adverse events occurring in other countries also provide important information on the safety and effectiveness of medical devices.

The main output from these activities is a database of adverse events occurring in Canada. This is called the Medical Devices System (MDS). There are also outputs that are produced from activities undertaken to promote better reporting. The immediate outcomes are that stakeholders are willing to report adverse events, and that there is timely and high quality reporting of these events.

8) Benefit-risk Assessment:

A large number of adverse events are reported annually to Health Canada. These events are reviewed and analyzed individually and collectively to determine where a medical device, or improper use of that device, poses a significant unknown risk to the health of Canadians. This analysis looks for patterns in reports or complaints that could "signal" a safety concern or a

concern re therapeutic effectiveness that requires some form of action from Health Canada. The immediate outcome from this activity is the timely identification of risks and effectiveness issues.

9) Risk Management:
The risk management activity involves the assessment of "signals" to determine what form the regulatory interventions, if any, is required. These regulatory interventions take the form of directives to manufacturers as to the corrective action they must take. Some examples of Health Canada's directives to industry include recalls, better labeling and better user instructions.

Since Health Canada is reliant on the manufacturer to take corrective action, the immediate outcome from the risk management activity is timely and effective industry response to Health Canada's interventions; in other words problems are resolved quickly and effectively.

10) Risk Communication:
An important role for Health Canada is the communication of safety concerns to health care professionals and the public in a timely manner. The risk information can be communicated to stakeholders in a variety of ways, including WEB site notices, a newsletter, and letters to health care professionals.

There is often some level of risk associated with the use of a medical device, which must be balanced against the health benefits of using that device. The immediate outcome of good risk communication is that the users of medical devices have timely and useful information on risk and on therapeutic effectiveness, and can make informed decisions on what devices to use (or not use) and how to use these devices. A second immediate outcome of effective risk communication is that Health Canada is recognized as the national centre for information on safety and effectiveness. This, in turn, will help stakeholders to know where to go for this information.

11) Policy Research and Strategic Development:
This activity area is actually a collection of activities in support of all activities previously discussed. Some examples of the outputs include: standards and guidelines, advice; automated reporting; automated signal detection; point of use delivery of information; partnerships with therapeutic communities, and international agreements. The outcomes from these activities are increased effectiveness and efficiency of the other activity areas.

From Consulting and Audit Canada
August 31, 2005

SECTION 4

College By-Laws

By-laws

Council of the College creates its By-laws in accordance with the Regulated Health Professions Act, 1991. The By-laws provide the legal framework and foundation for all that the College does including who may stand for election to Council, the information that may appear on the public register, and how conflicts of interest are handled and addressed.

Proposed changes to the By-laws may be subject to a 60-day public consultation, such as changes related to payments and fees, maintenance of the register and professional liability insurance.

The College's current By-laws include five schedules, as follows:

- Schedule 1 - Process for Election of Officers
- Schedule 2 - Rules of Order of the Council
- Schedule 3 - Code of Conduct for Council and Committee Members
- Schedule 4 - Code of Ethics for Dental Technologists
- Schedule 5 – Fees

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College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

COLLEGE OF DENTAL TECHNOLOGISTS OF ONTARIO

BY-LAWS

APPROVED BY COUNCIL - September 25, 2015

REVISION APPROVED BY COUNCIL -	Schedule 5	June 10, 2016
REVISION APPROVED BY COUNCIL -	Schedule 5	July 31, 2017
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BY-LAWS OF THE COLLEGE OF DENTAL TECHNOLOGISTS OF ONTARIO

1. INTERPRETATION

1.01 – Definitions

In these By-Laws, unless otherwise defined or required by the context,

"Act" means the Dental Technology Act, 1991 and includes the regulations made under it;

"Auditor" means the accountant or firm of accountants duly licensed under the Public Accounting Act who have been appointed by Council under article 4.14;

"By-Law" or "By-Laws" means the By-Laws of the College;

"Code" means the Health Professions Procedural Code, which is Schedule 2 of the Regulated Health Professions Act, 1991;

"College" means the College of Dental Technologists of Ontario;

"Committee" means a Committee of the College and includes statutory Committees established under section 10 of the Code, standing Committees, planning groups, a Panel of a Committee and any other Committee established by Council under these By-Laws;

"Council" means the Council established under subsection 5(1) of the Dental Technology Act, 1991;

"Council Member" (sometimes referred to as a "member of Council") means a Member elected to Council or a Public Member appointed to Council;

"Elected Member" means a Member who has been elected to serve on Council from an electoral district;

"Member" means a member of the College;

"Panel" means a panel appointed under article 12.08 or a panel authorized under the Code;

"President" and "Vice-President" mean, respectively, the President and the Vice-President of the College;

"Professional Association" means an organized group of individuals who promote and advocate for the interests of the profession related to dental technology, dentistry, denturism or other dental profession, but does not include a school whose sole purpose is to educate;

"Public Member" means a person appointed by the Lieutenant Governor in Council as described in section 5(1)(b) of the Act;

"Register" means the Register required to be kept pursuant to the Code;

"Registrar" means the Registrar of the College; and

"RHPA" means the Regulated Health Professions Act, 1991 and includes the regulations made under it.

1.02 – Singular and Plural / Masculine and Feminine

In these and all By-Laws of the College, the singular shall include the plural, the plural shall include the singular, the masculine shall include the feminine and the feminine shall include the masculine.

1.03 – Legislative References

Any reference in these By-Laws to a statute, a regulation or a section of a statute or regulation shall be deemed to apply to any re-enactment or amendment of that statute, regulation or section, as the case may be.

1.04 – Consistency with RHPA and Act

All provisions of these By-Laws shall be interpreted in a manner consistent with the RHPA and the Act and where any inconsistency is found to exist, the inconsistent provision shall, where practical, be severed from these By-Laws.

1.05 – Calculating Time

A reference in these and all By-Laws of the College to the number of days between two events means calendar days and excludes the day on which the first event happens and includes the day on which the second event happens.

1.06 – Holidays

A time limit in these and all By-Laws of the College that would otherwise expire on a holiday or a weekend is extended to include the next day that is not a holiday or a weekend.

2. GENERAL

2.01 – Forms

Certificates of registration and other documentation issued by the College shall be in such form as the Registrar shall provide.

3. EXECUTION OF CONTRACTS AND OTHER DOCUMENTS

3.01 – General Signing Authority

Council may appoint any one or more officers or other persons to sign contracts, documents and instruments in writing on behalf of the College, whether generally or in relation to specific contracts, documents or instruments in writing.

3.02 – Definition of Contracts, etc.

The term "contracts", "documents" or "instruments in writing" as used in these By-Laws is intended to include deeds, mortgages, hypothecs, charges, conveyances, transfers and assignments of property, real or personal, movable or immovable, powers of attorney, agreements, releases, receipts and discharges for the payment of money or other obligations, conveyances, transfers and assignments of shares, bonds, debentures or other securities and all paper writings.

3.03 – Summonses

Except where otherwise provided by law, the Registrar may sign summonses and notices on behalf of the College or any Committee.

3.04 – Seal

The seal depicted below is the seal of the College.

3.05 – Use of Seal

The seal of the College shall be affixed to any document that requires the College seal by a person authorized to sign the document on behalf of the College.

4. BANKING AND FINANCE

4.01 – Fiscal Year

The fiscal year of the College shall commence on the first day of September and conclude on the last day of August the following year.

4.02 – Banking

Council shall appoint a Canadian chartered bank (which shall be a Schedule 1 or Schedule 2 bank under the Bank Act (Canada)) for the use of the College which shall be operated, managed and administered by the Registrar in such manner as Council may from time to time direct and by such other persons who may be authorized by Council. All money received shall be deposited in the account or accounts maintained by the College at such bank, without deduction for any purpose whatsoever. The College shall have a petty cash fund for expenditure items where payment by individual cheque is not practical, any such payment not to exceed $200 and such petty cash fund to be operated on an "as needed" basis. Except for payments out of the petty cash fund, all payments by the College shall be made by cheque or by electronic payment drawn on the College's bank account

4.03 – Authorized Signatories for Amounts Less Than $10,000

Subject to article 3.02, all cheques, drafts, notes, or orders for payment of money and all notes and acceptances and bills of exchange in an amount less than $10,000 may be signed by the Registrar alone.

4.04 – Authorized Signatories for Amounts of $10,000 or More

Subject to article 3.02, all cheques, drafts, notes, or orders for payment of money and all notes and acceptances and bills of exchange in an amount of $10,000 or more shall be signed by the Registrar and one of the President, Vice-President or such other person as Council may designate.

4.05 – Avoidance

The Registrar may not make any payment where amounts or orders have been split to avoid the limit on purchases or where due diligence has not been exercised with respect to potential or actual conflicts of interest.

4.06 – Borrowing and Giving of Security

The Registrar, or any one or more officers or employees of the College as Council determines, may, and with the approval by a two-thirds majority affirmative vote of Council members present and voting:

(i) Borrow money on the credit of the College;

(ii) Limit or increase the amount or amounts that may be borrowed;

(iii) Issue, sell or pledge debt obligations of the College, including, but not limited to, bonds, debentures, notes or other liabilities, whether secured or unsecured; and

(iv) Charge, mortgage, hypothecate or pledge all or any of the real or personal property of the College, including book debts, rights, powers, franchises and undertakings, to secure any such securities or any money borrowed, or other debt, or any other obligation or liability of the College.

4.07 – Budget

Council shall approve annually,

(i) An operating budget for the College for each fiscal year; and

(ii) A capital budget for the College for each fiscal year.

4.08 – Expenses

The President, Vice-President and the Registrar may approve purchases or leasing of goods and acquisition of services in accordance with the following:

(i) The Registrar may authorize expenses not exceeding $25,000 if the expenditure has previously been approved as an item in the College budget;

(ii) The Registrar and one of the President, or Vice-President may authorize expenses in excess of $25,000 if the expenditure has previously been approved as an item in the College budget;

(iii) The Registrar may authorize expenses not exceeding $5,000 if the expenditure has not previously been approved as an item in the College budget if the Registrar believes that the expenditure is necessary for the operations of the College; and

(iv) The Executive Committee shall review any proposed expense exceeding $5,000 if the item is not an expenditure in the College budget and make recommendations to Council for approval. If immediate action is required, the Executive Committee may approve the expenditure.

4.09 – Grants

The Executive Committee may negotiate the obtaining of a grant on behalf of the College but such agreements shall be approved by Council before they are finalized unless immediate action is required in which case Council shall be notified of the grant by its next meeting.

4.10 – Investments

Any two of the Registrar, President and Vice-President may invest or re-invest the funds of the College which are not immediately required for the purposes of the College in such manner as Council may, by resolution direct, and, in order to implement such investment or reinvestment, Council may authorize by resolution an officer or officers of the College to carry out such direction.

Without limiting the generality of the foregoing, the funds of the College to be invested as referred to above in this section may be invested in securities issued or guaranteed by:

(i) The Government of Canada;

(ii) The Province of Ontario;

(iii) A corporate bond issued by a corporation with a rating of BBB or higher with the Dominion Bond Rating Service or a rating of four stars or higher with Morningstar Bond Ratings; or

(iv) A Schedule I Canadian chartered bank.

4.11 – Custody of Securities

All securities owned by the College shall be lodged, in the name of the College, with a Canadian chartered bank or a Canadian trust company, or in a safety deposit box, or held in accounts with such brokerage houses as may be authorized by Council. Any such securities and other documents shall be placed in, or removed from, the College's safety deposit box only by two of the President, the Vice-President, and the Registrar

4.12 – Ownership of Securities

All share certificates, bonds, debentures, notes or obligations belonging to the College shall be issued in the name of the College.

4.13 – Indemnification

Every Council Member, Committee member, officer, employee or appointee of the College, including assessors, investigators and inspectors, and each of their heirs, executors and administrators and estate, respectively, shall from time to time and at all times be indemnified and saved harmless out of the funds of the College from and against:

(i) All costs, charges, expenses, awards and damages whatsoever that he or she sustains or incurs in any action, suit or proceeding that is brought, commenced or prosecuted against him or her in respect of any act, deed, matter or thing whatsoever made, done or permitted by him or her in or about the execution of the duties of his or her office; and

(ii) All other reasonable costs, charges, expenses, awards and damages that he or she sustains or incurs in or about or in relation to the affairs of the College;

except such costs, charges, expenses, awards and damages as are occasioned by his or her own wilful neglect or default. Where the person is a commercial service provider (e.g., a private investigator hired to conduct an investigation), the College has discretion as to whether or not to provide indemnity.

4.14 – Appointment of Auditor

Council shall appoint an accountant or a firm of accountants licensed under the Public Accounting Act to audit the accounts of the College and to prepare financial statements for each fiscal year.

4.15 – Term of Office

The Auditor shall remain in office until removed by Council.

4.16 – Notice to Auditors

The Registrar shall give notice of every appointment and re-appointment of an auditor to the auditor in writing promptly after the appointment or re-appointment is made, together with a copy of these By-Laws.

4.17 – Examinations by Auditors

The auditor shall make such examinations as will enable them to report to Council as required by law and under these By-Laws. Without limiting the generality of the foregoing, the auditor shall report to the Executive Committee at its last meeting before Council meeting at which the financial statements of the College are to be submitted. The auditor of the College shall report in writing to Council at the meeting at which the financial statements of the College are to be submitted and shall state in the report whether, in their opinion, the financial statements present fairly the financial position of the College and the results of its operations for the period under review in accordance with Canadian accounting standards for not-for-profit organizations.

4.18 – Access

The College's auditors shall be given a right of access at all reasonable times to all records, documents, books, accounts and vouchers of the College and shall be entitled to require from Council Members and other officers and employees of the College such information as in their opinion, giving due weight to the principle of privacy of personal information, is necessary to enable them to report as required by law and under this By-Law.

4.19 – Attendance at Meetings

The College's auditors shall be entitled to attend any meeting of Council and to be heard at any such meeting at which their representative is in attendance on any part of the business of the meeting that concerns the auditors or the financial statements of the College. The Registrar shall send a notice of every meeting of Council to the College's auditors in sufficient time so as to allow the College's auditors to arrange for representation at such meeting.

4.20 – Audited Financial Statements and Report

The audited financial statements of the College, together with a signed and certified copy of the Auditor's report, shall be presented annually to Council and provided to the Minister of Health and Long-Term Care.

4.21 – Deadline for Report

The report of the Auditor shall be prepared within 120 days of the close of the fiscal year for presentation to Council.

5. OFFICERS, THE REGISTRAR AND OTHER REPRESENTATIVES – GENERAL

5.01 – Officers of the College

The officers of the College shall be the President, Vice-President and such other officers as Council may determine.

5.02 – Term of Office

The term of office for each officer of the College shall commence immediately following their election as an officer and shall continue until the next election for officers, approximately one year later.

6. ELECTION OF OFFICERS

6.01 – Eligibility for Nomination

Only a member of Council is eligible for nomination or election as an officer of the College.

6.02 - Election Procedure

At the first regular Council meeting after the elections for Elected Members, Council shall elect by secret ballot from among those members of Council eligible for election, the President, Vice-President and any other officer positions, in accordance with these By-Laws and the "Process for Election of Officers" set out in Schedule 1.

6.03 – Removal of President or Vice-President

The President and/or Vice-President may be removed from office by a resolution adopted by not less than two-thirds of Council Members present and voting subject to the following criteria:

(i) The President and/or Vice-President as the case maybe has been given advance notice of the resolution consistent with the notice period required for Council meetings;

(ii) The resolution is presented at a Council meeting;

(iii) The Registrar shall preside over the resolution;

(iv) The vote regarding this resolution shall be taken by secret ballot;

(v) Following the tally of the vote and the report to Council the Registrar shall ensure that the ballots are destroyed.

6.04 – Filling Vacancies (President)

In the event that the President is removed from office, resigns or dies or the position of President becomes vacant for any reason, the Vice President shall become the President for the remaining term of the office and the office of the Vice-President shall become vacant.

6.05 – Filling Vacancies (Vice-President)

In the event that the Vice-President is removed from office, resigns or dies or the position of Vice-President becomes vacant for any reason, Council shall elect a new Vice-President to hold office for the remainder of the term.

7. DUTIES OF OFFICERS

7.01 – Duties of the President

The President shall:

(i) If present, preside as Chair at all meetings of Council unless the President designates another Council Member as alternate Chair for all or any portion of the meeting, but Council approval is required to designate a person not on Council to act as a non-voting Chair;

(ii) Serve as Chair of the Executive Committee;

(iii) Perform those duties assigned to the President in these By-Laws; and

(iv) Perform all duties and responsibilities pertaining to his or her office and such other duties and responsibilities as may be decided by Council.

7.02 – Duties of the Vice-President

The Vice-President shall:

(i) Perform the duties of the President in the event that the President is unable to perform those duties;

(ii) Perform those duties assigned to the Vice-President in these By-Laws;

(iii) Serve on the Executive Committee; and

(iv) Perform all duties and responsibilities pertaining to his or her office and such other duties and responsibilities as may be decided by Council.

7.03 – Duties of Other Officers

Any other officer of the College shall, unless Council designates otherwise:

(i) Serve on the Executive Committee; and

(ii) Perform all duties and responsibilities as may be decided by Council.

8. THE REGISTRAR

8.01 – Appointment of Registrar

The Registrar shall be appointed by Council.

8.02 – Duties of the Registrar

The Registrar shall be the Chief Executive Officer of the College and shall have such duties and responsibilities as are conferred by the Act, the RHPA, these By-Laws and the policies of the College as well as such duties and responsibilities assigned to the position by Council.

8.03 – Acting Registrar

Where the Registrar is absent and there is no Deputy Registrar available or where the office of the Registrar becomes vacant, the Executive Committee or Council shall appoint an Acting Registrar until a Registrar is appointed.

9. COUNCIL AND INDEMNITY

9.01 – Authority of Council

Council shall perform the functions assigned to it under the Act and the Code.

9.02 – Honoraria and Expenses

The amount payable to members of Council who are Members for attendance at, travel to and preparation for the transaction of College business, shall be the amounts set by the resolution of Council. The College shall publish the amounts on the College's website.

9.03 – Composition of Council

Council shall be composed of seven Elected Members and at least five and no more than six Public Members.

10. ELECTION OF COUNCIL MEMBERS

10.01 – Electoral Districts

The following electoral districts are established for the purposes of the election of Elected Members (with necessary modifications by the Registrar to ensure that the entire province is covered and that there is no overlap of districts).

(a) Electoral District 1, the Central District, being composed of Toronto and Peel;

(b) Electoral District 2, the Western District, being composed of Bruce, Grey, Elgin, Essex, Huron, Chatham-Kent, Lambton, Middlesex, Oxford, Perth, Brant, Wellington, Dufferin, Haldimand, Norfolk, Hamilton, Halton, Niagara and Waterloo, and the Territorial Districts of Rainy River, Thunder Bay, Kenora, Algoma, Sudbury and Manitoulin; and

(c) Electoral District 3, the Eastern District, being composed of York, Durham, Ottawa, Simcoe, Northumberland, Peterborough, Prince Edward, Kawartha Lakes, Haliburton, Stormont, Dundas and Glengarry, Prescott and Russell, Renfrew, Hastings, Frontenac, Lennox and Addington, Lanark, and Leeds and Grenville and the Territorial Districts of Cochrane, Muskoka, Parry Sound, Nipissing and Timiskaming.

10.02 – Election Date and Term

Elections shall be held in November in the year before the year in which the term of office of the Elected Members of that electoral district expires.

10.03 – Term of Office

(i) The term of office of an Elected Member is three years. The serving Elected Members shall continue in office until their successors take office at the first regular meeting of Council in the calendar year following the election or until he or she resigns his or her office or is removed from Council, or until such other time designated by Council, whichever occurs first.

(ii) A Member may be elected for more than one term but no Member who is elected to serve on Council may be an Elected Member for more than nine consecutive years.

(iii) An Elected Member who has served for nine consecutive years is not eligible for election for a period of 12 consecutive months from the termination of his or her office.

10.04 – Number of Members Elected

For each electoral district referred to in column 1 of the following table, there shall be elected to Council the number of Members set out opposite in column 2.

Column 1	Column 2
Electoral District	Number of Members
1 Central	3
2 Western	2
3 Eastern	2

10.05 – Eligibility for Election

A Member is eligible for election to Council if the Member has been nominated in accordance with these By-Laws, has completed and returned the conflict of interest questionnaire and if, on the deadline for the receipt of nominations and up to and including the date of the election,

(i) The Member resides in Ontario;

(ii) The Member holds a certificate of registration in the General Class;

(iii) The Member is engaged in the practice of dental technology in the electoral district in which he or she is nominated,

(iv) Or if the Member is not engaged in the practice of dental technology, the district for which he or she is nominated is the location of the Member's principal residence;

(v) The Member is not nominated in more than one district;

(vi) The Member is not in default of payment of any fees to the College;

(vii) The Member is not the subject of any disciplinary, incompetency or incapacity proceeding;

(viii) The Member has not been the subject of any professional misconduct, incompetence or incapacity finding in the preceding three years;

(ix) The Member's certificate of registration is not subject to a term, condition or limitation imposed by the College;

(x) A period of six years has elapsed since the Member complied with all aspects of an order imposed by the Discipline or Fitness to Practice Committee;

(xi) The Member's certificate of registration has not been revoked or suspended, other than for non-payment of fees, in the six years preceding the date of nomination;

(xii) The Member has not been disqualified from Council or a Committee within the preceding three years;

(xiii) The Member has agreed to resign and does, before taking office, any position such as director, owner, board member, officer or employee that the Member holds with a Professional Association;

(xiv) The Member is not a member of a council of any other College regulated under the RHPA;

(xv) The Member is not currently and has not been for the previous year an employee of the College;

(xvi) The Member does not have a conflict of interest to serve as a member of Council or has agreed to remove any such conflict of interest before taking office; and

(xvii) The Member is not in any default of returning any required form or information to the College.

10.06 – Eligibility to Vote

A Member is eligible to vote in an election for members of Council if, on the day of the election, the Member

(i) Holds a certificate of registration;

(ii) 21 days prior to the election practices the profession or, if the Member does not practice the profession, his or her principal place of residence, in the electoral district for which an election is being held;

(iv) Is not in default of any fees or other amounts owed to the College; and

(v) Is not in default of returning any required form or information to the College.

10.07 – Disputes Decided by the Registrar

Any disputes regarding a Member's eligibility to vote in an election shall be decided by the Registrar.

10.08 – Notice of Election and Nominations

At least 60 days before the date of an election, the Registrar shall notify every Member of the date of the election and of the nomination procedure, including the deadline for submitting nominations to the College.

10.09 – Nomination Deadline

The nomination of a candidate for election as a member of Council shall be in writing and shall be received by the Registrar at least 40 days before the date of the election.

10.10 – Signed Nominations

The nomination shall be signed by the nominator. When the nomination is made by a Member other than the nominee, the nominee shall also sign the nomination as a signal of his or her consent to the nomination. A Member may only sign one nomination form.

10.11 – Confirmation of Eligibility

The Registrar shall request every nominee to confirm his or her eligibility for election to Council in writing and any nominee who fails to provide such confirmation in the manner and by the deadline set by the Registrar shall not be eligible for election.

10.12 – Conflict of Interest Questionnaire

The Registrar shall request every nominee to complete and return a conflict of interest questionnaire and any nominee who fails to complete and return the questionnaire by the deadline set by the Registrar and in a form acceptable to the Registrar shall not be eligible for election.

10.13 – Personal Statement

The Registrar shall invite every nominee to provide a biography and personal statement by the deadline established by the Registrar, and any biography and personal statement that is not submitted by the deadline set by the Registrar and in the form acceptable to the Registrar, shall not be included with the materials sent to Members under article 10.18.

10.14 – Withdrawal of Nominations

A candidate may withdraw from an election by giving notice, in writing, to the Registrar. Upon receiving written notice of a candidate's withdrawal from the election, the Registrar shall make reasonable efforts to remove the name of the candidate from the ballot (or equivalent if voting is done electronically) and, if the Registrar is unable to remove the name of the candidate from the ballot (or equivalent if voting is done electronically) in a sufficiently timely manner, the Registrar shall make reasonable efforts to notify the Members eligible to vote that the candidate has withdrawn from the election.

10.15 – Acclamation

If, following the deadline for the return of the conflict of interest questionnaire and the written confirmation of eligibility, the Registrar determines that the number of eligible candidates nominated for an electoral district is less than or equal to the number of members of Council to be elected in that district, the Registrar shall declare those candidates who are eligible for election to be elected by acclamation and shall notify the candidates and the membership of this result in the manner the Registrar deems most expedient and practical.

10.16 – Insufficient Number of Candidates

If the number of eligible candidates is less than the number of members of Council to be elected in that district, after declaring an acclamation pursuant to article 10.15, a vacancy (or vacancies) shall be deemed to exist and the Registrar shall hold a by-election in accordance with article 10.36 of these By-Laws.

10.17 – Registrar's Electoral Duties

The Registrar shall supervise and administer the election of candidates and, without limiting the generality of the above, the Registrar may, subject to these By-Laws,

(i) Appoint returning officers and scrutineers;

(ii) Establish procedures and any necessary deadlines including procedures and deadlines relating to the receipt of nominations, biographies and personal statements and ballots (or equivalent if voting is done electronically);

(iii) Establish procedures for the opening and counting of ballots (or equivalent if voting is done electronically);

(iv) Provide for the notification of the results of the election to all candidates and Members;

(v) Provide for the destruction of ballots (or equivalent if voting is done electronically) following an election;

(vi) In exceptional circumstances, modify any time period respecting elections as the Registrar considers necessary to compensate for the exceptional circumstances; and

(vii) Do anything else that the Registrar deems necessary and appropriate to ensure that the election is fair and effective.

10.18 – Voting Process

No later than 30 days before the date of an election, the Registrar shall send every Member eligible to vote in the election a list of the eligible candidates, the biography and personal statement of every eligible candidate who has submitted one by the deadline established by the Registrar and in the form acceptable to the Registrar, a ballot (or equivalent if voting is done electronically) and an explanation of the voting process.

10.19 – Ballot Verification

Ballots (or equivalent if voting is done electronically) must be received in the manner specified at or before the date and time specified for the election in order to be counted in the vote.

10.20 – Number of Votes Cast

A Member may cast as many votes on a ballot (or equivalent if voting is done electronically) in an election of Members to Council as there are Members to be elected from that electoral district, but shall not cast more than one vote for any candidate.

10.21 – Results

As soon as practicable after the ballots (or equivalent if voting is done electronically) have been counted, the Registrar shall advise the membership of the results of the election and shall advise each eligible candidate of the results of the election, the number of votes he or she received and the candidate's right to request a recount in accordance with article 10.23.

10.22 – Tie Votes

In the event that a winner cannot be declared because two or more candidates have received the same number of votes, the Registrar shall break the tie by lot.

10.23 – Request for Recount

A candidate may require a recount by delivering a written request to the Registrar no more than seven days after the election date and paying the fee specified in these By-Laws.

10.24 – Manner of Recount

The Registrar shall hold a recount no more than 15 days after receiving a written request and the recount shall be conducted in as transparent a manner as the voting system reasonably permits.

10.25 – Change in Results

In the event that the recount changes the election outcome, the candidate requiring the recount is entitled to reimbursement of the fee described in article 10.23.

10.26 – Proxy Voting

A Member cannot vote in an election by means of a proxy.

10.27 – Referral of Disputes to Executive Committee

If the Executive Committee is of the opinion that there are reasonable grounds to doubt or dispute the validity of the election of any member of Council it shall initiate an inquiry.

10.28 – Report and Recommendation of Executive Committee

Where the Executive Committee initiates an inquiry under article 10.27, it shall hold an inquiry into the validity of the election of the member of Council in question and, following the inquiry, shall make a report and recommendation to Council.

10.29 – Options Available to Council

Council may, after reviewing the report and recommendation of the Executive Committee and subject to article 10.24, do one of the following:

(i) Declare the election result in question to be valid; or

(ii) Declare the election result in question to be invalid; and either

  (a) Declare another candidate to have been elected; or

  (b) Direct that another election be held.

10.30 – Minor Irregularities Not Fatal

Council shall not declare an election result to be invalid solely on the basis of a minor irregularity regarding the requirements of these By-Laws or a procedure established by the Registrar.

10.31 – Disqualification of Elected Members

Council shall disqualify an Elected Member, if the Member,

(i) Resigns from Council;

(ii) Ceases to hold a certificate of registration in the General Class;

(iii) Ceases to reside in Ontario;

(iv) Is in default of payment of any fee prescribed by these By-Laws for a period of more than 60 days;

(v) Is found to have committed professional misconduct or to be incompetent by a Panel of the Discipline Committee;

(vi) Is found to be incapacitated by a Panel of the Fitness to Practice Committee;

(vii) Retains or obtains a responsible position such as director, owner, board member or officer, or retains employment or becomes an employee of any Professional Association (however, for greater certainty, a Council Member shall not be disqualified by reason of serving on an association or organization to which he or she has been appointed by Council as a representative of the College);

(viii) Becomes a member of a council of any other College regulated under the RHPA;

(ix) Fails, without reasonable cause, to attend two or more consecutive meetings of Council;

(x) Fails, without reasonable cause, to attend two or more consecutive meetings of a Committee;

(xi) Fails, without reasonable cause, to attend a hearing or a review by a panel for which he or she has been selected;

(xii) Is found guilty of a federal or provincial offence which, in the opinion of Council, is of such a nature that it warrants disqualification;

(xiii) Breaches section 36 of the RHPA which, in the opinion of Council, is of such a nature that warrants disqualification;

(xiv) Has breached the conflict of interest provisions of these By-Laws which, in the opinion of Council, is of such a nature that warrants disqualification; or

(xv) Fails, in the opinion of Council, to discharge properly or honestly any office to which he or she has been elected or appointed.

10.32 – Request for Removal of a Public Member

Council may request the removal of a Public Member by the Public Appointments Secretariat if the Public Member:

(i) Resigns from Council;

(ii) Ceases to reside in Ontario;

(iii) Retains or obtains a responsible position such as director, owner, board member or officer, or retains employment or becomes an employee of any Professional Association (however, for greater certainty, a Council Member shall not be disqualified by reason of serving on an association or organization to which he or she has been appointed by Council as a representative of the College);

(iv) Becomes a member of a council of any other College regulated under the RHPA;

(v) Fails, without reasonable cause, to attend two or more consecutive meetings of Council;

(vi) Fails, without reasonable cause, to attend two or more consecutive meetings of a Committee;

(vii) Fails, without reasonable cause, to attend a hearing or a review by a panel for which he or she has been selected;

(viii) Is convicted of a federal or provincial offence which, in the opinion of Council, is of such a nature that it warrants disqualification;

(ix) Breaches section 36 of the RHPA which, in the opinion of Council, is of such a nature that warrants disqualification;

(x) Has breached the conflict of interest provisions of these By-Laws which, in the opinion of Council, is of such a nature that warrants disqualification; or

(xi) Fails, in the opinion of Council, to discharge properly or honestly any office to which he or she has been elected or appointed.

10.33 – Registrar's Receipt of Information

If the Registrar receives information which suggests that an Elected Member meets one or more of the criteria for disqualification set out in article 10.31, other than paragraphs (i) and (ii) in which case Council shall immediately disqualify the Elected Member, the Registrar shall follow the procedure set out in article 15.02. Where the Registrar has reasonable and probable grounds to believe that a member of Council meets the criteria for disqualification and no one has made a complaint in writing, the Registrar shall make a complaint in writing.

10.34 – Effect of Disqualification

An Elected Member who is disqualified by Council ceases to be a member of Council and ceases to be a member of any Committee of which he or she is a member.

10.35 – Filling of Vacancies

If the seat of an Elected Member becomes vacant less than 12 months before the expiry of the member's term of office, Council may,

(i) Leave the seat vacant;

(ii) Appoint a Member who meets the criteria for eligibility for election set out in article 10.05; or

(iii) Direct the Registrar to hold a by-election in accordance with these By-Laws.

10.36 – By-Election

If the seat of an Elected Member becomes vacant more than 12 months before the expiry of the member's term of office, Council shall direct the Registrar to hold a by-election in accordance with these By-Laws.

10.37 – Manner of Holding By-Elections

A by-election shall be held in the same manner and shall be subject to the same criteria and processes as a regular election, subject to any necessary modifications.

10.38 – Term of Office for Members Filling Vacancies

The term of office of a person appointed or elected to fill a vacancy shall commence on the day of the appointment or election, as the case may be, and shall continue until the date that the former Elected Member's term would have expired.

11. COUNCIL MEETINGS

11.01 – Location and Frequency of Meetings

(i) Meetings of Council may be held at the College's offices or at any other place in Ontario as Council or Registrar may determine.

(ii) A Council meeting shall, wherever possible, be held at a place and on a date set in advance and shall occur at regular intervals and at such frequency as necessary for Council to conduct its business but shall, in any event, occur at least three times per year.

11.02 – Notice of Meetings

The Registrar shall notify Council Members of the meeting, setting out the date, time and place of the meeting and the general nature of the business to be transacted at least 14 days before the date of the meeting.

11.03 – Waiver of Notice

A Council Member may, at any time, waive the requirement for the giving of notice of a meeting.

11.04 – Business at Meetings

Council may only consider or transact at a regular meeting:

(i) Matters on the agenda;

(ii) Matters brought by the Executive Committee or the Registrar;

(iii) Recommendations and Reports by Committees;

(iv) Matters for which notice was given by a member of Council at the preceding meeting or where written notice has been given at least 30 days in advance of the meeting; and

(v) Such other matters, not included on the agenda, as the majority of members in attendance determine to be of an urgent nature.

11.05 – Chair

The President acts as Chair of Council unless the President has designated another Council Member as an alternate Chair for all or any portion of the meeting; but Council approval is required to designate a person not on Council to act as a non-voting Chair. In the event that the President is absent the Vice-President shall act as Chair and in the absence of both the President and the Vice-President, Council shall elect, from amongst their number, a Council Member to serve as Chair at that meeting.

11.06 – Manner of Meeting

Any meeting of Council, other than a hearing that must be held in person, may be conducted by means of teleconference or any other means that permits all persons participating in the meeting to communicate with each other simultaneously and instantaneously (including audio or video conferencing) and persons participating in the meeting by such means are deemed to be present at the meeting.

11.07 – Quorum

Unless specifically provided for otherwise under the Act, the RHPA or these By-Laws, a simple majority of Council Members shall constitute a quorum for the purpose of a meeting.

11.08 – Simple Majority

Unless specifically provided for otherwise under the Act, the RHPA, or these By-Laws, every motion which properly comes before Council shall be decided by a simple majority of the votes cast at the meeting by Council Members present.

11.09 – Chair Vote

If the Chair is a member of Council, he or she may vote.

11.10 – Tie Votes

In the event of a tie vote, the motion is defeated.

11.11 – Resolution

A resolution signed by all members of Council, including a resolution where all or some of the members of Council have signed by facsimile or email, is valid and effective as if passed at a meeting of Council held for the purpose.

11.12 – Rules

Except where inconsistent with the RHPA, the Act, or these By-Laws, the rules of order for meetings of Council are set out in Schedule 2.

11.13 – Minutes

The Registrar shall ensure that accurate minutes of all Council meetings are recorded, approved and maintained at the College office.

11.14 – Adjournments

Whether or not a quorum is present, the presiding Chair may, with the consent of the majority of Council Members present and voting, adjourn any properly called meeting to a fixed time and place, and any matter brought before the original meeting may be considered and transacted at a reconvened meeting provided that a quorum is present.

11.15 – Calling Special Meetings

The President or the majority of the Executive Committee shall call and convene a special meeting of Council:

(i) At his or her or its discretion;

(ii) Upon receipt of the written request of any seven members of Council; or

(iii) If a request is received from the Executive Committee under article 15.02.

11.16 – Notice of Special Meetings

The Registrar shall notify Council Members of the special meeting, setting out the date, time and place of the meeting and the general nature of the business to be transacted, at least five (5) days prior to the date of the meeting. Council may only consider or transact at a special meeting those items of business contained in the notice.

12. COMMITTEES – GENERAL

12.01 – Duties and Responsibilities

The duties and responsibilities of each Committee shall be those set out in the RHPA, the Act, these By-Laws and the Terms of Reference for that Committee, as approved by Council, where applicable.

12.02 – Creation of Additional Non-Statutory Committees

In addition to the statutory Committees required by the Code, Council may establish and maintain any additional standing or special Committees, including sub-Committees, ad-hoc Committees, planning groups and Panels, deemed necessary for the effective and efficient function of the College.

12.03 – Composition of Committees

Unless stated otherwise in the Code or these By-Laws, every Committee of the College shall be composed of at least three persons and shall include at least one Elected Member and at least one Public Member. In appointing persons to a Non-Statutory Committee, Council may appoint persons who are neither Council Members nor members of the College unless the Code or these By-Laws provide otherwise.

12.04 – Ratios

Unless stated otherwise in the Code or these By-Laws, the number of Committee members who are also Members shall, wherever possible, exceed the number of Committee members who are Public Members.

12.05 – Filling Vacancies

Subject to articles 6.03 and 6.04, where a vacancy occurs in respect of the membership by a Council Member on a Statutory Committee, the Executive Committee shall, if necessary for a Committee to achieve its quorum or if necessary to give effect to the provisions of the Code, appoint Council members to fill any vacancies. Every Council Member of a Committee so appointed shall continue to be a member of such Committee until confirmed or replaced, provided that any such appointment shall not extend beyond the then remaining term of Council Member being replaced. Where a Council Member vacancy has occurred on any Committee, Council shall, at its next meeting, fill such vacancy from among the remaining Council Members or, if appropriate, confirm the replacement of Council member who was installed as a replacement by the Executive Committee as contemplated above.

12.06 – Vacancies

Despite anything in these By-Laws, a Committee is properly constituted despite any vacancy so long as there are sufficient members to form a quorum of the Committee or a Panel of the Committee.

12.07 – Quorum

The quorum of any Committee is three members unless otherwise provided in the Code or these By-Laws or unless the Committee is composed of only three members, in which case, the quorum for such a Committee shall be two members.

12.08 – Panels

A Committee may meet in Panels selected by the Chair of the Committee. In addition, Council may establish and appoint standing Panels of a Committee.

12.09 – Honoraria and Expenses

The amount payable to members of Committees who are Members for attendance at, travel to and preparation for the transaction of College business, shall be the amounts set by the resolution of Council. The College shall publish the amounts on the College's website.

13. SPECIFIC COMPOSITION AND SELECTION OF COMMITTEES

13.01 – Executive Committee

(1) The Executive Committee shall be composed of:

(i) Three members who shall be Elected Members; and

(ii) Two members who shall be Public Members.

(2) The President and Vice-President shall be members of the Executive Committee.

13.02 – Registration Committee

The Registration Committee shall be composed of:

(i) At least two Elected Members; and

(ii) At least one Public Member.

13.03 – Inquiries, Complaints and Reports Committee

The Inquiries, Complaints and Reports Committee shall be composed of:

(i) At least two Elected Members;

(ii) At least one Public Member; and

(iii) At least one Member who is not a member of Council.

13.04 – Discipline Committee

The Discipline Committee shall be composed of:

(i) At least two Elected Members;

(ii) At least two Public Members; and

(iii) At least two Members who are not members of Council.

13.05 – Fitness to Practise Committee

The Fitness to Practise Committee shall be composed of:

(i) At least two Elected Members; and

(ii) At least one Public Member.

13.06 – Quality Assurance Committee

The Quality Assurance Committee shall be composed of:

(i) At least one Elected Member;

(ii) At least one Public Member; and

(iii) At least one Member who is not a member of Council.

13.07 – Patient Relations Committee

The Patient Relations Committee shall be composed of:

(i) At least one Elected Member; and

(ii) At least two Public Members.

13.08 – Appointment of Committee Members

Unless otherwise stated in these By-Laws, every Committee member shall be appointed by Council, with the exception of the Executive Committee, whose members shall be elected

13.09 – Appointment of Non-Council Individuals

Subject to any specific composition requirements in these By-Laws, Council may, at its discretion, appoint individuals who are not members of Council to any Committee.

13.10 – Term of Office of Committee Members

The term of office of a Committee member shall commence immediately after the appointment and in the case of Council members shall continue for approximately one year; and in the case of Committee members who are not members of Council shall continue for approximately two years.

13.11 – Chairs

Unless stated otherwise in these By-Laws, the Chair or Chairs of each Committee shall be a member of Council and shall be selected by the members of the Committee, failing which they may be appointed by Council. Council may, appoint or remove the Chair of a Committee by resolution. Appointed members of sub-Committees, ad-hoc Committees, planning groups who are not Council members may be appointed as Chairs of those Committees.

13.12 – Decisions Regarding Appointments

In making an appointment under article 13.08 or 13.09, Council shall take into consideration the location of practice, if applicable, as well as the experience, expertise, availability and other qualifications and characteristics of the Member or other person, in order to complement the attributes of the other Committee members.

13.13 – Eligibility for Appointment

A Member is eligible for appointment to a Committee if, on the date of the appointment,

(i) The Members resides in Ontario;

(ii) The Member holds a certificate of registration in the General Class;

(iii) The Member is not in default of payment of any fees prescribed to the College;

(iv) The Member is not the subject of any disciplinary or incapacity proceeding;

(v) The Member has not been the subject of any professional misconduct, incompetence or incapacity finding in the preceding three years;

(vi) The Member's certificate of registration has not been revoked or suspended in the preceding three years for any reason;

(vii) The Member's certificate of registration is not subject to a term, condition, or limitation imposed by the Discipline Committee or the Fitness to Practice Committee;

(viii) The Member has agreed to and does resign, before taking office, any position such as director, owner, board member, officer or Employee that the Member holds with a Professional Association;

(ix) The Member has not been disqualified from Council or a Committee within the preceding three years;

(x) The Member is not a member of a council of any other College regulated under the RHPA;

(xi) The Member is not currently and has not been for the previous year an employee of the College;

(xii) The Member is not in any default of returning any required form or information to the College; and

(xiii) The Member does not have a conflict of interest to serve as a Committee member or has agreed to remove any such conflict of interest before sitting on the Committee or Panel.

13.14 – Removal of Committee Members

Despite the other provisions of these By-Laws that permit the removal of a Committee member in specific circumstances, Council may also remove a member of a Committee at its discretion, upon a resolution passed by a two-thirds majority affirmative vote of Council members present and voting.

14. COMMITTEE MEETINGS

14.01 – Location and Frequency of Meetings

Committee meetings shall, wherever possible, be held at a place and on a date set in advance and shall occur at regular intervals and at such frequency as necessary for the Committee to conduct its business.

14.02 – Manner of Meeting

Any meeting of a Committee may be conducted by means of teleconference or any other means that permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously (including audio or video conferencing) and persons participating in the meeting by such means are deemed to be present at the meeting.

14.03 – Chair

In the event that the Chair of the Committee is unable or unwilling to preside at the meeting, the Committee members shall select, from amongst their number, a Committee member to serve as Chair for the purposes of that meeting.

14.04 – Minutes

The Chair of each Committee shall ensure that accurate minutes of all Committee meetings and proceedings are recorded, approved and maintained at the College office.

14.05 – Simple Majority

Unless specifically provided for otherwise under the Code or these By-Laws, every motion which properly comes before a Committee shall be decided by a simple majority of the votes cast at the meeting by the Committee members present.

14.06 – Chair Vote

If the Chair is a member of the Committee, he or she may vote.

14.07 – Tie Votes

In the event of a tie vote, the motion is defeated.

15. DUTIES OF COUNCIL AND COMMITTEE MEMBERS

15.01 – Expectations and Duties

Every member of Council and every Committee member shall, in the performance of his or her duties:

(i) Familiarize himself or herself with the Act, the RHPA, these By-Laws and any policies of the College;

(ii) Familiarize himself or herself with any other records, documents and guidelines that may be necessary for the performance of his or her duties;

(iii) Ccomply with the provisions of the Act, the RHPA, these By-Laws, any policies of the College and rules that are adopted by Council;

(iv) Regularly attend meetings on time and participate constructively in discussions;

(v) Ensure that confidential matters coming to his or her attention as a member of Council or as a member of a Committee are not disclosed by him or her, except as required for the performance of his or her duties or as permitted by the RHPA;

(vi) Conduct himself or herself in an appropriate manner with College staff, other members of Council or members of the Committees, Members and members of the public;

(vii) Comply with the College's Code of Conduct, which is attached as Schedule 3 to these By-Laws and forms part of these By-Laws;

(viii) Avoid, or where that is not possible, declare all conflicts of interest in the manner set out in these By-Law;

(ix) Step down from his or her positions on Council and on Committees in the event that allegations regarding his or her conduct, competence or capacity are referred to the Discipline Committee or Fitness to Practice Committee until such time as the matter has been finally disposed of;

(x) Publicly supports and does not speak against any decision of Council or, if the matter is not going to be considered by Council, any decision of College Committees; and

(xi) Perform the duties associated with his or her position conscientiously and with due care and diligence in a manner that serves and protects the public interest.

15.02 – Removal of Council or Committee Member

The following procedure shall be followed in the event that a member of Council or Committee member is alleged to have contravened the duties of a member of Council or Committee member or meets the criteria for disqualification set out in article 10.31 other than paragraphs (i) and (ii).

(i) A written complaint shall be filed with the Registrar. A complaint can be made by a member of the public, a Council or Committee member or the Registrar. If a member of Council or a Committee receives such a complaint, he or she shall immediately file it with the Registrar.

(ii) The Registrar shall report the complaint to the President or the Vice-President who shall bring the complaint to the Executive Committee if he or she believes that the complaint may warrant formal action. If the Executive Committee is unable to address the complaint it may appoint another Committee to fulfill its duties under this article.

(iii) If the Executive Committee or any Committee appointed by the Executive Committee, after any investigation it deems appropriate, believes that the complaint may warrant formal action, it shall call a meeting of Council. Council shall determine whether there has been a breach of duties or whether the criteria for disqualification have been met and, if so, impose the appropriate sanction. The appropriate sanction can include one or more of the following:

(a) Censure of the member verbally or in writing,

(b) Removal of the member from any Committee on which he or she serves,

(c) Disqualification of an Elected Member from Council, or a report to the Public Appointments Secretariat requesting removal of the Public Member concerned from Council.

(iv) A decision finding that there has been a breach of duties or that a Council or Committee member meets the criteria for disqualification set out in article 10.31, and a decision to impose a particular sanction must be approved by a two-thirds majority affirmative vote of e Council Members present and voting.

(v) The Council or Committee member whose conduct is the subject of concern shall not take part in the deliberation or vote, however, he or she shall be given a reasonable opportunity to respond to the allegation

16. CONFLICTS OF INTEREST

16.01 – Duty to Avoid Conflicts of Interest

All Council and Committee members have a duty to carry out their responsibilities in a manner that serves and protects the interest of the public. As such, they must not engage in any activities or in decision-making concerning any matters where they have a direct or indirect personal or financial interest. All Council and Committee members have a duty to uphold and further the intent of the Act to regulate the practice and profession of dental technology in Ontario, and not to represent the views of advocacy or special interest groups.

16.02 – Recognition of Conflict

Council and Committee members recognize that a conflict of interest or an appearance of a conflict of interest by a member of Council or its Committees:

(i) Could bring discredit to the College;

(ii) Could amount to a breach of the fiduciary obligation of the person to the College; and

(iii) Could create liability for either the College or the person involved or both.

16.03 – Conflicts Relating to Involvement with a Professional Association

A member of Council or a Committee member shall be perceived to have conflict of interest in a matter and should not serve on Council or its Committees at all if he or she holds a responsible position such as director, owner, board member or officer in or is an employee of any Professional Association.

16.04 – Conflicts Relating to Position in Other Organizations

A member of Council or a Committee member would be perceived to have conflict of interest in a matter and should refrain from participating in any discussion or voting if he or she holds a responsible position such as director, owner, board member or officer in or is an employee of another organization where his or her duties may be seen by a reasonable person as influencing his or her judgment in the matter under consideration by Council or its Committees.

16.05 – Declaration Forms

Upon appointment or election, and annually thereafter if requested, every Council and Committee member shall fully complete and deliver to the Registrar a form, available from the Registrar, declaring his or her current and recent affiliations with Professional Associations and other organizations to facilitate compliance with the above provisions.

16.06 – Interests of Related Persons

For the purposes of these By-Laws, the direct or indirect financial interest of a parent, spouse, child or sibling of a Council or Committee member are interpreted to be the interests of Council or Committee member. In addition, each Council or Committee member shall declare any direct or indirect personal interest of a parent, spouse, child or sibling so that an informed and considered discussion can be held as to whether the personal interest constitutes a conflict of interest. Here, the term "spouse" includes a common-law spouse and a same-sex partner of the person.

16.07 – Where a Conflict May Exist

Where a Council or Committee member believes that he or she may have a conflict of interest in any matter which is the subject of deliberation or action by Council or its Committees, he or she shall:

(i) Consult, as needed, with the President, the Registrar and legal counsel and, if there is any doubt about whether he or she may have or be perceived to have a conflict, prior to any consideration of the matter, declare the potential conflict to Council or the Committee and accept Council's or the Committee's direction as to whether there is an appearance of a conflict;

(ii) Where there appears to be a conflict of interest, not take part in the discussion of, or vote on, any question in respect of the matter;

(iii) Where there appears to be a conflict of interest, absent himself or herself from the portion of any meeting relating to the matter; and

(iv) Where there appears to be a conflict of interest, not attempt in any way to influence the voting or do anything that might be perceived as attempting to influence the decision of other members on the matter.

16.08 – Conflicts Recorded in Minutes

Every declaration of a conflict of interest shall be recorded in the minutes of the meeting together with a description of the nature of the conflict.

16.09 – Use of College Information or Property

A member of Council or a Committee member shall not use College property or information of any kind to advance his or her own interests, direct or indirect.

16.10 – Staff (Employee) Positions

A member of Council or a Committee member may not hold any other position, employment, contract or appointment with the College while serving as a member of Council or its Committees. There is a one-year waiting period before the individual may apply for a staff or consultant position with the College. This includes, but is not limited to, positions as peer assessor, investigator, inspector, examiner or other management or administrative staff.

17. CONFIDENTIALITY

17.01 – Duty of Confidentiality

Members of Council and Committees, staff and persons retained or appointed by the College are required to maintain confidentiality of information that comes before them in the course of discharging their duties unless disclosure is authorized by Council or is otherwise permitted under section 36(1) of the RHPA.

17.02 – Disclosure Under the RHPA

Subsection 36(1) of the RHPA permits disclosure in a number of specific circumstances. Members of Council and Committees, staff and persons retained or appointed by the College are expected to understand when those exceptions apply and seek advice if they are in doubt.

17.03 – Confidentiality Agreement

Council and Committee members, staff and persons retained or appointed by the College are required to sign, annually, the confidentiality agreement approved by Council.

18. COMMUNICATIONS

18.01 – Media Contacts

All media contact shall be channelled and coordinated through the Registrar's office. Any Council or Committee member being asked by media representatives to provide interviews, respond to Inquiries or to comment on issues concerning the regulation of the profession or the operation of the College shall not provide any such communication and shall instead refer them to the Registrar's office.

18.02 – College Communications

The Registrar, the President or, in the absence of the President, the Vice-President,

(i) Are the authorized spokespersons of the College but either of them may request a member of Council, a College employee or a consultant to perform this function, as appropriate, under the circumstances; and

(ii) May communicate with the media to provide interviews, respond to Inquiries or comment on issues concerning regulation of the profession or the operation of the College. A member of Council or a

Committee member shall not perform such communications unless authorized by the Registrar, the President or, in the absence of the President, the Vice-President.

18.03 – Consistent Messaging

All messages to the media and to the public must be consistent with the approved policies and positions of the College. Any member of Council or Committee member shall resign all positions with Council and its Committees prior to expressing public disagreement with a decision, policy or position of the College or its Committees and, even then, shall only do so in a manner consistent with his or her ongoing fiduciary duties towards the College and under his or her Confidentiality Agreement.

18.04 – Invitations for Speaking Engagements

All requests inviting the President, the Registrar or a member of Council or a Committee to speak in his or her capacity as a representative of the College must be submitted, in writing, to the Registrar with details of the date, time and place of the speaking engagement as well as the topic and anticipated length of the presentation.

18.05 – Acceptance of Invitations for Speaking Engagements

The Registrar, in consultation with the President, where possible, shall review all requests inviting Council or Committee members to speak and shall determine whether to accept the invitation and the appropriate representative to address the topic. Other than as described above, no member of Council or Committee shall accept any request to make representations or speak on behalf of the College or in his or her capacity as a representative of the College.

18.06 – Presentation Content

The content of every presentation must be consistent with the approved policies and positions of the College and shall be submitted, where feasible, at least five days before the date of the presentation to the Registrar or a person designated by the Registrar for approval.

18.07 – No Compensation

No person speaking in his or her capacity as a representative of the College shall receive any payment or benefit related to the presentation or, if the payment or gift cannot in the circumstances be gracefully declined, it shall immediately be turned over to the Registrar. However, mementoes of nominal value ($50.00 or less) may be accepted and retained.

19. FEES

19.01 – Registration Year

The registration year for Members shall be from September 1st to August 31st.

19.02 – Renewal Process

The annual registration fee is due and payable on or before the day before each registration year. At least 45 days before the annual registration fees are due, the Registrar shall send to each Member a notice stating that the annual registration fees are due, setting out the amount of the annual registration fee for each category of registration and a request for information required under the regulations and these By-Laws. The obligation to pay the annual registration fee continues even if the Registrar fails to provide the notice or the Member fails to receive such notice.

19.03 – Fee Amounts

Schedule 5 sets out the applicable fees that a Member or person shall pay to the College.

19.04 – Payment of Fees Set by Registrar

A person shall pay the fees set by the Registrar for anything the Registrar is required or authorized to do.

19.05 – Fee Increases

Each year each fee described in these By-Laws shall be increased by the percentage increase, if any, in the Consumer Price Index for goods and services in Canada as published by Statistics Canada or any successor organization.

20. PROFESSIONAL LIABILITY INSURANCE

20.01 – Requirement to Carry Insurance

(1) Every member who holds a certificate of registration in the General Class shall maintain professional liability insurance to indemnify the member for all errors and omissions that may occur while practicing dental technology provided through a policy of insurance with the following characteristics:

(i) The member is specifically named as an insured and for all settings in which the member practices;

(ii) The College is notified by the insurer if the policy is cancelled or the terms are amended before the expiration date;

(iii) The insurer is licensed with the Financial Services Commission of Ontario;

(iv) A minimum of $1,000,000 per claim, occurrence or loss and an annual aggregate limit of not less than $1,000,000;

(v) There is no amount as a deductible; and,

(vi) Where the insurance policy is of a "claims made" form, the coverage must include an extended reporting period of at least two (2) years after the termination of the insurance policy.

(2) An Inactive Member who has practised in Ontario within the previous two years must carry professional liability run off coverage (sometimes called enduring or tail coverage) for a minimum of two years since the Member last practised in Ontario provide by an insurer licensed with the Financial Services Commission of Ontario, the office of the Superintendent of Financial Institutions Canada or a body outside of Ontario that the Registrar considers substantially equivalent to the Financial Services Commission of Ontario.

20.02 – Proof of Insurance

A Member holding a general certificate of registration must, upon request, provide to the College proof of professional liability insurance in a form acceptable to the Registrar which must include the following information:

(i) Policy number;

(ii) Name of the insured that matches the name of the Member;

(iii) Address of the insured;

(iv) Policy period; and

(v) Coverage details.

20.03 – Declaration of Eligibility for Insurance

An applicant for registration must provide a declaration that he or she is eligible for professional liability insurance coverage that complies with the requirements of these By-Laws including that he or she shall submit proof of

insurance to the Registrar no less than 30 days after his or her registration is approved. The Registrar shall not issue the certificate of registration until actual proof of coverage is received.

20.04 – Relying on Employer's Insurance Coverage

A Member may rely on the insurance coverage provided by his or her employer so long as the insurance coverage complies with the requirements of these By-Laws including the ability to provide proof of coverage of the Member by the Member's name. If a Member is relying on insurance coverage provided by his or her employer, he or she must have insurance coverage that complies with the requirements of these By-Laws for all places of employment.

21. THE REGISTER

21.01 – Name in Register

Subject to article 21.02, a Member's name in the register shall be the full name indicated on the documents used to support the Member's initial registration with the College.

21.02 – Exception for Name Change

The Member may enter a name, other than the name referred to in section 21.01, in the register if the Registrar:

(i) Has received a written request from the Member;

(ii) Is satisfied that the Member has legally changed his or her name; and

(iii) Is satisfied that the name change is not for any improper purpose.

21.03 – Exception for Alternate Name

In addition to the name entered under articles 21.01 and 21.02, the Registrar may enter in the register as an alternative name used by the Member any nicknames or abbreviations that the Member uses in any place of practice.

21.04 – Business Address

A Member's business address in the register shall be the address for receiving business communications designated by the Member, which address may be different than the Member's address for communications with the College. If the Member does not designate a business address the Registrar may assign any address for the Member known to the College as the business address. A Member's business address shall include the name of the business or entity that employs the Member or, if the Member is self-employed or is not practising, the Member's business address shall include a notation to that effect.

21.05 – Business Telephone Number

A Member's business telephone number shall be the telephone number for receiving business communications designated by the Member, which telephone number may be different than the Member's telephone number for communications with the College. If the Member does not designate a business telephone number the Registrar may assign any telephone number known to the College as the business telephone number.

21.06 – Register Information Required by the Code

Subsections are changed from roman numeral to alphabetical. E.g. (i) is now (a).

Under subsection 23(2) of the Code and subject to certain exceptions contained in the Code, the following information must be contained in the College's register:

(a) Each member's name, business address and business telephone number, and, if applicable, the name of every health profession corporation of which the member is a shareholder;

(b) Where a Member is deceased, the name of the deceased Member and the date upon which the Member died, if known to the Registrar;

(c) The name, business address and business telephone number of every health profession corporation;

(d) The names of the shareholders of each health profession corporation who are members of the College;

(e) Each member's class of registration and specialist status;

(f) The terms, conditions and limitations that are in effect on each certificate of registration;

(g) A notation of every caution that a Member has received from a panel of the Inquiries, Complaints and Reports Committee under paragraph 3 of subsection 26 (1) of the Code, and any specified continuing education or remedial programs required by a panel of the Inquiries, Complaints and Reports Committee using its powers under paragraph 4 of subsection 26 (1) of the Code;

(h) A notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 of the Code and has not been finally resolved, including the date of the referral and the status of the hearing before a panel of the Discipline Committee, until the matter has been resolved;

(i) A copy of the specified allegations against a Member for every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 of the Code and that has not been finally resolved;

(j) Every result of a disciplinary or incapacity proceeding;

(k) A notation and synopsis of any acknowledgements and undertakings in relation to matters involving allegations of professional misconduct or incompetence before the Inquiries, Complaints and Reports Committee or the Discipline Committee that a Member has entered into with the College and that are in effect;

(l) A notation of every finding of professional negligence or malpractice, which may or may not relate to the Member's suitability to practise, made against the Member, unless the finding is reversed on appeal;

(m) A notation of every revocation or suspension of a certificate of registration;

(n) A notation of every revocation or suspension of a certificate of authorization;

(o) Information that a panel of the Registration Committee, Discipline Committee or Fitness to Practise Committee specifies shall be included;

(p) Where findings of the Discipline Committee are appealed, a notation that they are under appeal, until the appeal is finally disposed of;

(q) Where, during or as a result of a proceeding under section 25 of the Code, a member has resigned and agreed never to practise again in Ontario, a notation of the resignation and agreement;

(r) Where the College has an inspection program established under clause 95 (1) (h) or (h.1) of the Code, the outcomes of inspections conducted by the College;

(s) Information that is required to be kept in the register in accordance with regulations made pursuant to clause 43 (1)(t) of the *Regulated Health Professions Act*, 1991; and

(t) Information that is required to be kept in the register in accordance with these By-Laws.

21.07 – Additional Register Information

In accordance with the authorization provided by paragraph 20 of subsection 23(2) of the Code, the following additional information with respect to each Member shall be kept in the register of the College and is designated public pursuant to subsection 23(5) of the Code:

(a) If there have been any changes to the Member's name since the date of the Member's initial application for registration, the former names of the Member;

(b) The name, address and telephone number of every business entity that employs the Member as a practitioner of dental technology and, if the Member is self-employed as a practitioner of Dental Technology, the address and telephone number of the locations where the Member practises other than addresses of individual clients;

(c) The Member's business email address;

(d) The Member's registration number;

(e) The date of the Member's initial registration with the College;

(f) The date on which each class of registration that the Member holds or held was obtained and, if applicable, the date on which each terminated;

(g) Where the College is aware that a Member is currently registered or licensed to practise a profession inside or outside of Ontario, a notation of that fact;

(h) Where a Member is engaged in the practice of dental technology in Ontario, the address and telephone number of each location at which the member regularly engages in that practice;

(i) Where a Member is engaged in the practice of dental technology in Ontario, the name and address of the person or business for whom or through which the member primarily engages in the practice of dental technology in Ontario;

(j) If the Member ceased to be a Member, a notation specifying the reason for the termination of registration and the date upon which the Member ceased to be a Member;

(k) A summary of any currently existing charges against a Member, of which the College is aware, in respect of a federal, provincial or other offence that the Registrar believes is relevant to the Member's suitability to practise;

(l) A summary of any currently existing conditions, terms, orders, directions or agreements relating to the custody or release of the Member in respect of provincial or federal offence processes of which the College is aware and that the Registrar believes is relevant to the Member's suitability to practise;

(m) A summary of any findings of guilt, of which the College is aware, made by a court against a Member in respect of a provincial, federal or other offence that the Registrar believes is relevant to the Member's suitability to practise;

(n) Where, on or after December 31, 2015, a member has received a caution from a panel of the Inquiries, Complaints or Reports Committee under paragraph 3 of subsection 26 (1) of the Code:

i. A notation of the fact, including a summary of the caution;

ii. The date of the panel's decision; and

iii. If applicable, a notation that the panel's decision is subject to review and therefore is not yet final, which notation shall be removed once the review is finally disposed of;

(o) Where, on or after December 31, 2015, a member is required by a panel of the Inquiries, Complaints or Reports Committee to complete a specified continuing education or remediation program (SCERP) under paragraph 4 of subsection 26 (1) of the Code:

i. A notation of the fact, including a summary of the SCERP;

ii. The date of the panel's decision; and

iii. If applicable, a notation that the panel's decision is subject to review and therefore is not yet final, which notation shall be removed once the review is finally disposed of;

(p) Where applicable, a summary of any restriction on a member's right to practise:

i. Resulting from an undertaking given by the member to the College or an agreement entered into between the member and the College; or

ii. Of which the College is aware and which has been imposed by a court or other lawful authority, in which event the summary of the restriction shall also include the source of the restriction;

(q) For every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 of the Code and has not been finally resolved, until the matter has been resolved,

i. The notice of hearing;

ii. The anticipated date of the hearing if the hearing date has been set or the next scheduled date for the continuation of the hearing if the hearing was adjourned to a specific date or if the hearing was adjourned without a specific date, a notation to that effect;

iii. If the hearing is awaiting scheduling, a statement of that fact; and

iv. If the hearing of evidence and arguments is completed and the parties are awaiting a decision of the Discipline Committee, a statement of that fact;

(r) Where the College is aware that a pending allegation of professional misconduct or incompetence or a similar allegation has been referred to a discipline type of hearing against a member registered or licensed to practise a profession inside or outside of Ontario,

i. A notation of that fact;

ii. The date of the referral if available;

iii. A brief summary of each allegation if available; and

iv. The notice of hearing if available;

(s) A notation, including the date of the referral, for every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Fitness to Practice Committee under section 61 of the code and has not been finally resolved, until the matter has been resolved;

(t) For every application to the Discipline Committee or Fitness to Practice Committee for reinstatement that has not been finally resolved, until that matter has been resolved,

i. A notation of that fact, including the date of the application;

ii. The anticipated date of the hearing, if the hearing date has been set or the next scheduled date for the continuation of the hearing if the hearing has commenced;

iii. If the hearing has been adjourned and no future date has been set, the fact of that adjournment, and

iv. If the decision is under reserve, that fact;

(u) If an application to the Discipline Committee or Fitness to Practice Committee for reinstatement has been decided, the decision of the Committee;

(v) Where a finding of professional negligence or malpractice is contained in the College's register, the following information;

i. The notice of and a description of the finding;

ii. The date the finding was made against the member;

iii. The name and location of the court that made the finding against the member; and

iv. The status of any appeal respecting the finding made against the member;

(w) Any information jointly agreed to be placed on the register by the College and the member;

(x) Where the member's certificate of registration is subject to any terms, conditions and limitations, the reason for them and the date they took effect and where applicable, the Committee responsible for the imposition of those terms, conditions and limitations;

(y) Where the member's certificate of registration is subject to an interim order, a notation of that fact, the nature of the order and the date that the order took effect;

(z) Where the member's certificate of registration is subject to a suspension for failure to pay a fee, the reason for the suspension and the date of the suspension in addition to the fact of the suspension;

(aa) Where the College is aware that a finding of professional misconduct or incompetence or similar finding has been made against the member by a body that governs a profession, inside or outside of Ontario, and that finding has not been reversed on appeal,

i. A notation of the finding;

ii. The name of the governing body that made the finding;

iii. A brief summary of the facts on which the finding was based;

iv. The penalty and any other orders made relative to the finding;

v. The date the finding was made; and

vi. Information regarding any appeals of the finding;

(bb) Where the College is aware that a finding of incapacity or similar finding has been made against the member by a body that governs a profession, inside or outside of Ontario, and that finding has not been reversed on appeal,

i. A notation of the finding;

ii. The name of the governing body that made the finding;

iii. The date the finding was made;

iv. A summary of any order made; and

v. Information regarding any appeals of the finding;

Unless the body that governs a profession making the finding has not made the finding public;

(cc) Where a decision of the Discipline Committee has been published by the College with the member's name or former name including,

i. A notation of that fact; and

ii. Identification of the specific publication of the College which contains the information;

(dd) Where, during or as a result of a proceeding under section 25 of the code a member has resigned, a notation of that fact;

(ee) Where, on or after December 31, 2015, the registrar confirms whether the College is investigating a member because there is a compelling public interest in disclosing this information pursuant to 36(1)(g) of the RHPA, the fact that the member is under investigation;

(ff) In addition to the name of every health profession corporation of which the member is a shareholder, the business address, business telephone number, business e-mail address, if there is one, and any operating names of the health profession corporation; and

(gg) Any of the information in respect of a former member that was on the register just before the registration terminated, for a period of at least two years after the termination of registration, except for any information related to discipline proceedings in Ontario, in which case it shall be entered on the register for a period of at least fifty years after the termination of membership.

21.08 – Removal of Information

Notwithstanding paragraphs (o) and (p) of article 21.07 where, after a review, the Inquiries, Complaints and Reports Committee has been required to remove or vary the appearance for a caution or a SCERP, the original notation may be removed once the Committee makes its new decision. Where the original requirement to appear for a caution or to complete a SCERP has been varied, the Registrar may enter a summary of the process leading up to and the results of the variation.

21.09 – Information to be Withheld from Public

(1) All of the information referred to section 23 of the Code or as information recorded in the register in these By-Laws is information designated to be withheld from the public pursuant to subsection 23(6) of the Code such that the Registrar may refuse to disclose to an individual or post on the College's website any or all of that information if the Registrar has reasonable grounds to believe that disclosure of that information may jeopardize the safety of an individual.

(2) Pursuant to subsection 23(11.1) of the Code, the Registrar shall refuse to disclose to an individual or to post on the College's website the result of a disciplinary or incapacity proceeding:

a. Where the result of a discipline proceeding was that no finding of professional misconduct or incompetence was made against the member; and

b. More than 90 days have passed since the information was prepared or last updated, unless before the expiry of the 90 days the member to whom the information relates specifically requests in writing that the Registrar continue to maintain public access to the information.

21.10 – Providing Information to the College

If requested, the Member shall immediately, and in any event no later than five days after receiving the request, provide the College with the following information, in the form requested by the College:

(i) Information required to be maintained in the register in accordance with subsection 23(2) of the Code and these By-Laws;

(ii) The address and telephone number of the Member's primary residence in Ontario and, if the Member does not reside in Ontario, the address and telephone number of the Member's primary residence;

(iii) The Member's preferred e-mail address for communications from the College;

(iv) The Member's professional activities including the Member's areas of practice;

(v) Information regarding the Member's employment including;

(a) The Member's title and position; and

(b) A description of the Member's role, duties, and responsibilities;

(vi) Information about the Member's registration with any other body that governs a profession, whether inside or outside of Ontario, including the name of the governing body, the Member's registration or licence number and the date the Member first became registered;

(vii) Information about the Member's participation in the quality assurance program;

(viii) Information about the educational institution where the Member obtained any certificates, diplomas or degrees in dental technology, the type of certificates, diplomas or degrees obtained and the date each was issued; and

(ix) Information for the purpose of compiling statistical data.

21.11 – Notification of College

The Member shall notify the College, in writing, of any changes to the following information within 30 days of the effective date of the change:

(i) The Member's name;

(ii) The address and telephone number of the Member's primary residence in Ontario and, if the Member does not reside in Ontario, the address and telephone number of the Member's primary residence;

(iii) The Member's business address or business telephone number;

(iv) The name, address or telephone number of any business or entity that employs the Member as a practitioner of dental technology, and, if the Member is self-employed as a practitioner of dental technology, any changes to the address or telephone number of the location where the Member practises other than addresses of individual clients; and

(v) The Member's preferred email address for communications with the College.

22. PROFESSIONAL CORPORATIONS

22.01 - Duty to Provide Information

Every Member shall, for every professional corporation of which the Member is a shareholder, provide in writing the following information: (i) on the application and annual renewal forms for a certificate of authorization: (ii) upon the written request of the Registrar; or (iii) within 30 days and upon any change in the information within 30 days of the change:

(i) The name of the professional corporation as registered with the Ministry of Government and Consumer Services;

(ii) Any business names used by the professional corporation;

(iii) The name, as set out in the register, and registration number of each shareholder of the professional corporation;

(iv) The name, as set out in the register, of each officer and director of the professional corporation, and the title or office held by each officer and director;

(v) The principal practice address, telephone number, facsimile number and email address of the professional corporation;

(vi) The address and telephone number of all other locations, other than residences of clients, at which the professional services offered by the professional corporation are provided; and

(vii) A brief description of the professional activities carried out by the professional corporation.

23. FUNDING FOR THERAPY AND COUNSELLING FOR SEXUAL ABUSE

23.01 - Funding

The Patient Relations Committee may require therapists and counsellors who provide therapy or counselling funded through the program and persons who are receiving such therapy or counselling to provide a written statement, signed in each case by the therapist or counsellor and by the person which statement shall contain:

(i) Details of the therapist or counsellor's training and experience;

(ii) Confirmation that the therapy or counselling is being provided to the client;

(iii) Confirmation that the funds received shall be devoted only to therapy or counselling that is related in whole or in part to the sexual abuse by the Member; and

(iv) Any other information that the Patient Relations Committee determines demonstrates that the person satisfies the eligibility requirements.

24. CODE OF ETHICS

Schedule 4 of these By-Laws sets out the Code of Ethics for the profession.

25. BY-LAWS AND AMENDMENTS

25.01 – Effective Date

These By-Laws shall become effective as soon as they have been approved by Council whereupon all previous By-Laws made by Council are hereby repealed.

25.02 – Amendments

The By-Laws of the College or any section thereof may be enacted, amended, or revoked by a two thirds majority affirmative vote of Council Members present and voting at a meeting of Council called for that purpose.

25.03 – Repeal of Former By-laws

The repeal of any By-Law in whole or part shall not in any way affect the validity of any act done or right, privilege, obligation or liability acquired or incurred thereunder or the validity of any contract or agreement made pursuant to any such By-Law prior to such repeal. All members of Council and other persons acting under any By-Law so repealed in whole or in part shall continue to act as if elected or appointed under the provisions of these By-Laws.

SCHEDULE 1 TO THE BY-LAWS

Process for Election of Officers

The elections shall be supervised by the Registrar. The Registrar may be assisted by scrutineers.

Before the first regular meeting of the newly elected Council each year or any other Council meeting designated for the purpose by Council resolution, the Registrar shall send an invitation to all Council Members requesting any person wishing to stand for election to the offices of the President, Vice-President and Executive Committee member to indicate so, in writing, to the Registrar.

At the meeting of Council when the election of officers shall take place, the Registrar shall present the names of eligible candidates who have indicated their interest for the position of President. Nominations may also be made from the floor.

Where there is only one nominee for a position, that person shall be elected by acclamation. In the event that there is more than one candidate for the office, the voting shall be conducted by secret ballot, with the result being tabulated and then recorded and reported by the Registrar.

Before the vote, candidates shall be given the opportunity to speak for a period not exceeding five minutes (order to be determined by lot). The election of a candidate shall be confirmed by a majority vote of those present and voting, taken by secret ballot. Where no candidate receives a majority vote, the candidate receiving the fewest votes shall be disqualified and Council shall, by secret ballot, vote on the remaining candidates until one candidate receives a majority vote.

In the event of a tie, a second ballot shall take place. Candidates shall have an opportunity to speak for a period not exceeding five minutes before the vote. If the second ballot also results in a tie, the winning candidate shall be determined by lot.

The results of each election shall be tabulated and reported by the Registrar, with the number of votes accorded to each candidate to remain confidential.

Once the President is elected, the Vice-President shall be elected in a similar manner. Once the Vice-President has been elected, the remaining Executive Committee positions shall be elected in a similar manner ensuring that there are an appropriate number of Members and Public Members.

Once the election is completed, the Registrar shall call for a motion to destroy the ballots.

SCHEDULE 2 TO THE BY-LAWS

Rules of Order of the Council

1. Each agenda topic shall be introduced briefly by the person or Committee representative raising it. Council Members may ask questions of clarification, then the person introducing the matter shall make a motion and another Council Member must second the motion before it can be debated.

2. When any Council Member wishes to speak, he or she shall so indicate by raising his or her hand and shall address the Chair and confine himself or herself to the matter under discussion.

3. Staff persons and consultants with expertise in a matter may be permitted by the Chair to answer specific questions about the matter.

4. Observers at a Council meeting are not allowed to speak to a matter that is under debate.

5. A Council Member may not speak again on the debate of a matter until every other Council Member who wishes to speak to it has been given an opportunity to do so. The only exception is that the person introducing the matter or a staff person may answer questions about the matter. Council Members shall not speak to a matter more than twice without the permission of the Chair.

6. No Council Member may speak longer than five (5) minutes upon any motion except with the permission of Council.

7. When a motion is under debate, no other motion can be made except to amend it, to postpone it, to put the motion to a vote, to adjourn the debate or the Council meeting or to refer the motion to a Committee.

8. A motion to amend the motion then under debate shall be disposed of first. Only one motion to amend the motion under debate can be made at a time.

9. When it appears to the Chair that the debate on a matter has concluded, when Council has passed a motion to vote on the motion or when the time allocated to the debate on the matter has concluded, the Chair shall put the motion to a vote.

10. When a matter is being voted on, no Council Member shall enter or leave the Council room, and no further debate is permitted.

11. No Council Member is entitled to vote upon any motion in which he or she has a conflict of interest, and the vote of any Council Member so interested shall be disallowed.

12. Any motion decided by Council shall not be re-introduced during the same meeting except by a two-thirds vote of the Council Members then present.

13. Whenever the Chair is of the opinion that a motion offered to Council is contrary to these rules or these By-Laws, he or she shall rule the motion out of order and give his or her reasons for doing so.

14. The Chair shall preserve order and decorum, and shall decide questions of order, subject to an appeal to Council without debate.

15. The above rules may be relaxed by the Chair if it appears that greater informality is beneficial in the particular circumstances, unless Council requires strict adherence.

16. Council Members are not permitted to discuss a matter with observers while it is being debated including during any recess of the debate.

17. Council Members shall turn off cell phones during Council meetings and, except during a break in the meeting, shall not use a cell phone, blackberry or other electronic device. Laptops shall only be used during Council meetings to review materials related to the matter under debate (e.g., electronic copies of background documents) and to make personal notes of the debate.

18. Council Members shall be silent while others are speaking.

19. In all cases not provided for in these rules or by other rules of Council, the current edition of "Robert's Rules of Order" shall be followed so far as they may be applicable.

20. These Rules shall apply, with necessary modifications, to meetings conducted by teleconference or any other electronic means permitted by these By-Laws, including audio or video conferencing.

SCHEDULE 3 TO THE BY-LAWS

Code of Conduct for Council and Committee Members

(1) This Schedule applies to members of Council and members of all Committees of the College.

(2) Council and Committee members must, at all times, maintain high standards of integrity, honesty and loyalty when discharging their College duties. They must act in the best interest of the College. They shall:

(i) be familiar and comply with the provisions of the *RHPA* and its regulations, the Code , the Act, and these By-Laws and policies of the College;

(ii) be prepared to participate in Council meetings and Committee work including reading background materials and briefing documents;

(iii) diligently take part in Committee work and actively serve on Committees as appointed by Council;

(iv) regularly attend meetings on time (including not missing two (2) or more consecutive meetings without reasonable cause) and participate constructively in discussions;

(v) offer opinions and express views on matters before the College, Council and Committee, when appropriate;

(vi) participate in all deliberations in a respectful and courteous manner, recognizing the diverse background, skills and experience of Council and Committee members;

(vii) uphold the decisions made by a majority of Council and Committees, regardless of the level of prior individual disagreement;

(viii) avoid and, where that is not possible, declare any appearance of or actual conflicts of interest;

(ix) refrain from including or referencing Council or Committee titles or positions held at the College in any personal or business promotional materials, advertisements and business cards (although referencing one's titles or positions held at the College in one's curriculum vitae is acceptable so long as the curriculum vitae is not overtly used in a promotional manner);

(x) preserve confidentiality of all information before Council or Committee unless disclosure has been authorized by Council or is otherwise exempted under s. 36(1) of the *RHPA*;

(xi) refrain from attempting to influence a statutory decision unless one is a member of a Panel of the Committee or, where there is no Panel, of the Committee dealing with the matter;

(xii) respect the boundaries of staff whose role is not to report to or work for individual Council or Committee members including not contacting staff members directly, except on matters where the staff member has been assigned to provide administrative support to that Committee or Council or where otherwise appropriate;

(xiii) be respectful of others and not engage in behaviour that might reasonably be perceived as verbal, physical or sexual abuse or harassment.

SCHEDULE 4 TO THE BY-LAWS

Code of Ethics for Dental Technologists

Note to Readers: In the event of any inconsistency between this document and the legislation that affects dental technology practice, the legislation governs.

College publications contain practice parameters and standards which should be considered by all Ontario dental technologists in the care of their patients and in the practice of the profession. College publications are developed in consultation with the profession and describe current professional expectations. It is important to note that these College publications may be used by the College or other bodies in determining whether appropriate standards of practice and professional responsibilities have been maintained.

Preamble

The ethical foundation of the practice of dental technology consists of general principles of conduct which the profession has come to accept as prerequisites to maintain the dignity and integrity of the profession. This Code is intended to outline, in broad fashion, the duties and responsibilities to which members of the College are expected to adhere in their relations with the public, their fellow practitioners and other health professionals.

General

Ethical dental technologists will:

1. Have as their consideration the adequate design, construction, repair or alteration of dental prosthetic, restorative and orthodontic devices;

2. Strive to improve the standards of dental technology services;

3. Uphold the honour and dignity of the profession by standards of integrity and behaviour;

4. Recognize their limitations;

5. Be responsible in setting a value on their services;

6. Abide by the laws of the jurisdiction in which they practise;

7. Inform the College when a physical or mental disease/condition has affected or may affect over time, their ability to practise safely or competently;

8. Inform the College, because of reasonable grounds obtained in the course of practising the profession, of conduct that may constitute sexual abuse or sexual harassment of another dental technologist or a member of another College.

Services to the Public

Ethical dental technologists will:

1. Practise their profession with all the knowledge and ability of which they are capable;

2. Not practise under conditions which may adversely affect the quality of their services;

3. Continue their education to improve their standards of services;

4. Kindly but firmly insist upon doing only those things which their professional knowledge dictates to be in the best interest and welfare of the patients for whom dental technology services are requested;

5. Not abdicate their professional responsibilities to protect the health and well-being of their patients for whom dental technology services are requested;

6. Recognize that patients have the right to accept or reject any treatment plan recommended by a dental technologist and have the right to request opinions from other dental technologists;

7. Keep in confidence information derived from their patients or from colleagues regarding patients and divulge it only with the permission of the patients except when the law requires them to do otherwise, and in circumstances of inter-professional consultation;

8. Ensure that their conduct in the practice of their profession is above reproach and that they will not take, physical, emotional or financial advantage of patients referred to them;

9. Assist on patients' requests, by supplying them the information required to enable the patients to receive any benefits to which they may be entitled;

10. Not hold out to the public as exclusive agents of any method or technique unless they are qualified;

11. Cooperate with appropriate public officials;

12. Act in a manner consistent with the Canadian Human Rights Act and the Human Rights Code (Ontario);

13. Inform the College, because of reasonable grounds obtained in the course of practising the profession, of conduct constituting sexual abuse of a patient by a member of the College, or, where such conduct is by a member of another College, inform the College of which the person who is a member.

Fellow/Prescribing Practitioners

Ethical dental technologists will:

1. Not pass judgement on the qualifications of or procedures rendered by fellow practitioners except as may be required in the interest of patients' oral health;

2. Render only such dental technology service as has been requested by the prescribing practitioner;

3. Not collaborate with prescribing and/or fellow practitioners in acts that may lead to fraudulent activities or contravention of the Act or the RHPA.

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SCHEDULE 5 TO THE BY-LAWS - FEES

Description	Fees for 2020-2021
Registration Examinations	
Examination Application Processing Fee (non-refundable)	**$ 276**
Eligibility Examination	**$ 276**
Written Theory	**$ 276**
Jurisprudence and Ethics	**$ 276**
Individual Practical Project - Repeat	**$ 498**
Appeal of Examination Results	**$ 446**
Registration	
New Applicants	
New Application Evaluation & Processing Fee (non-refundable)	**$ 276**
General Certificate of Registration	**$ 1,749**
Members	
Renewals	
General Certificate of Registration	**$ 1,749**
Inactive Certificate of Registration	**$ 829**
Request to Transfer Class of Registration	
Transfer Application Processing Fee (non-refundable)	**$ 276**
General Certificate of Registration	**$ 1,749**
Inactive Certificate of Registration	**$ 829**
Health Profession Corporation	
New Application Evaluation & Processing Fee (non-refundable)	**$ 121**
Certificate of Authorization - First Year and Renewals	**$ 1,326**
Other Fees	
Late Payment Penalty for every month of delay in fee payment effective September 1	**$ 243**
Lifting of Suspension	**$ 276**
Reinstatement	**$ 276**
Replacement RDT Stamp	**$ 97**
Replacement Wall Certificate (Certificate of Registration)	**$ 110**
Statutory Committee Ordered Assessment	**$ 651**
Recount of election ballots	**$ 558**
File or information search	**$ 55**
Letter of Professional Standing	**$ 110**
Service charge for declined payments	**$ 55**
RDT Stamp re-direct Shipping & Handling	**$ 25**
Administrative fee for notices (First notice)	**$ 50**
Administrative fee for notices (Subsequent notices)	**$ 100**

Notes:

College By-Laws, Section 19.05 – Fee Increases: Each year each fee described in these By-Laws shall be increased by the percentage increase, if any, in the Consumer Price Index for goods and services in Canada as published by Statistics Canada or any successor organization.

General Certificate of Registration: This fee includes the cost of the RDT Stamp.

RDT Stamp Re-Direct Shipping & Handling: To recover the costs of retrieving returned RDT Stamps and re-directing them to an alternate shipping address or pickup from the College office.

Administration Fees for Notices: Administration Fees for Notices shall be applied when a notice is sent to an RDT who has failed to comply with a regulatory requirement. For example: updating place(s) of business, updating professional liability insurance information or submitting their CPD credits by the specified deadline.

Approved by Council on June 19, 2020.

SECTION 5

College Standards, Guidelines and Policies

- Standards of Practice
  - Introduction
  - Full Dentures
  - Partial Dentures
  - Crown & Bridge
  - Implants
  - Orthodontics
  - Laboratory Supervision
  - Infection Control Guidelines
  - Return to Practice Guidance
- Quality Assurance
- Patient Relations
- Complaint & Reports
- Discipline
- Fitness to Practice
- Practice Advisory:
  - Conflict of Interest
  - Display of Wall Certificates
  - Supervision Stamp
  - Administrative Suspension of RDTs

Standards

Standards of Practice set out the professional expectations for dental technologists. They are the minimum knowledge, skills and judgement needed to practice safely and provide quality service to the public. Standards are set by the College of Dental Technologists of Ontario and all Registered Dental Technologists (RDTs) must adhere to them. The College supports its Member's compliance by issuing Guidelines that describe the ways in which an RDT can apply the Standards to their practice.

Standards of Practice also promote the continuing competence of self-regulated health care professionals by helping Members to identify continuing quality improvement opportunities.

Why do we need Standards of Practice?

The Standards are critical for self-regulation because they reflect what dental technologists believe is the accepted way to practice the profession to ensure that the public interest is served and protected. The Standards set out the minimum requirement that dental technologists need to meet in order to provide care that is safe, competent, and ethical and give the regulator a tool to hold Members accountable if they fall below those requirements.

STANDARDS OF PRACTICE

FOR

DENTAL TECHNOLOGISTS

Amended June, 2000

305 Milner Ave., Suite 904, Scarborough, Ontario M1B 3V4
Telephone: (416) 438-5003 Fax: (416) 438-5004

Introduction to the Standards of Practice

What Are Standards of Practice ?

The Standards of Practice are a list of the most critical tasks performed by a Dental Technologist (RDT) in the areas of Full Dentures, Partial Dentures, Crown and Bridge, Implants and Orthodontics. The Standards of Practice are intended to be generic and have been developed to describe the outcomes of the various tasks the RDT is required to perform within the scope of practice. **The Standards describe how well** an RDT is expected to perform. How to do each task will be determined by a laboratory's policies and procedures and by the curriculum developed by education programs.

The Standards form a working document which will evolve as changes in the practice evolve.

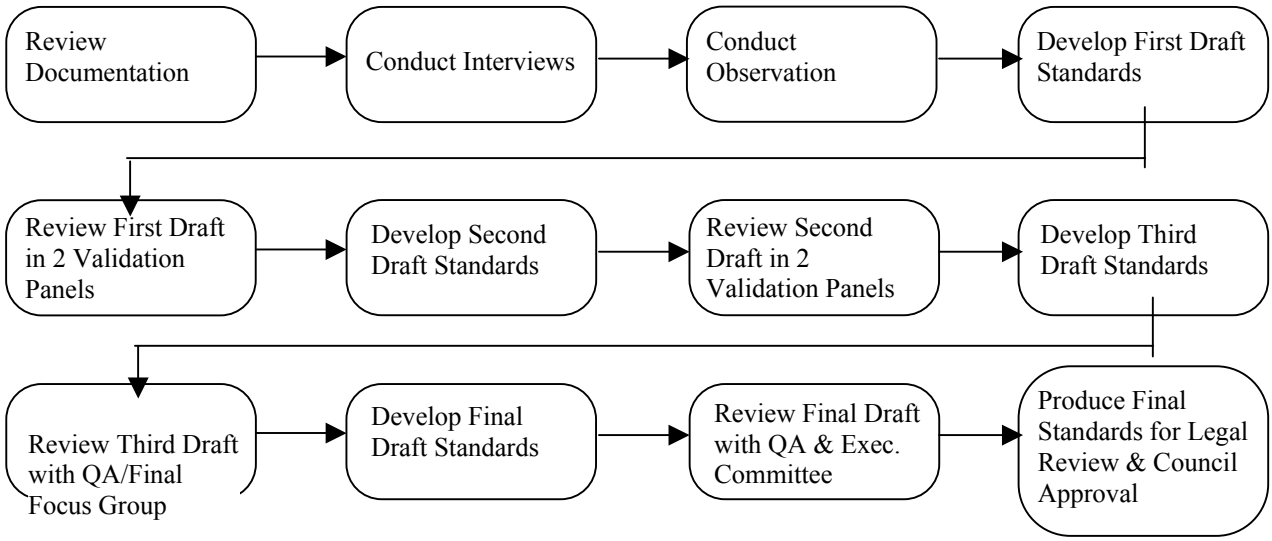
Why have Standards of Practice ?

The Standards of Practice have been developed by the College of Dental Technologists of Ontario in response to the *Regulated Health Professions Act (RHPA)* to protect the public through the development and use of these Standards of Practice. These Standards will serve as a tool to determine whether a Dental Technologist can do the job at an acceptable level. In addition they will serve as a reference tool for:

- the RDT, to better understand his/her job requirements
- the RDT, to teach and supervise others
- educators, to address in curriculum design
- registration (admission to the College)
- complaints investigation
- discipline hearings
- fitness to practice
- quality assurance
- the public, by providing objective standards in order to assess the quality of care

How were these Standards developed ?

The Standards of Practice are a result of a collaborative effort involving over thirty practising members of the College of Dental Technologists of Ontario, the ARDT (currently known as the ADTO), and the CDLC. The following flow chart illustrates the process used to collect and validate the information. The process began in May 1996 and was completed in November 1996.



Who must meet the Standards of Practice ?

All Dental Technologists must meet the minimum level of performance described in the Standards of Practice. However, a Dental Technologist is only held accountable to meet a standard if he/she is the person who:

a) has performed the task

b) has supervised the laboratory in which the task was performed and while the task (or a part of the task) was being performed within the meaning of supervision as defined from time to time by the CDTO (See Guidelines Respecting Laboratory Supervision)

The Standards of Practice set a level of competence. The Dental Technologist must also comply with any requirements as defined in the existing legislation related to the practice of dental technology.

How do the Standards of Practice link to the Quality Assurance Program ?

The Standards of Practice are the foundation upon which the Quality Assurance Program goals and objectives have been built. Each RDT shall participate in the Quality Assurance Program by first assessing himself/herself against the Standards and then developing a plan to enhance skills/knowledge based on this assessment. Every RDT shall be asked to attest to the College of Dental Technologists of Ontario that he/she has completed the assessment and is or is not meeting the Standards.

Glossary of Terms

The following are definitions and explanations of terms found in the Standards of Practice.

Consent:

RDT's are required to follow the *Health Care Consent Act, 1995 (HCCA)* to obtain consent from or on behalf of their patients before providing treatment. Under HCCA, consent must be informed. Dental Technologists should be aware of the general principles listed below when they are obtaining consent:

- Consent must relate specifically to the treatment. Blanket consents are not acceptable.
- Consent must be given voluntarily.
- The patient providing consent must be mentally capable of doing so.
- Where the dental technologist believes that the patient is not capable of making the consent, the decision of a substitute decision maker can be relied upon. There is a clear hierarchy of substitute decision makers in the HCCA.
- The patient must be fully informed of the risks and benefits of the treatment being proposed.
- Consent can be written, oral or implied.
- Consent, even if signed, is not valid unless the patient or the substitute decision maker was fully informed.

Health Professional:

A Health Professional is defined as a Dentist, Denturist or an RDT who is subcontracting work to another RDT.

Implant Cylinder:

A precisely machined component part of the implant system used to provide an intimate interface between the implant and the prosthesis.

Implant Analog:

A precise reproduction of the implant(s) in the patient's mouth or the implant abutment(s). This type of analog is used in model construction.

Master Model:

The formal definition of a master model is an unaltered model fabricated from the Health Professional's final impression. In practice, the master model may or may not be used as a working model.

Occlusal Registration Device:

A record of the patient's bite sometimes referred to in practice as an occlusal registration record, bite registration or bite block.

Preliminary Model:

A model representing the patient's pre-operative condition.

Standards of Practice

A standard of practice consists of three interrelated sub-components that describe:

Condition:

The situation in which the accomplishment of a task has to be demonstrated, including any resources, tools, materials, etc. that are given/available.

Task:

What a Dental Technologist is expected to accomplish on the job.

Criteria:

How well one is required to demonstrate the achievement of a task and is stated in observable and measurable terms.
These criteria include one or more of the following:
Measures of the effectiveness and/or Measures of efficiency of performance.

Measures of effectiveness include:

- Technical quality
- Interpersonal quality
- Safety

Measures of efficiency include:

- Timeliness

Study Model:

A model representing the patient's pre-operative condition.
* In Orthodontics, the final study model represents the final result of the orthodontic treatment.

Working Model:

A model upon which the appliance or restoration is fabricated.

Full Denture

Listing of Standards by Task

FULL DENTURES

1. Disinfect the impression and/or model
2. Evaluate the prescription for completeness
3. Document changes to the prescription
4. Evaluate the impression or model for completeness
5. Create a master model
6. Fabricate custom trays
7. Construct an occlusal registration device
8. Send the occlusal registration device and models to the health professional for confirmation
9. Mount the models on an articulator
10. Select and set-up the teeth and wax-up dentures

FULL AND PARTIAL DENTURES

11. Send denture wax-up to the health professional to verify set-up
12. Complete set-up adjustments
13. Seal wax on model and complete wax-up for processing
14. Prepare the denture for processing
15. Process the denture
16. Eliminate the wax
17. Evaluate the investing process
18. Create mechanical retention of the denture teeth, if needed
19. Apply the separating medium
20. Fill the mold with the required denture base material
21. De-flask the denture
22. Equilibrate occlusion
23. Remove the model from the denture, trim and polish
24. Determine the quality of the denture
25. Prepare the denture for shipping
26. Align and lute together broken denture components

Condition:

Given a shipment of an impression or model from a Health Professional

Task:

Disinfect the impression and/or model

Criteria:

Safety:

- So that gloves are worn at all times until disinfecting is completed
- So that the disinfectant used is compatible with the impression and/or model
- So that manufacturer's specifications for the disinfectant used, are followed
- So that the packaging material that was in direct contact with the impression or model, is discarded
- So that the impression and/or model is disinfected according to the Universal Precautions -- at the minimum -- low level, as defined by the RCDSO guidelines, dated June 1995

Timing:

- Before proceeding any further

Full Denture

Condition:

Given a prescription from a Health Professional

Task:

Evaluate the prescription for completeness

Criteria:

Technical Quality:

- The Prescription must include:
  - ⇒ the patient's name or identification number
  - ⇒ the Health Professional's name
  - ⇒ type and/or description of prosthesis or treatment objectives
  - ⇒ shade
  - ⇒ date sent
- So that if in doubt, the dental technologist will consult the Health Professional before proceeding with the work

Condition:

Given that clarification and/or changes are needed due to an incomplete or unclear prescription from a Health Professional

Task:

Document changes to the prescription

Criteria:

Technical Quality:

- So that any changes or modifications to a prescription or design as a result of discussion with the Health Professional, are documented and dated
- Documentation must include:
  - ⇒ date and time of discussion
  - ⇒ name of contact from Health Professional's office
  - ⇒ changes and modifications agreed to
  - ⇒ signature of the RDT or that of the person designated by the RDT

Full Denture

Condition:

Given a prescription and impression or model from a Health Professional

Task:

Evaluate the impression or model for completeness

Criteria:

Technical Quality:

- The impression or model must --
  - ⇒ not have any flaws and/or visible distortions that will affect the work to be done

Condition:

Given a complete prescription from a Health Professional, and impressions

Task:

Create a master model

Criteria:

Technical Quality:

- So that the model displays all anatomical tissue landmarks present in the impression
- So that the model is clear of voids, has no air bubbles, has a dense smooth surface and is a faithful reproduction of the impression

Full Denture

Condition:

Given a complete prescription from a Health Professional, which includes the requirement for a custom tray, and an impression or model

Task:

Fabricate custom trays

Criteria:

Technical Quality:

- So that the custom tray conforms with the anatomical outlines and landmarks provided on the preliminary model
- So that the custom tray provides proper design for the chosen material or impression technique to be used as prescribed

Safety:

- So that materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used

Condition:

Given the prescription, master or working model and using materials as required by the prescribed technique

Task:

Construct an occlusal registration device

Criteria:

Technical Quality:

- According to the technique specified in the prescription
- So that the occlusal registration device is "well fitting" as per the technique prescribed
- So that the occlusal registration device is constructed so as to enable health professional to establish the patient's jaw relationship

Safety

- So that materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used

Condition:

Given a completed occlusal registration device and models

Task:

Send the occlusal registration device and models to the Health Professional for confirmation

Criteria:

Technical Quality:

- Packing it so that it will be received by the Health Professional with no damage or distortion

Condition:

Given an occlusion registration device, models and prescription from a Health Professional and using an articulator

Task:

Mount the models on an articulator

Criteria:

Technical Quality:

- So that the patient's jaw relationship is established in accordance with the occlusal registration device provided by the Health Professional

Full Denture

Condition:

Given the articulated models, occlusal registration device and the prescription from a Health Professional

Task:

Select and set-up the teeth and wax-up dentures

Criteria:

Technical Quality:

- Following the Health Professional's prescription and/or instructions
- So that the shade of the teeth matches the prescription
- So that the mold is selected in accordance with the manufacturer's suggested criteria
- So that the teeth are set-up to achieve the required occlusal relationship
- So that wax-up is done according to anatomical requirements
- So that the aesthetic requirements specified by the Health Professional are met

Condition:

Given a completed denture wax-up

Task:

Send denture wax-up to the Health Professional to verify set-up

Criteria:

Technical Quality:

- Packing it so that it will be received by the Health Professional with no damage or distortion

Condition:

Given the waxed-up denture has been tried into the patient's mouth and any adjustments to the denture from the Health Professional are noted on the prescription

Task:

Complete set-up adjustments

Criteria:

Technical Quality:

- As noted on prescription
- So that any new instructions from the Health Professional are followed
- So that if the occlusal registration is different, the models are re-articulated and the denture teeth are reset

Condition:

Given the waxed-up denture has been tried into the patient's mouth and is ready for processing

Task:

Seal wax on model and complete wax-up for processing

Criteria:

Technical Quality:

- So that the denture is sealed onto the model according to the technique prescribed
- So that the borders and palate are fully waxed

Condition:

Given a full denture sealed on the model and materials dictated by the processing technique

Task:

Prepare the denture for processing

Criteria:

Technical Quality:

- According to the processing technique
- So that none of the denture teeth move
- So that all dimensions are preserved

Condition:

Given denture ready for processing

Task:

Process the denture

Criteria:

Technical Quality:

- According to the technique and/or manufacturer specifications

Condition:

Given an invested and waxed-up denture

Task:

Eliminate the wax

Criteria:

Technical Quality:

- So that there is no residue of wax left in the mold

Condition:

Given a clean mold

Task:

Evaluate the investing process

Criteria:

Technical Quality:

- So that there are no voids or defects in the mold and teeth are secure

Condition:

Given a clean mold

Task:

Create mechanical retention of the denture teeth, if needed

Criteria:

Technical Quality:

- So there are undercuts in the denture teeth or the teeth are roughened
- So that the surface area of the ridge lap is increased

Condition:

Given a clean mold with post dam areas established and a separating medium

Task:

Apply the separating medium

Criteria:

Technical Quality:

- So that the denture teeth are free of separating medium
- According to manufacturer's specifications
- So that the mold will separate from the denture base material

Condition:

Given a mold, the equipment and material required by the selected technique

Task:

Fill the mold with the required denture base material

Criteria:

Technical Quality:

- According to the manufacturer's specifications
- So that the denture has no porosity
- So that the curing process is followed correctly according to the manufacturer's specifications thereby ensuring that there will be no more than a 1 millimeter anterior opening in the processed denture

Safety:

- So that materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the matreials used

Condition:

Given a processed denture

Task:

De-flask the denture

Criteria:

Technical Quality:

- According to the technique being used
- So that denture and model are retrieved from the mold without damage to the denture
- So that the model can be re-positioned on the original articulator mounting

Condition:

Given a de-flasked denture, model and the original articulator mounting

Task:

Equilibrate occlusion

Criteria:

Technical Quality:

- So that the occlusion is re-established to the verified occlusal registration

Condition:

Given an equilibrated denture, polishing stones, wheels, burs and polishing media

Task:

Remove the model from the denture, trim and polish

Criteria:

Technical Quality:

- So that the model is removed without damage to the denture
- So that the denture is trimmed to re-establish anatomical contours and aesthetics
- So that the denture is polished till it is free of scratches
- So that those areas of the denture that come in contact with the tissue have not been changed
- So that the denture is clean and ready for shipping

Condition:

Given the clean denture and a Health Professional's prescription

Task:

Determine the quality of the denture

Criteria:

Technical Quality:

- The denture must be correct in accordance with the prescription
- The denture must fulfil the required intra-oral function and intent of the prescription

Condition:

Given a polished, clean denture, and denture shipping bag and/or container

Task:

Prepare the denture for shipping

Criteria:

Technical Quality:

- Packing it so that it will be received by the Health Professional with no damage or distortion

Condition:

Given a broken denture that can be assembled without impression

Task:

Align and lute together the denture components

Criteria:

Technical Quality:

- So that the broken components are aligned to replicate the original denture base

Safety:

- So that the materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used

Listing of Standards By Task

PARTIAL DENTURES

1. Disinfect the impression and/or model
2. Evaluate the prescription for completeness
3. Document changes to the prescription
4. Evaluate the impression or model for completeness
5. Create a master model and a duplicate model
6. Fabricate custom trays
7. Set the bite and mount the case on the articulator
8. Survey & design the appliance
9. Block out the undercuts
10. Fabricate a refractory model
11. Transfer the design from the master model to the refractory model and wax-up
12. Sprue the appliance
13. Invest the model into the casting ring
14. Burn-out the wax pattern
15. Cast and de-vest the appliance
16. Trim and fit the appliance to the duplicate model
17. Fabricate saddle(s) for the altered cast
18. Send the appliance to the Health Professional for try-in and/or altered cast and/or bite registration, if needed
19. Fabricate an altered cast model
20. Set-up the teeth and wax-up the tissue

(Continue with "Full and Partial Dentures" Standards 11 - 26 detailed in prior pages)

Partial Denture

Condition:

Given a shipment of an impression or model from a Health Professional

Task:

Disinfect the impression and/or model

Criteria:

Safety:

- So that gloves are worn at all times until disinfecting is completed
- So that the disinfectant used is compatible with the impression and/or model
- So that manufacturer's specifications for the disinfectant used, are followed
- So that the packaging material that was in direct contact with the impression or model, is discarded
- So that the impression and/or model is disinfected according to the Universal Precautions -- at the minimum -- low level, as defined by the RCDSO guidelines, dated June 1995.

1

Timing:

- Before proceeding any further

Condition:

Given a prescription from a Health Professional

Task:

Evaluate the prescription for completeness

Criteria:

Technical Quality:

- The prescription must include:
  - ⇒ the patient's name or identification number
  - ⇒ the Health Professional's name
  - ⇒ type and/or description of prosthesis or treatment objectives
  - ⇒ materials and teeth to be used
  - ⇒ shade, if necessary
  - ⇒ date sent
- So that if in doubt, the dental technologist will consult the Health Professional before proceeding with the work

Partial Denture

Condition:

Given that clarification and/or changes are needed due to an incomplete or unclear prescription from a Health Professional

Task:

Document changes to the prescription

Criteria:

Technical Quality:

- So that any changes or modifications to a prescription or design as a result of discussions with the Health Professional, are documented and dated.
- Documentation must include:
  - ⇒ date and time of discussion
  - ⇒ name of contact from the Health Professional's office
  - ⇒ changes and modifications agreed to
  - ⇒ signature of the RDT or that of the person designated by the RDT

Condition:

Given a prescription and impression or model from a Health Professional

Task:

Evaluate the impression or model for completeness

Criteria:

Technical Quality:

- The impression or model must --
  - ⇒ not have any flaws and/or visible distortions that will affect the work to be done

Partial Denture

Condition:

Given a complete prescription from a Health Professional, and impressions

Task:

Create a master model and a duplicate model

Criteria:

Technical Quality:

- So that the models displays all anatomical tissue landmarks
- So that the models are clear of voids and have no air bubbles in the technically critical areas

Condition:

Given a complete prescription from a Health Professional, which includes the requirement for a custom tray, and an impression or model

Task:

Fabricate custom trays

Criteria:

Technical Quality:

- So that the custom tray conforms with the anatomical outlines and landmarks provided on the preliminary model
- So that the custom tray provides proper design for the chosen material or impression technique to be used as prescribed

Safety:

- So that materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used

Partial Denture

Condition:

Given a Health Professional's prescription, a working and opposing model, an articulator, a bite registration and luting material

Task:

Set the bite and mount the case on the articulator

Criteria:

Technical Quality:

- So that the models interdigitate as per patient's centric occlusion or as required by the prescription

Condition:

Given an articulated case, a surveyor, hand instruments, and a Health Professional's instructions

Task:

Survey & design the appliance

Criteria:

Technical Quality:

- According to the Health Professional's prescription
- So that the height of contour of the teeth is outlined
- So that the path of insertion of the appliance is manipulated to achieve harmonization with all the abutment teeth
- So that any potential problems for function, retention or aesthetics are identified
- So that retention is achieved without sacrificing the aesthetics as dictated by the dentist
- So that any potential compromises to the retention and/or aesthetics are approved by the Health Professional

Condition:

Given the designed appliance on the master model, block-out materials and a heat source

Task:

Block-out the undercuts

Criteria:

Technical Quality:

- So that all undercuts that are not part of the design are eliminated
- So that relief and block-out wax is placed in areas as required by the design

Condition:

Given the blocked-out master model, duplicating system, hand instruments and refractory model system

Task:

Fabricate a refractory model

Criteria:

Technical Quality:

- So that the refractory model reproduces the master model accurately
- So that the manufacturer's specifications for the materials used are followed

Condition:

Given the master model, refractory model, hand instruments, patterns and wax

Task:

Transfer the design from the master model to the refractory model and wax-up

Criteria:

Technical Quality:

- So that the markings are transferred accurately
- So that the pattern is applied without being distorted
- So that the wax-up is an exact duplicate of the approved design

Condition:

Given the waxed appliance on the refractory model

Task:

Sprue the appliance

Criteria:

Technical Quality:

- So as to allow for an accurate reproduction of the wax pattern by casting alloy

Partial Denture

Condition:

Given the waxed and sprued pattern on a refractory model and casting ring, an investment system and hand instruments

Task:

Invest the model into the casting ring

Criteria:

Technical Quality:

- According to manufacturer's specifications

Condition:

Given mold, furnace and crucible

Task:

Burn-out the wax pattern

Criteria:

Technical Quality:

- So that the temperature used and time allowed for burn-out follows alloy manufacturer's specifications

Condition:

Given selected alloy for casting and a casting system

Task:

Cast and de-vest the appliance

Criteria:

Technical Quality:

- So that porosity is not present in the restoration
- So that all details of the wax pattern are present in the casting
- So that all casting, de-vesting and cleaning procedures are followed according to the instructions of alloy and equipment manufacturers

Safety:

- So that materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used

Condition:

Given the de-vested casting, high speed motor, trimming tools, and a polishing system

Task:

Trim and fit the appliance to the duplicate model

Criteria:

Technical Quality:

- So that the rests are completely seated
- So that the damage to the duplicate model is isolated to the retentive areas of the clasp
- So that the external parts of the metal castings are refined to the original wax contours
- So that the appliance has a clean and shiny appearance
- So that the appliance is passive when fully seated
- So that there are no occlusal interferences

Condition:

Given a request from a Health Professional for saddles for an altered cast procedure, and given the appliance fitted on the master model, and processing materials

Task:

Fabricate saddle(s) for the altered cast

Criteria:

Technical Quality:

- So that the saddle(s) conform with the anatomical outlines and landmarks provided on the preliminary model
- So that the saddle(s) provides proper design for the chosen material or impression technique to be used as prescribed

Safety:

- So that materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used

Condition:

Given the appliance fitted on the master model and a request for try-in and/or altered cast and/or bite registration as specified in the prescription

Task:

Send the appliance to the Health Professional for try-in and/or altered cast and/or bite registration, if needed

Criteria:

Technical Quality:

- So that the appliance will be received by the Health Professional without damage or visible distortions

Condition:

Given a disinfected cast partial appliance with altered cast impression, a master model, hand instruments, heat source, luting material, and a mixing system

Task:

Fabricate an altered cast model

Criteria:

Technical Quality:

- So that the cast partial rests are seated on the master model
- So that there is no interference between the impression material and the model
- So that the altered addition interlocks with the original model

Condition:

Given the model, appliance, heat source, teeth, wax, hand instruments, trimming tools, and a hand piece and/or lathe

Task:

Set-up the teeth and wax-up the tissue

Criteria:

Technical Quality:

- Following the Health Professional's prescription and/or instructions
- So that the shade of the teeth matches the prescription
- So that the mold is selected in accordance with the manufacturer's suggested criteria
- So that the teeth are set-up to achieve the required occlusal relationship
- So that wax-up is done according to anatomical requirements
- So that the aesthetic requirements specified by the Health Professional are met

Continue with "Full and Partial Dentures" Standards #11 –26 detailed in prior pages.

Listing of Standards By Task

CROWN & BRIDGE

1. Disinfect the impression and/or model
2. Assess the prescription for completeness
3. Determine the correct shading for the restoration
4. Document changes to the prescription and/or design requirements
5. Determine the quality of the impression and the bite registration
6. Fabricate a master model and separate dies
7. Mount the models on the articulator
8. Prepare dies
9. Wax-up the restoration
10. Select the alloy to be used in casting
11. Invest wax pattern
12. Burn-out the wax pattern
13. Cast and de-vest the restoration
14. Fit the restoration to the master die
15. Send the restoration to the Health Professional for try-in
16. Prepare the restoration for ceramic/composite application
17. Oxidize the restoration
18. Apply the veneering material to the restoration
19. Contour the veneer
20. Glaze and/or stain the restoration
21. Polish the exterior metal portions of the restoration and microblast the fitting surfaces
22. Determine the restoration's quality
23. Prepare the restoration for shipping

Condition:

Given a shipment of an impression or model from a Health Professional

Task:

Disinfect the impression and/or model

Criteria:

Safety:

- So that gloves are worn at all times until disinfecting is completed
- So that the disinfectant used is compatible with the impression and/or model
- So that manufacturer's specifications for disinfectant used, are followed
- So that the packaging material that was in direct contact with the impression or model, is discarded
- So that the impression and/or model is disinfected according to the Universal Precautions -- at the minimum -- low level, as defined by the RCDSO guidelines, dated June 1995

Timing:

- Before proceeding any further

Condition:

Given a prescription from a Health Professional

Task:

Assess the prescription for completeness

Criteria:

Technical Quality:

- The prescription must include:
  - ⇒ the patient's name or identification number
  - ⇒ the authorized Health Professional's name
  - ⇒ type and/or description of prosthesis or treatment objectives
  - ⇒ type of alloy to use (i.e. noble, high noble, non-precious)
  - ⇒ shade
  - ⇒ date sent and date required
- So that if in doubt, the dental technologist will consult the Health Professional before proceeding with the work

Condition:

If the shading was not established by a Health Professional, and given that colour corrected lighting is used and that patient is present

Task:

Determine the correct shading for the restoration

Criteria:

Technical Quality:

- So that the shade blends with the shade of the adjacent teeth
- So that the shade selected is recorded

Interpersonal Quality:

- Ensuring that you explain to the patient what you are going to do and why
- Ensuring that you ask the patient for his/her expectations regarding the shading
- Ensuring that if the patient's expectations cannot be met, you (the RDT) explain to the patient why
- So that while taking the shading, touching the patient only in the area around the mouth
- So that consent to take the shade is obtained from the patient

Safety:

- So that if the patient needs help, assist him/her onto the chair
- So that hands are washed prior to gloves being worn
- So that new examination gloves are worn at all times
- So that all colour matching tabs are disinfected
- So that all instruments used in the patient's mouth are disinfected

Condition:

Given that clarification and/or changes are needed due to an incomplete or unclear prescription from a Health Professional

Task:

Document changes to the prescription and/or design requirements

Criteria:

Technical Quality:

- So that any changes or modifications to a prescription or design as a result of discussions with the Health Professional, are documented and dated
- Documentation must include:
  - ⇒ date and time of discussion
  - ⇒ name of contact from the Health Professional's office
  - ⇒ changes and modifications agreed to
  - ⇒ signature of the RDT or that of the person designated by the RDT

Condition:

Given a completed impression and bite registration (provided by a prescribing Health Professional)

Task:

Determine the quality of the impression and the bite registration

Criteria:

Technical Quality:

- The impression must:
  - ⇒ not have any air bubbles, drags or visible distortions
  - ⇒ replicate the Health Professional's preparation entirely
  - ⇒ if impression copings are used, they must be secure in the impression material (i.e. must be locked into the impression)
- The bite registration must be accurate, i.e. not distorted
- If in doubt at any stage, the dental technologist should consult with the Health Professional

Condition:

Given an impression with no air bubbles, drags or visible distortions and the following equipment and materials: a vibration device, mixing container, vacuum mixer, die stone, epoxy resins, and a removable die system

Task:

Fabricate a master model and separate dies

Criteria:

Technical Quality:

- So that the model is a true reproduction of the impression
- So that there is a clear outline of the prepared margins
- So that the space between opposing teeth is consistent with the manufacturer's specifications for the restoration materials used
- So that the die system allows repeated removal and replacement of the die to its pre-cut position

Safety:

- Wearing gloves while pouring the model

Condition:

Given the requirement to articulate, and using an articulator

Task:

Mount the models on the articulator

Criteria:

Technical Quality:

- So that the models are mounted in the relationship required by the prescription

Condition:

Given a hand piece, burs, block-out material, marking pencil, die spacer, die hardener and dust extractor and a magnification device

Task:

Prepare dies

Criteria:

Technical Quality:

- So that all aspects of the margin are visible and accessible
- So that the dies are not over trimmed
- So that the preparation is parallel to the path of insertion
- So that minor undercuts and imperfections are blocked out
- So that the margins are marked visibly
- So that the spacer covers all preparation areas as per technique

Condition:

Given a Health Professional's prescription (for metal or veneered to metal crown & bridge), the articulated model, wax, die separator, and hand instruments

Task:

Wax-up the restoration

Criteria:

Technical Quality:

- So that if any of the occlusal contacting surfaces are in metal, functional and anatomical harmony must be achieved
- So that the margins are sealed with no under or over extensions as defined by the penciled markings except when otherwise required by the prescription
- So that copings are designed to support the veneer to the veneer manufacturer's specifications

Condition:

Given a prescription from a Health Professional

Task:

Select the alloy to be used in casting

Criteria:

Technical Quality:

- So that the properties of the alloy are suitable for restoration
- So that the selected alloy complies with the requested alloy on the Health Professional's prescription

Safety:

- So that materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and materials used

Condition:

Given a casting ring, vacuum mixer, sprue form, debubbilizer, spatula, hand instruments, wax and investment system

Task:

Invest wax pattern

Criteria:

Technical Quality:

- So that manufacturer's specifications are followed

Condition:

Given a mold, furnace and crucible

Task:

Burn-out the wax pattern

Criteria:

Technical Quality:

- So that the temperature used and time allowed for burn-out follows alloy manufacturer's specifications

Condition:

Given a selected alloy for casting, mold that has been burnt out, a casting system, and a de-vesting system

Task:

Cast and de-vest the restoration

Criteria:

Technical Quality:

- So that porosity is not present in the restoration
- So that all details of the wax pattern are present in the casting
- So that all casting, de-vesting and cleaning procedures are followed according to the instructions of alloy and equipment manufacturers

Condition:

Given a cleaned restoration, a lathe and/or hand piece, trimming tools and a magnification device

Task:

Fit the restoration to the master die

Criteria:

Technical Quality:

- So that if any of the occlusal contacting surface are in metal, functional and anatomical harmony must be achieved
- So that the margins are seated with no under or over extensions as defined by the penciled markings except when otherwise required by the prescription
- So that copings are designed to support the veneer to the veneer manufacturer's specifications
- So that there is no damage to the die

Condition:

Given a restoration fitted to the master model, a request specified in the prescription or the RDT's decision that try-in is required

Task:

Send the restoration to the Health Professional for try-in

Criteria

Technical Quality:

- So that the restoration will be received by the Health Professional without damage or visible distortions

Condition:

Using ceramic/composite compatible trimming tools

Task:

Prepare the metal restoration for ceramic/composite application

Criteria:

Technical Quality:

- So that the ceramic can bond to the metal
- So that the surface has a smooth and even finish, and has no sharp edges (if ceramic)
- So that retention is provided for composite bonding

Condition:

Using a ceramic furnace and a metal substructure

Task:

Oxidize the restoration

Criteria:

Technical Quality:

- According to the manufacturer's specifications of the alloy used

Condition:

Given prepared metal restoration, the ceramic furnace, hand instruments, and veneering materials

Task:

Apply the veneering materials to the restoration

Criteria:

Technical Quality:

- So that the form, function and the desired shade of the restoration is achieved

Safety:

- So that materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used

Condition:

Given a veneered restoration, hand piece and trimming tools

Task:

Contour the veneer

Criteria:

Technical Quality:

- So that if any of the occlusal contacting surfaces are in the veneering material, functional and anatomical harmony are achieved
- So that the margins are sealed with no under or over extensions as defined by the penciled markings except when otherwise required by the prescription
- So that the fit, form and function are harmonious with the neighbouring teeth unless otherwise required by the prescription

Condition:

Given a ceramic furnace or curing unit, stains, hand instruments and the trimmed veneered restoration

Task:

Glaze and/or stain the restoration

Criteria:

Technical Quality:

- So that the prescribed shade and surface characteristics are achieved

Condition:

Given a completed restoration and using trimming tools

Task:

Polish the exterior metal portions of the restoration and microblast the fitting surfaces

Criteria:

Technical Quality:

- So that all oxide and debris is removed from the fitting surfaces
- So that the surface has a mirror-like finish

Condition:

Given the clean restoration and a Health Professional's prescription

Task:

Determine the restoration's quality

Criteria:

Technical Quality:

- The restoration must be correct in accordance with the prescription
- The restoration must fulfil the required intra-oral function and intent of the prescription

Condition:

Given a completed (porcelain/composite), glazed and polished cast restoration, and shipping bag/container

Task:

Prepare the restoration for shipping

Criteria:

Technical Quality:

- Packing it so that it will be received by the Health Professional with no damage or distortion

Listing of Standards By Task

IMPLANTS

1. Disinfect the impression and/or model
2. Evaluate the prescription for completeness
3. Document changes to the prescription and/or design requirements
4. Evaluate the impression or model for completeness
5. Pour the study model
6. Mount the models on the articulator
7. Determine if proposed clinical treatment plan is technically possible or suggest alternatives
8. Complete diagnostic set-up and/or wax-up
9. Send the wax-up to the Health Professional for try-in or verification
10. Fabricate a surgical stent to aid the surgeon in implant placement
11. Pack and send surgical stent to Health Professional
12. Disinfect impression and pour preliminary model
13. Fabricate custom tray
14. Package and send custom tray to Health Professional
15. Verify that impression quality is acceptable
16. Attach analogues to the impression transfer copings, if necessary, and re-seat copings in the impression
17. Pour final impressions to create master model
18. Fabricate an occlusal registration device(s), if needed, and record the components used
19. Send occlusal registraion device(s) to the Health Professional
20. Mount the master and opposing models on the articulator
21. Construct the restoration
22. Select and set-up teeth and wax-up
23. Send the wax-up to the Health Professional for try-in
24. Create a matrix of existing set-up, if necessary
25. Fabricate sub-assembly or substructure

Condition:

Given a shipment of an impression or model from a Health Professional

Task:

Disinfect the impression and/or model

Criteria:

Safety:

- So that gloves are worn at all times until disinfecting is completed
- So that the disinfectant used is compatible with the impression and/or model
- So that manufacturer's specifications for the disinfectant used, are followed
- So that the packaging material that was in direct contact with the impression or model is discarded
- So that the impression and/or model is disinfected according to the Universal Precaution -- at the minimum -- low level, as defined by the RCDSO guidelines, dated June 1995

Timing:

- Before proceeding any further

Condition:

Given a prescription from a Health Professional

Task:

Evaluate the prescription for completeness

Criteria:

Technical Quality:

- The prescription must include:
  - ⇒ the patient's name or identification number
  - ⇒ the Health Professional's name
  - ⇒ type and/or description of prosthesis or treatment objectives
  - ⇒ manufacturer of the implant
  - ⇒ materials used and teeth to be used
  - ⇒ shade
  - ⇒ date sent
- So that if in doubt, the dental technologist will consult the Health Professional before proceeding with the work

Condition:

Given that clarification and/or changes are needed due to an incomplete or unclear prescription from the Health Professional

Task:

Document changes to the prescription and/or design requirements

Criteria:

Technical Quality:

- So that any changes or modifications to a prescription or design as a result of discussions with the Health Professional, are documented and dated
- Documentation must include:
  - ⇒ date and time of discussion
  - ⇒ name of contact from Health Professional's office
  - ⇒ changes and modifications agreed to
  - ⇒ signature of the RDT or that of the person designated by the RDT

Conditions:

Given a prescription and impression or model from a Health Professional

Task:

Evaluate the impression or model for completeness

Criteria:

Technical Quality:

- The impression or model must --
  - ⇒ not have any flaws and/or visible distortions that will affect the work to be done

Condition:

Given a full arch impression with no defects

Task:

Pour the study model

Criteria:

Technical Quality:

- So that the model is clear of voids, has no air bubbles, has a dense smooth surface and is a faithful reproduction of the impression

Condition:

Given a Health Professional's prescription, upper and lower study models, occlusal registration, an articulator and luting material

Task:

Mount the models on the articulator

Criteria:

Technical Quality:

- So that the patient's jaw or occlusal relationship is established in accordance with the occlusal registration provided by the Health Professional

Condition:

Given articulated upper and lower study model and a proposed treatment plan

Task:

Determine if proposed clinical treatment plan is technically possible or suggest alternatives

Criteria:

Technical Quality:

- There must be sufficient room for the proposed prosthetic restoration
- So that the proper formula is used to avoid leverage of the implants in accordance with manufacturer's specifications
- So that the ideal location and angulation of fixtures is determined to best support the technical requirements of the restoration
- So that the proposed materials and components are compatible/suitable with the clinical treatment plan

Condition:

Given a Health Professional's approved treatment plan, or prescription, articulated models, teeth and/or wax

Task:

Complete diagnostic set-up and/or wax-up

Criteria:

Technical Quality:

- Following the Health Professional's prescription and/or instructions, including aesthetic requirements
- So that the shade of the teeth matches the prescription
- So that the teeth are set-up or waxed-up to achieve the required occlusal relationship
- So that wax-up is done according to anatomical requirements and implant locations

Condition:

Given a completed diagnostic set-up and/or wax-up

Task:

Send wax-up to the Health Professional for try-in or verification

Criteria:

Technical Quality:

- Packing it so that it will be received by the Health Professional with no damage or distortion

Condition:

Given the treatment plan, study models, and/or diagnostic wax-up, materials and equipment to fabricate a surgical stent

Task:

Fabricate a surgical stent to aid the surgeon in implant placement

Criteria:

Technical Quality:

- So that the surgical stent fits the tissue or occlusal surface without distortion
- So that the suggested implant placement will be aesthetically acceptable without compromising function

Safety:

- So that materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used

Condition:

Given the polished and clean surgical stent, shipping bag and/or container

Task:

Pack and send the surgical stent to the Health Professional

Criteria:

Technical Quality:

- Packing it so that it will be received by the Health Professional with no damage or distortion

Condition:

Given a new full arch preliminary impression with no defects and treatment plan or prescription

Task:

Disinfect impression and pour preliminary model

Criteria:

Technical Quality:

- So that the model is clear of voids, has no air bubbles, has a dense smooth surface and is a faithful reproduction of the impression

Condition:

Given a preliminary model with identifiable implant sites, custom tray material and treatment plan or prescription

Task:

Fabricate custom tray

Criteria:

Technical Quality:

- So that the custom tray conforms with the anatomical outlines and landmarks provided on the preliminary model
- So that the custom tray provides proper design for the chosen material or impression technique to be used as prescribed
- So that the design conforms to the technique determined by the implant system used

Safety:

- So that materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used

Condition:

Given a completed custom tray

Task:

Package and send custom tray to the Health Professional

Criteria:

Technical Quality:

- Packing it so that it will be received by the Health Professional with no damage or distortion

Condition:

Given a final impression, treatment plan or prescription, and written verification of the accuracy of the component fit from a Health Professional

Task:

Verify that impression quality is acceptable

Criteria:

Technical Quality:

- So that the impression is clear of voids or air bubbles in the technically critical areas

Condition:

Given a master impression, treatment plan or prescription, a magnification device and analogues

Task:

Attach analogues to the impression transfer coping, if necessary, and reseat copings in the impression

Criteria:

Technical Quality:

- So that the analogues are fitting flush with transfer impression copings
- So that there is no movement of the analogues
- The impression transfer screw must be secure
- So that there are no voids around the screws
- So that the screws are locked in position and cannot be rotated or moved

Condition:

Given the implant final impression with analogues and copings in place with written verification of accuracy of component fit from a Health Professional (i.e. dentist or denturist)

Task:

Pour final impressions to create master model

Criteria:

Technical Quality:

- So that the model is clear of voids, has no air bubbles, has a dense smooth surface and is a faithful reproduction of the impression
- So that soft tissue material is poured wherever the interface of the analogue impression coping is below tissue level
- So that the model displays all anatomical tissue landmarks
- So the components have not shifted or moved

Condition:

Given a final model, treatment plan or prescription and selected components

Task:

Fabricate an occlusal registration device(s), if needed, and record the components used

Criteria:

Technical Quality:

- According to the requirements of the type of implant restoration
- According to the technique specified in the prescription
- So that the occlusal registration device(s) has a passive fit to the master model according to the technique prescribed
- So that there is full and complete contact between the abutting surfaces of the occlusal registration device(s) and the implant cylinder
- So that the occlusal registration device(s) is constructed so as to enable the Health Professional to establish the patient's jaw relationship
- So that the identification of the component parts used is recorded

Safety:

- So that materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used

Condition:

Given a completed occlusal registration device(s)

Task:

Send occlusal registration device(s) to the Health Professional

Criteria:

Technical Quality:

- Packing it so that it will be received by the Health Professional with no damage or distortion

Condition:

Given the master and opposing models, occlusal registration device(s) treatment plan or prescription and an articulator

Task:

Mount the master and opposing models on the articulator

Criteria:

Technical Quality:

- So that the patient's jaw or occlusal relationship is established in accordance with the occlusal registration(s) provided by the Health Professional

FIXED CROWN & BRIDGE RESTORATION

Condition:

Given a master model with a treatment plan or prescription specifying crown & bridge, and the selected components

Task:

Construct the restoration

- Follow Crown & Bridge Standards #8-15
- Note that the criteria listed below apply to Crown & Bridge Standards #8-15 when implants are involved

Criteria:

Technical Quality:

- Following the Health Professional's prescription
- So that the appropriate and selected implant components as per the treatment plan are used
- So that the restoration has a passive fit on abutments or implants
- So that the components used are recorded

OVER DENTURE OR FIXED DETACHABLE RESTORATION (HYBRID)

Condition:

Given the treatment plan or prescription, articulated master models and implant components, teeth and wax

Task:

Select and set-up teeth and wax-up

Criteria:

Technical Quality:

- Following the Health Professional's prescription and/or instructions
- So that the shade of the teeth matches the prescription
- So that the mold is selected in accordance with the manufacturer's suggested criteria
- So that the teeth are set-up to achieve the required occlusal relationship
- So that the wax-up is done according to anatomical requirements
- So that the aesthetic requirements specified by the Health Professional are met
- According to the anatomical and implant system requirements

OVER DENTURE OR FIXED DETACHABLE RESTORATION (HYBRID)

Condition:

Given a completed set-up and wax-up

Task:

Send the wax-up to the Health Professional for try-in

Criteria:

Technical Quality:

- Packing it so that it will be received by the Health Professional with no damage or distortion

OVER DENTURE OR FIXED DETACHABLE RESTORATION (HYBRID)

Condition:

Given a set-up that has been approved by a Health Professional, and given that any required adjustments are noted on the prescription

Task:

Create a matrix of existing set-up, if necessary

Criteria:

Technical Quality:

- So that the matrix is dimensionally stable and transferable
- So that the matrix represents an accurate reproduction of the placement of the teeth and denture base contour

OVER DENTURE OR FIXED DETACHABLE RESTORATION (HYBRID)

Condition:

Given the treatment plan or prescription, articulated master model(s), matrix, implant components, teeth and wax

Task:

Fabricate sub-assembly or substructure

- Follow Crown & Bridge Standards #8-15 and then Full Denture Standards #12-24
- Note that the criteria listed below apply to Crown & Bridge Standards #8-15 and Full Denture Standards #12-24 when implants are involved

Criteria:

Technical Quality:

- Following the Health Professional's prescription
- So that the substructure is free of porosity or voids
- So that the substructure has passive fit to the master model
- So that the substructure is designed to support the chosen restoration
- So that the appropriate and selected components and materials as defined by the treatment plan are used
- So that the metal seat of the implant cylinder is not damaged

Orthodontics

Listing of Standards By Task

ORTHODONTICS

1. Disinfect the impression and/or model
2. Evaluate the prescription for completeness
3. Document changes to the prescription and/or design requirements
4. Assess the impression or model
5. Fabricate a working cast
6. Fabricate a working cast with bands attached
7. Fabricate a study cast
8. Prepare cast for banding
9. Seat the bands on working cast
10. Mount the working models on the articulator
11. Fabricate and place wires and components for the appliance on the model
12. Apply separator
13. Soak the cast
14. Apply and process material
15. Remove the appliance from the model and de-wax the appliance and model
16. Solder wire components
17. Trim the appliance
18. Polish, shine and clean the appliance
19. Determine the appliance quality
20. Prepare the appliance for shipping
21. Align and lute together broken orthodontic appliance components

Condition:

Given a shipment of an impression or model from a Health Professional

Task:

Disinfect the impression and/or model

Criteria:

Safety:

- So that gloves are worn at all times until disinfecting is completed
- So that the disinfectant used is compatible with the impression and/or model
- So that manufacturer's specifications for the disinfectant used, are followed
- So that the packaging material that was in direct contact with the impression or model, is discarded
- So that the impression and/or model is disinfected according to the Universal Precautions -- at the minimum -- low level, as defined by the RCDSO guidelines, dated June 1995

Timing:

- Before proceeding any further

Condition:

Given a prescription from a Health Professional

Task:

Evaluate the prescription for completeness

Criteria:

Technical Quality:

- The prescription must include:
  - ⇒ the patient's name or identification number
  - ⇒ the authorized Health Professional's name
  - ⇒ type and/or description of appliance or treatment objectives
  - ⇒ date sent and date required
- So that if in doubt, the dental technologist will consult the Health Professional before proceeding with the work

Condition:

Given that clarification and/or changes are needed due to an incomplete or unclear prescription from a Health Professional

Task:

Document changes to the prescription and/or design requirements

Criteria:

Technical Quality:

- So that any changes or modifications to a prescription or design as a result of discussions with the Health Professional, are documented and dated
- Documentation must include:
  - ⇒ date and time of discussion
  - ⇒ name of contact from the Health Professional's office
  - ⇒ changes and modifications agreed to
  - ⇒ signature of the RDT or that of the person designated by the RDT

Condition:

Given an impression or model from a Health Professional

Task:

Assess the impression or model

Criteria:

Technical Quality:

- The impression or model must --
  - ⇒ not have any flaws and/or visible distortions that will affect the work to be done

Condition:

Given a complete prescription and an impression from a Health Professional, model materials, mixing container, a spatula, and a vibrator

Task:

Fabricate a working cast

Criteria:

Technical Quality:

- So that the model is free of air bubbles or visible distortions that will affect the work to be done

Condition:

Given a complete prescription and an impression containing bands from a Health Professional, model materials, mixing container, a spatula, and a vibrator

Task:

Fabricate a working cast with bands attached

Criteria:

Technical Quality:

- So that the model is free of air bubbles or visible distortions that will affect the work to be done
- So that the bands are accurately recorded on the model in accordance with the band position in the impression

Condition:

Given a complete prescription and an impression from a Health Professional, model materials, mixing containers, a spatula, a vibrator and a model trimmer, and bite registration, if provided

Task:

Fabricate a study cast

Criteria:

Technical Quality:

- So that the model is free of air bubbles and visible distortions
- So that the study model meets the requirements of the Health Professional as stated on the prescription

Condition:

Given a complete prescription and an impression from a Health Professional, a working cast, orthodontic bands and related tools

Task:

Prepare the cast for banding

Criteria:

Technical Quality:

- So that the requirements of the Health Professional as stated on the prescription are met
- So that the cast is altered to simulate the subgingival contours of the teeth to be banded

Condition:

Given a complete prescription and an impression from a Health Professional, an altered working cast, orthodontic bands and related tools

Task:

Seat the bands on working cast

Criteria:

Technical Quality:

- So that the requirements of the Health Profession as stated on the prescription are met
- So that the bands are well adapted to the tooth and are even with the marginal ridges

Condition:

Given a Health Professional's prescription, a working and opposing model, an articulator, and luting material, and if required, a bite registration or construction bite

Task:

Mount the working models on the articulator

Criteria:

Technical Quality:

- So that the models are mounted in the relationship as required by the prescription

Condition:

Given the prescription and the design, a range of wires and a variety of components and tools required for wire work and soldering material

Task:

Fabricate and place wires and components for the appliance on the model

Criteria:

Technical Quality:

- According to the prescription
- So that the wire and components are held stationary on the cast
- So that the wire and components to be embedded in processing materials are set off the model
- So that the wire and fixed components to be soldered are held stationary on the cast
- So that the wires are free of nicks

Safety:

- So that materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used.

Condition:

Given the model, separator and brush

Task:

Apply separator

Criteria:

Technical Quality:

- So that all areas which will be coming in contact with processing material (e.g. acrylic) are covered

Condition:

Given a wired cast and using a tub with water

Task:

Soak the cast

Criteria:

Technical Quality:

- So that all air bubbles are removed

Orthodontics

Condition:

Given a soaked and separated model, the fabricated components and wire work, processing material and equipment required by the technique

Task:

Apply and process material

Criteria:

Technical Quality:

- So that the material is processed without porosity
- So that manufacturer's specifications are met

Safety:

- So that non-allergenic materials are used when specified in the prescription
- So that materials are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used

Condition:

Using wax remover (i.e. hot or cold water, steam or chemical wax remover)

Task:

Remove the appliance from the model and de-wax the appliance and model

Criteria:

Technical Quality:

- So that the appliance is not distorted
- So that all wax is removed from the appliance

Condition:

Given fabricated wire for a fixed appliance or a removable appliance requiring soldered components

Task:

Solder wire components

Criteria:

Technical Quality:

- So that the requirements of the Health Professional as stated on the prescription are met
- So that the solder joints are free of voids and porosity
- So that the soldered components are secure

Safety:

- So that soldering materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used

Condition:

Given the prescription and using burs on a dental lathe or hand piece

Task:

Trim the appliance

Criteria:

Technical Quality:

- So that clasps are functional
- So that all excess acrylic is removed
- So that all excess solder is removed
- So that active components can perform their design functions
- So that the appliance fits passively to the master model

Condition:

Given a lathe or hand piece, cotton and/or bristle brushes, polishing media and the appliance

Task:

Polish, shine and clean the appliance

Criteria:

Technical Quality:

- So that the appliance, including any solder joints, is smooth and all scratches are removed
- So that wire work is not distorted
- So that all sharp edges are rounded off
- So that all polishing debris is removed
- So that the appliance is clean and ready for shipping

Condition:

Given the clean appliance and a Health Professional's prescription

Task:

Determine the appliance quality

Criteria:

Technical Quality:

- The appliance must be correct in accordance with the prescription
- The appliance must fulfil the required intra-oral function and intent of the prescription

Condition:

Given a polished and clean appliance, and shipping bag/container

Task:

Prepare the appliance for shipping

Criteria:

Technical Quality:

- Packing it so that it will be received by the Health Professional with no damage or distortion

Condition:

Given a broken orthodontic appliance that can be assembled without an impression

Task:

Align and lute together the orthodontic appliance components

Criteria:

Technical Quality:

- So that the broken components are aligned to replace the original orthodontic appliance

Safety:

- So that materials used are either ADA, CDA, Health Canada or FDA approved
- So that if materials do not have either ADA, CDA, Health Canada or FDA approvals, the RDT must inform the prescribing Health Professional and record the Health Professional's approval and the materials used

COLLEGE OF DENTAL TECHNOLOGISTS OF ONTARIO

Laboratory Supervision Standards

This document contains practice parameters and standards that must be taken into account by all Ontario dental technologists in discharging supervisory responsibilities and/or in the provision of dental technology services in dental laboratories. It is important to note that the College (CDTO) or other bodies shall refer to this document in determining whether appropriate standards and professional responsibilities have been maintained.

INTRODUCTION

The *Regulated Health Professions Act, 1991* states:

> "32. – (1) No person shall design, construct, repair or alter a dental prosthetic, restorative or orthodontic device unless,
>
> (a) the technical aspects of the design, construction, repair or alteration are supervised by a member of the College of Dental Technologists of Ontario (CDTO) or the Royal College of Dental Surgeons of Ontario (RCDSO); or
>
> (b) the person is a member of the College in clause (a)."
>
> [Exceptions are provided for denturists, public hospitals, and clinics associated with faculties of dentistry or denturism.]

We consider the "technical aspects of design" to be the determination of the shape, contours, and structural elements, the choice of materials, and the choice of process.

The "technical aspect of construction" includes the specification of process details, and of material details. The materials are to be specified having regard to the environment in which the appliance will be used.

The "technical aspects of repair or alteration" involve the same processes of design and construction, though applied to an existing appliance.

We are of the view that "dental prosthetic, restorative or orthodontic device" includes significant custom-made sub-components. Sourcing such components must be from supervised laboratories.

CONCEPT OF SUPERVISION

The concept of "supervision" is:

> "***A member of the College (CDTO) is responsible for all aspects of dental technology practice in the laboratory in which the member practises and which is being supervised by the member at all times. A member is responsible for overseeing the design, construction, repair and alteration of each dental prosthetic, restorative or orthodontic device that is processed in the laboratory under the authority of the member's stamp, whether the member is physically present or not. A member who is supervising must be available within the suite of offices housing the laboratory when prescriptions are being processed, as detailed below. A member shall indicate his/her acceptance of responsibility for supervising by stamping each case in accordance with the standards of the College."***

SUPERVISION REQUIREMENTS

The CDTO Standards of Practice and Laboratory Supervision clearly sets out the College's expectations of its members. The CDTO requires that each invoice or other authorization for release of any dental prosthetic be stamped by the dental technologist (RDT) taking responsibility for the case. Dentists and others recognize the College issued stamp as indicating that every technical aspect of the design of the dental prosthetic, restorative or orthodontic device was personally supervised by the responsible RDT. The College operates a program to ensure that only qualified members who continually meet the supervision requirements will have the privilege of using the College issued RDT stamp. In order to be permitted to participate in the program, members must complete the application form for laboratory supervision, provide information about their planned supervision activities and undertake to meet standards and requirements. The use of the stamp would be required to conform to professional standards set by the College. The stamp includes the member's registered name and his/her registration number with the College. Each document requiring a stamp would also have to be dated.

1. CONTROL OF RDT STAMP

Only an RDT can authorize a laboratory to impress his/her College issued stamp. Each RDT will be responsible for ensuring that his/her stamp is not used by any laboratory without his/her authority, and each RDT will be held **completely responsible** for any case which is released on the authority of his/her stamp, unless it can be demonstrated that the laboratory used the stamp when the RDT was not employed or otherwise associated with the laboratory, **and** after the RDT had made all reasonable efforts to obtain the stamp from the laboratory and deprive the laboratory of the right or ability to use the stamp. ***If a member's stamp has been lost or stolen or should there be unauthorized use of a member's stamp, the member must notify the College in writing within 72 hours.***

2. WHAT MUST BE STAMPED?

Both the client and laboratory copy of the invoice or other document authorizing the release of the case must be stamped by the supervising RDT or dentist. According to the RCDSO, the supervising dentist should either sign or imprint his Ontario Dental Association (ODA) stamp. (Ref. "Dispatch", Jan/Feb 2003, p.24 and 43.) It is a standard of practice that

no case be released, other than on an interim basis, without a stamp. Every invoice must be stamped, including "no charge" invoices for interim stages or repairs or alterations. This control is intended to back up the requirement in the records and conflicts provisions of the regulations.

Stamping the invoice indicates that the RDT-in-charge of the laboratory in question has examined all records supplied by the prescribing dentist and any other records necessary to the design, fabrication or repair or alteration in question. These include impressions, intra-oral records, models, diagrams, written instructions, and verbal instructions, which must be recorded in the chart. The stamp indicates that the RDT accepts responsibility for certifying that the records reviewed are adequate to design, construct, repair or alter the case.

By stamping the invoice or any other document authorizing the release of the case, the RDT certifies that he/she has examined the case for conformity to the prescription. The stamp also certifies that the case was designed, constructed, repaired, or altered in accordance with the standards of the CDTO, and that the invoice conforms with the standards of the College in that it accurately reflects the processes, materials and charges.

2.1 Design Consultations

Prior to release of any written design proposal setting out the technical aspects of the dental device in question, it **must be stamped and initialled**. This will ensure that the thought process which is the essence of the professional knowledge, skill and judgement of the RDT cannot be circumvented, with non-RDT plans being conveyed to the dentist and then back to the laboratory and prescription. Please note that there are no exceptions to the rule that an RDT must also initial a written design proposal. ***No design consultation proposal can ever be released without an RDT's direct approval.***

2.2 Colour Matching (Custom Staining)

It is a standard of practice that colour matching (custom staining) requires the presence of an RDT. An RDT may remove, subject to the CDTO Standards of Practice, a "removable" temporary appliance to do intra-oral colour matching, provided that no cement seal may be broken. After completing the procedure, the RDT must record the shade that he/she had selected on the prescription, invoice and/or work order which **must be stamped and initialled**.

3. ACTIVITIES NOT REQUIRING RDT APPROVAL

3.1 Release of any case at a stage where it is notable to be used for its intended purpose. Such cases shall not include try-ins. This will permit wax mock-ups, ***but would not permit any appliance to be released without a stamp if it could conceivably be retained for use by the patient***, regardless of whether the RDT believes he/she will be required to do further work at the time of release.

3.2 Disinfection of cases

4. THE REQUIREMENT THAT AN RDT MUST BE PRESENT

The CDTO expects an RDT to be fully responsible and accountable at all times for the technical aspects of dental technology practice, as well as for the administration of the laboratory. ***The personal involvement of an RDT is required in every case.*** While the College recognizes the practical need for RDTs to take short absences from their laboratories, it expects the dental technologists to put in place adequate measures to ensure that the public is protected prior to taking any time off and to personally review each item before it goes out.

4.1 Short-term absences for such matters as lunch, banking, off-site consultations, CDTO and association affairs are to be permitted, provided that they do not exceed 30% of the operating hours of the laboratory in any given week. The RDT will authorize the release of cases by stamping the invoices and release authorization of every case, and perform other supervisory responsibilities during the remainder of the operating hours of the laboratory when he/she is present. These permitted absences cannot be carried forward or be cumulated for later use.

4.2 To ensure that each laboratory is supervised regularly and consistently, an RDT has to be present during its operating hours. A laboratory **cannot** be said to be supervised if there is no RDT or DDS present for:

- More than two calendar weeks in each of the *three four-month* periods in which the laboratory is operating in any calendar year and which absence cannot exceed 30 days in total; or
- More than two calendar weeks in any six-week period.

4.3 Any absence of greater than those permitted above will require a replacement RDT who has successfully obtained Laboratory Supervision Status from the College and been issued their own RDT stamp.

4.4 As well, the College will consider giving relief in individual cases of hardship arising from illness or bereavement, or participation in the work of Ontario dental technology professional bodies at the board or committee level, provided that there are alternative mechanisms that ensure public protection. The College may refuse to approve absences beyond those set out above if the public safety may be jeopardized, or if the laboratory would repeatedly be left unsupervised or inadequately supervised. The College will, at its option, require members seeking such relief to provide details of the alternative mechanisms in place at the laboratory the RDT supervises to assure the public is protected and that there is personal RDT involvement in every case.

4.5 Despite absences set out above, an RDT has to be personally responsible for every colour matching, case, invoice and authorization of releases under his/her stamp. Design consultations, which in all instances, requires the participation of an RDT must be stamped and initialled.

4.6 Each RDT will be required to keep a record of the days worked or assigned to a given laboratory and to produce it to the College on request. ***An RDT may only supervise a single laboratory on a given day. No RDT shall permit a laboratory to use his or her stamp on a day which is not assigned to that laboratory. For the purpose of supervision, a laboratory is a physical as well as a corporate entity in which the design, construction, repair and alteration of dental devices takes place in a single building within a single area, all of the parts of which are contiguous and directly accessible one from the other, and which operates and issues invoices under a single name.***

5. GENERAL SUPERVISORY RESPONSIBILITIES OF A "SUPERVISING RDT"

We consider that the supervising RDT or DDS should be responsible and accountable for the administration and management of the laboratory, for setting guidelines through policy and procedure manuals, for inspection and quality control, and for directing both regulated and unregulated staff.

The supervising RDT or DDS must:

5.1 be personally involved in the hiring of all technical employees who will work under his/her supervision in the design, construction, repair or alteration of dental devices, and must, at a minimum, interview and evaluate the candidate, and approve his/her hiring;

5.2 periodically evaluate staff under supervision, at least, annually, and more frequently if necessary;

5.3 ensure that records are kept in accordance with College standards, including the periodic confirmation that they are being appropriately compiled and stored;

5.4 take responsibility for compliance with the financial record keeping requirements of the College;

5.5 be responsible for the adequacy of materials used in the fabrication of dental appliances, and shall be responsible for the nature, adequacy, maintenance and calibration of all equipment used in the fabrication of dental appliances and shall warrant that each meets College standards;

5.6 set guidelines as to how each order will be filled and what standards must be met;

5.7 establish and update written procedure manuals dealing with materials, processes, equipment and infection control. Initial manuals must be available no later than September 1, 1997;

5.8 ensure that those under his/her supervision are familiar with the manuals and follow the procedures and meet the standards set out therein;

5.9 establish a written procedure for orders which do not fall within the standard policy and procedure manuals;

5.10 be responsible for periodic test sampling of materials, inspection of equipment, and review of procedures and their application to ensure continued conformity to quality standards;

5.11 establish and update written equipment maintenance guidelines for quality control and safety, with the initial manual available no later than September 1, 1997. These manuals may rely on manufacturer's guidelines, where they do not conflict with any College standard or policy;

5.12 be responsible for the general training and development of employees to ensure familiarity with the manuals, including revisions to the manuals to reflect new standards, equipment or materials in respect of any area to which the employees in question is assigned tasks in the laboratory.

The CDTO is of the view that to carry out this level of supervision, with the RDT's personal involvement in every case and in the general oversight aspects, would require a significant commitment of time actually spent in the laboratory. ***Members should be aware that the College will require members to meet both the quantitative and the qualitative standards.***

July 2003.

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STANDARD OF PRACTICE:

INFECTION PREVENTION AND CONTROL

College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

Contents

Introduction

Infection prevention and control is an important part of the health and safety of both patients and practitioners. The following document describes in detail the standards set by CDTO for both the prevention of transmission of infectious diseases and procedures for infection prevention/control in the dental technology practice.

Before performing any dental technology activity, RDTs and all personnel must be aware of the Infection Prevention and Control Standards that should take place in the in dental technology setting.

The Infection Prevention and Control Standard of Practice is presented in four chapters, each encompassing a different subject as it pertains to infection prevention and control:

1. Standard Precautions
2. Reusable Instruments Reprocessing, and Maintenance
3. Blood or Body Fluid Exposure Management
4. Training and Documentation

Found in each chapter, the "Standards of Practice" are presented in numbered coloured boxes. The standards are the minimum level at which all RDTs are held accountable for.

2	**You shall properly use personal protective equipment when in contact with blood/saliva.**

Guidance boxes describe the actions and behaviours that enable RDTs to meet the minimum standards, they represent the current best practices in the field. RDTs are not obligated to follow the guidance provided, but they must demonstrate that they meet the standards should they not follow the guidance.

GUIDANCE
Proper hand hygiene techniques **Handwashing** Wash your hands with a liquid soap, appropriate for use in a healthcare setting, at the following times: 1. When your hands are visibly dirty or contaminated with proteinaceous material, blood or other body fluids. 2. At the beginning and end of each clinical session. 3. After a toilet break.

Duty of patient care

Infection Prevention and Control Standards involves taking steps to prevent the spread of infectious agents among all individuals in the practice environment. The routine use of infection prevention and control measures, and an understanding of how infectious agents are transmitted, are critical in preventing this transmission and essential in ensuring patients receive safe care.

Duty of compliance

RDTs have a legal responsibility to meet the standards contained in this document.

All practitioners shall ensure that:

- their own dental laboratory meets the Infection Prevention and Control Standards; and
- these standards are fully met in the practice in which they work.

Where practitioners delegate responsibility for infection prevention and control associated tasks, practitioners remain accountable.

Role of Public Health Units

Under the *Infection Prevention and Control Practices Complaints Protocol, 2015, P*ublic Health Units (PHUs) are required to investigate complaints, referrals, or reportable diseases that may be linked to infection prevention and control practices. This is applicable to all health care settings.

PHUs may investigate facilities where concerns have been identified through pre-organized or unannounced inspections, and will provide the facility with recommendations or requirements for corrective actions based on Public Health Ontario/ the Provincial Infectious Diseases Advisory Committee's best practices documents.

Depending on the severity of the lapse, the PHU may issue an order, including closure of the facility or partial restrictions for specific services that the facility renders. The PHU may also post the IPAC lapse according to public disclosure requirements issued by the Ontario Ministry of Health and Long-Term Care. If a complaint is received, the involved PHU(s) will work with the CDTO as much as possible during the investigation

Non-registered staff and volunteers

RDTs are responsible for ensuring that all personnel involved in infection prevention and control activities are trained to enable them to correctly perform the required tasks.

The College strongly recommends that RDTs ensure that all personnel, including non-registered staff, volunteers and students meet the Infection Prevention and Control Standards to minimise the risk of transmission of infectious agents to patients, staff and their families.

Immunization

Immunization is one of the safest and most effective health interventions to prevent infectious diseases. Vaccination is a key means of establishing immunity to a number of common infectious diseases, thereby reducing the risk of acquiring and further transmitting the disease.

The College strongly recommends that all RDTs, non-registered staff and students follow the Canadian Immunization Guide to establish immunity against any common infectious diseases, including hepatitis B, measles, mumps, rubella, varicella (chickenpox), tetanus, diphtheria, and pertussis.

Part 1:

Standard Precautions

Standard precautions are the minimum infection control practice used to prevent transmission of diseases that can be acquired by contact with blood, body fluids (for example saliva), non-intact skin, and mucous membranes.

Standard precautions should be in place at all times, regardless of whether or not there is a known infectious source or condition. They are designed to reduce the risk of transmission of microorganisms from both recognized and unrecognized sources of infection.

Where the suspected or confirmed presence of infectious agents represents an increased risk of transmission, it may require measures additional to standard precautions, termed transmission-based precautions as a second tier of infection prevention. Transmission-based precautions are used when infection can spread through contact, droplet or airborne routes (e.g., active tuberculosis, measles, chickenpox and viral influenza).

1.1 Hand Hygiene

Hand hygiene reduces potential pathogens on the hand and is considered the single most critical measure for reducing the risk of transmitting organisms to patients and health care workers. The term hand hygiene includes both handwashing with liquid soap and the use of an alcohol-based hand rub.

Alcohol-Based Hand Rub/Sanitizer, with 70-90% alcohol, is the preferred method for cleaning hands when hands are not visibly soiled. It has been shown to be more effective than washing hands with soap (even with antimicrobial soap).

Hand washing with soap and water must be performed when hands are visibly soiled with dirt, blood, and bodily fluids.

Hand hygiene is recommended:

- When hands are visibly soiled.
- After touching instruments, equipment, materials, and other objects likely to be contaminated by blood, saliva, or respiratory secretions without the use of gloves.
- Before putting on gloves and again immediately after removing gloves.

1 You shall routinely practice proper hand hygiene techniques

GUIDANCE

Proper hand hygiene techniques

Handwashing

Wash your hands with a liquid soap, appropriate for use in a healthcare setting, at the following times:

4. When your hands are visibly dirty or contaminated with proteinaceous material, blood or other body fluids.
5. At the beginning and end of each clinical session.
6. After a toilet break.

When using liquid soap and water for routine care:

1. Wet hands with water.
2. Apply soap.
3. Rub hands together for at least 15 seconds, covering all surfaces, focusing on fingertips and fingernails.
4. Rinse under running water and dry with disposable towel.
5. Use the towel to turn off the faucet.

When washing your hands, use sinks dedicated for handwashing purposes that are fitted with non-touch tapware, or employ a non-touch technique. After handwashing, dry your hands using single-use linen or disposable paper towels (not using an air-dryer). Dampness under gloves can cause irritation.

70-95% Alcohol-based hand rub

When hands are visibly and clinically clean use alcohol-based hand rub, specified for use in health care settings, at the following times:

1. Before and after every patient contact.
2. Before gloves are put on and after they are taken off. (e.g., in dental laboratory, at the beginning and end of unpacking items received from a dental office).
3. On entering and leaving the instrument reprocessing areas.
4. After hands inadvertently touch contaminated environmental surfaces, instruments or other equipment.

When using alcohol-based hand rub:

1. Apply to palm of one hand (the adequate amount used depends on specific hand rub product).
2. Rub hands together, covering all surfaces, focusing in particular on the fingertips and fingernails, until dry.
3. Do not dry them with linen or paper towels. Use enough rub to require at least 15 seconds to dry.

Other measures for effective hand hygiene

The following measures below help prevent the transmission of infections.

Condition of the hands

The condition of the hands can influence the effectiveness of hand hygiene. The presence of dermatitis, cracks, cuts or abrasions can trap bacteria and compromise hand hygiene, consequently the risk of skin infection and transmission of infection to others increases:

- Cuts and abrasions must be covered with waterproof dressings even if gloves are worn over the affected area(s).
- Refrain from direct patient contact or handling patient care equipment if you have an exudative lesion or weeping dermatitis on the lower arms, hands or face that cannot effectively be dressed to prevent transmission, until the condition is resolved.
- Use an aqueous based hand moisturiser regularly to maintain skin health; compatible with the hand hygiene products used.
- Do not use scrubbing brushes on hands because they can cause abrasions to the skin.

Nails, hand/wrist adornments

- Keep nails clean and short.
- Refrain from wearing nail polish, nail jewellery, artificial nails, and jewellery on the hands or arms.
- Refrain from wearing rings and wrist jewellery, including watches when performing hand hygiene.

But I didn't touch the patient. Why should I practice hand hygiene?

Bacteria can survive for days on equipment and other surfaces.

It is important to practice hand hygiene after you leave the room, even if you only touched patient care equipment or other surfaces.

Why alcohol-based hand rub (sanitizer) is the preferred method for hand hygiene when they are not visibly soiled?

- *It is more effective at killing potentially deadly germs on hands than soap.*
- *It requires less time.*
- *It is more accessible than handwashing sinks.*
- *It results in reducing bacterial counts on hands.*
- *It improves skin condition with less irritation and dryness than soap and water.*

1.2 Personal Protective Equipment

Personal Protective Equipment (PPE) refers to wearable equipment that is designed to protect health practitioners from exposure to potentially infectious agents.

2 **You shall properly use personal protective equipment when in contact with blood/saliva and when sprays or splashes may occur.**

GUIDANCE

Personal protective equipment (PPE)

PPE is mandatory when you are handling received items in the laboratory until they have been decontaminated or during patient-care activities (shade matching). In the dental laboratory setting, PPE includes: gloves; masks or face shields; protective eyewear; and outer protective clothing (e.g., gowns, laboratory coats, uniforms).

Gloves

- Perform hand hygiene before putting on gloves and immediately after removing gloves. Wearing gloves does not replace the need for hand hygiene.
- Use new properly fitting single-use gloves for each patient.
- Wear new single-use protective gloves whenever the hands might be contaminated with blood, saliva or other bodily fluid, or will be in contact with contaminated instruments, devices or surfaces (e.g., disinfection of impressions and prostheses).
- Do not wash single-use gloves as this may damage glove integrity.
- Replace gloves as soon as possible if they become soiled or damaged.

Utility gloves

- Wear puncture-resistant, heavy-duty utility gloves when handling or manually cleaning contaminated sharp instruments and/or when cleaning and disinfecting equipment and surfaces.
- Wear appropriate gloves when handling heated objects.

Masks

- Wear a surgical mask that covers both your nose and mouth during patient-care activities (shade matching) and/or during all procedures likely to generate splashes or sprays of blood or contaminated fluids.
- Avoid touching the front of the mask during patient shade matching.
- Follow the manufacturer's instructions to ensure the most appropriate fit and optimum protection.
- Change your mask with each patient or when they become wet or visibly contaminated.
- Remove gloves, masks and protective eyewear before moving from a contaminated zone to a clean zone in your practice setting.
- Put on the mask before the gloves to minimizes the spread of contamination.

Protective eyewear

- Use the protective eyewear that is fit for purpose and with complete coverage over and around the eyes, including solid (not vented) side shields.
- Wear protective eyewear when exposure to blood or other potentially infectious material is possible and during fabrication process when eye injury is possible.
- A face shield is recommended if side shields are not used.
- Clean and disinfect protective eyewear after each use.

Outer protective clothing

- Wear outer protective clothing/lab coat at all times during patient-care activities and/or fabrication process. All outer protective clothing should be made of synthetic material so that contaminants are not easily absorbed into the material.
- Change outer protective clothing: as soon as possible when visibly soiled or wet, when exposed to contaminated aerosols for prolonged periods of time, and at least daily when all clinical activities are completed.
- Remove outer protective clothing before leaving the treatment area for: a break involving eating and/or drinking, a toilet break, and before leaving the practice premises.
- Launder (wash) reusable outer protective clothing as a separate load at the hottest temperature the fabric can tolerate.
- Place disposable outer protective clothing in the general laboratory waste after use.

Ventilation is a very common control measure for toxic materials to prevent exposure to a toxic material, control measures are used. Well-designed and well-maintained ventilation systems remove toxic vapours, fumes, mists or airborne dusts from the workplace before workers are exposed. Removing the contaminated air reduces the hazard of toxic materials.

1.3 Respiratory Hygiene/Cough Etiquette

Respiratory hygiene and cough etiquette are terms used to describe infection prevention measures to decrease the transmission of respiratory illness (e.g., influenza and cold viruses). To prevent the transmission of all respiratory infections in healthcare settings, including influenza, respiratory hygiene/cough etiquette infection prevention measures should be implemented at the first point of contact with a potentially infected person. The strategies target primarily patients and individuals accompanying patients to the dental laboratory who might have undiagnosed transmissible respiratory infections, but also apply to anyone with signs of illness including cough, congestion, runny nose, or increased production of respiratory secretions.

3 **You shall routinely practice respiratory hygiene measures and cough etiquette.**

GUIDANCE

Respiratory hygiene/cough etiquette infection prevention measures

The following measures to contain respiratory secretions are recommended for all individuals with signs and symptoms of a respiratory infection.

- Cover your mouth and nose with a tissue when coughing or sneezing.
- Use the nearest waste receptacle to dispose of the tissue after use.
- Perform hand hygiene after having contact with respiratory secretions and contaminated objects/materials.

Healthcare facilities (dental laboratories) should ensure the availability of materials for adhering to respiratory hygiene/cough etiquette in waiting areas for patients and visitors.

- Provide tissues and no-touch receptacles for used tissue disposal.
- Provide conveniently located dispensers of alcohol-based hand rub; where sinks are available, ensure that supplies for hand washing (i.e., soap, disposable towels) are consistently available.

1.4 Safe Management of Sharps and Waste

Proper waste management is an integral part of your infection control plan. Waste from dental laboratories can be divided into three categories: sharps, general laboratory waste and extracted teeth.

Sharps including orthodontic wires, disposable blades, burs, needles, laboratory utility knives and other sharp instruments should be handled carefully and safely to prevent injury.

General waste from dental laboratory is no more infectious than residential waste. All items that do not release liquid or semi-liquid blood if compressed, are currently considered as general laboratory waste for example:

- Dental impression waste.
- Gloves or other appliances that have come in contact with blood, saliva or other bodily fluids.
- Single-use plastic bags, containers or boxes used for transporting and have come in contact with incoming contaminated cases (receiving items).
- disposable outer protective clothing contaminated with blood or saliva.

What you throw away at the laboratory each day may expose others to hazardous sharp instruments, infectious or chemicals agents. Federal, provincial and municipal authorities govern the environmentally safe transportation and disposal of waste after it leaves your laboratory, as determined by medical, hazardous and toxic waste regulations and Ontario *Reg. 347, Waste Management* under the *Environmental Protection Act*.

4 **You shall safely handle and dispose of any general laboratory waste.**

GUIDANCE

Safe handling of waste

- Wear appropriate Personal Protective Equipment (PPE) (e.g., protective eyewear, gowns, masks and gloves) when handling waste; and perform hand hygiene afterwards.
- Separate waste at its point of generation into: sharps and general laboratory waste.
- Remove waste from laboratory environment frequently.

Safe handling of sharps

- Dispose of a single-use sharp you have used immediately, or render it safe for disposal later.
- Use rigid walled, leak- and puncture-resistant yellow containers for disposal of sharps which are durable during installation and transport, and an appropriate size and shape. The closure should be secure and minimize exposure during closure.
- Follow safe practices to minimise the risk of sharps injury, including:
    - Use an intermediary tray instead of passing sharp instruments between staff members, for example, scalpels or utility knives.
    - Place appropriate sharps (biohazard) containers as close as possible to the area where the items are used.
    - Carry sharps in a lidded puncture-resistant container, cassette or covered tray from the point of origin to the reprocessing area.

1.5 Environmental Infection Prevention and Control

The prevention of cross-contamination or the spread of microorganisms from one source to another is of primary concern in the practice of dental technology. A contaminated zone is any area that most likely to become contaminated with potentially infectious material (blood, saliva, etc.). A clean zone is any other area within the practice environment.

The typical zones of contamination in dental laboratory environment are:

- The clinical working area for shade matching - typically including work surfaces, shade set.
- The receiving, cleaning and decontamination area for incoming cases including dental prostheses, impressions, orthodontic appliances, and other prosthodontic materials (e.g., Occlusal rims, temporary prostheses, bite registrations, or extracted teeth).
- The reprocessing area where instruments and equipment are handled and decontaminated.

5	**You shall employ procedures to minimize the spread of contamination in the laboratory and to prevent contamination of the clean zones.**

GUIDANCE

- Clearly define the contaminated and clean zones in dental laboratory.
- Reduce the risk of cross-contamination by minimizing the spread of contamination within a contaminated zone, including:
    - Place computers and clinical notes outside the contaminated zone. If limitations in your practice environment make it impossible to locate computers outside the contaminated zone, use barrier protection for these items.
- Reduce the risk of cross-contamination by minimizing the spread of contamination from the contaminated zone to clean zone, including:
    - Not touching surfaces, equipment, stored instruments and materials in the clean zone, with contaminated gloves or hands.
    - Clean and disinfect routinely environmental surfaces after properly receiving each dental laboratory case.
    - Do not use liquid chemical sterilants/high-level disinfectants for environmental surface disinfection or as holding solutions.
    - Allow for a one-way flow of items for example if you need to obtain materials or instruments from within the clean zone during a procedure, do so in a manner that does not cause contamination of the clean zone.
        - This can be achieved by removing your contaminated gloves and practising the appropriate hand hygiene techniques.
    - Extracted teeth can be returned to patients on request.

Guidance for the collection and disposal of hazardous waste is provided under Ontario law (Regulation 347), however it is recommended that practitioners develop their waste disposal procedures following reference to local disposal of healthcare waste.

1.6 Safe and Clean Laboratory

6 **You shall maintain a safe and clean dental laboratory environment by effective cleaning of all surfaces, equipment and instruments.**

GUIDANCE

Cleaning of surfaces in the contaminated zone

- Follow manufacturer recommendations for use of products selected for cleaning and disinfection (e.g., amount, dilution, contact time, safe use, and disposal); and after cleaning and disinfection, dry surfaces with a low-lint cloth or disposable paper towel.
- Clean and disinfect surfaces in the contaminated zones at the following times:

Clinical working area	Immediately after each patient
Receiving, cleaning and decontamination area for incoming cases	Immediately after decontamination of each case, or if visibly soiled
Reprocessing area	After loading sterilizer, or if visibly soiled

- Use low-level disinfectant.
- Use surface barriers to protect clinical contact surfaces, particularly those that are difficult to clean in the contaminated zone and change surface barriers between patients.
- Remove and discard barrier protection after each patient while still wearing gloves, clean surfaces and/or equipment that have been barrier protected, and place new barrier.
- Use seamless and smooth, slip-resistant, easily cleaned and appropriately wear-resistant materials for floor coverings in patient-care areas; and use slip-resistant, easily cleaned material for floor covering in the dental laboratory reprocessing areas.
- Clean walls, blinds, and window curtains in patient-care areas when they are visibly dusty or soiled.

Cleaning of surfaces in the clean zone

- Clean the work surfaces (e.g., floors, walls) in the clean zone with a detergent and water or a proper disinfectant/detergent on a routine basis, depending on the nature of the surface and type and degree of contamination, clean them at least weekly, and when visibly soiled.
- Clean mops and cloths after use and allow to dry before reuse; or use single-use, disposable mop heads or cloths.

1.7 Transmission-Based Precautions

Transmission-based precautions are used in addition to standard precautions when use of standard precautions alone does not fully prevent communicable disease transmission – a patient has a known or suspected infectious condition, transmitted by the airborne, droplet or contact route like tuberculosis, measles, chickenpox, mumps, and respiratory viruses.

Dental laboratory settings are not typically designed to carry out the Transmission-Based Precautions (e.g., Airborne Precautions for patients with suspected tuberculosis, measles, or chickenpox). Dental laboratories should develop and carry out systems for early detection and management of potentially infectious patients at initial points of entry to the dental setting.

7 **You shall follow appropriate transmission-based precautions, in addition to standard precautions.**

GUIDANCE

- Ask the referring health care professional at the beginning of each work order to determine if the patient has a known or suspected infectious condition.

- Examples of transmission-based precautions are listed below:

Contact Precautions	Droplet Precautions	Airborne Precautions
1. Antibiotic-resistant organisms (e.g., MRSA infection) 2. Acute vomiting/diarrhea 3. Uncontained drainage 4. Conjunctivitis	• Pertussis • Mumps • Rubella • Meningitis (etiology unknown and meningococcal)	• Pulmonary tuberculosis (TB) • Measles • Chickenpox (Varicella)
• Acute respiratory Infection (e.g., croup, RSV, common cold, influenza, bronchiolitis, pneumonia, acute exacerbation of asthma)		

1.8 Received Items (Incoming Cases)

Dental prostheses, impressions, orthodontic appliances, and other prosthodontic materials (e.g., occlusal rims, temporary prostheses, bite registrations, or extracted teeth) received from dental practices are potential sources for cross-contamination and should be handled in a manner that prevents transmission of infectious agents.

8 **You shall ensure received items are properly disinfected or decontaminated before any work is begun.**

GUIDANCE

- Communicate effectively with dental practice to ensure whether appropriate cleaning and disinfection procedures for received items are performed in order not to damage or distort the items because of disinfectant overexposure.

Received contaminated items

- Treat the item as contaminated and perform cleaning and disinfection procedures before handling:
  - if no communication has been received regarding prior cleaning and disinfection of the item.
  - if there is any doubt about performing prior cleaning and disinfection of the item.

Decontamination

- Establish a separate receiving, cleaning, and decontamination area in a dental laboratory to minimize the spread of contamination.
- Wear PPE during cleaning and until disinfection is completed.
- Clean blood and saliva thoroughly and carefully from received items (e.g., impression materials, bite registration).
- Dispose of all single-use shipping materials (e.g., plastic bags) that have touched the contaminated received items, or if there is any doubt or possibility of being contaminated. If they are reusable (e.g., reusable plastic containers), properly disinfect/sterilize them according to manufacturer's instructions.

Action	Appropriate procedure
Laboratory receiving item	Laboratory cleans and disinfects with appropriate solutions to protect integrity of material

Disinfection

- Select an appropriate disinfectant with low-level activity and ensure it:
  - has a Drug Identification Number (DIN) from Health Canada.
  - has efficacy for the intended use.
  - is compatible with the material to be disinfected.
  - is safe for use, with minimal toxic and irritating effects to/for staff.
- Disinfect contaminated items received from dental practices or other sources before performing any dental technology activity.

1.9 Sending Items Out

9 **You shall ensure that any completed work will be disinfected, packaged and labelled before sending it out.**

GUIDANCE

- Clean items for sending between a dental laboratory and dental practice or another dental laboratory, for example dental appliances, as follows:

Action	Appropriate procedure
Laboratory sending item to dental practice or laboratory	Laboratory cleans the item with an appropriate clinical detergent

- Clean, package and decontaminate (if possible sterilize) instruments for repair, before sending for repair or maintenance.
- Once cleaned, place items in a new sealed plastic bag; label to indicate “cleaned”; and then place in a clean, rigid container for transport.
- Do not reuse single-use shipping materials (e.g., plastic bags).

Part 2:

Reusable Instruments Reprocessing, and Maintenance

Reprocessing refers to the steps that are performed to ensure a contaminated reusable instrument is made safe for reuse. Reusable instruments may include dental instruments, devices and equipment. As appropriate for the instrument's intended use, reprocessing may include:

- Cleaning
- Disinfecting
- Sterilizing
- Packaging
- Safe storage

2.0 Reusable Instruments Reprocessing

Reprocessing refers to the steps that are performed to ensure contaminated instruments are made safe for reuse again. Reprocessing refers to the following 4 steps:

Step 1. Cleaning
Step 2. Disinfection
Step 3. Sterilization
Step 4. Storage of Instruments

10 **You shall use the appropriate reprocessing procedures for each type of contaminated reusable instrument.**

GUIDANCE

Reusable instruments

Reusable instruments such as dental instruments, devices and equipment, are categorized as critical, semi-critical, or noncritical, depending on the potential risk for infection associated with their intended use.

- **Critical instruments** are used to penetrate soft tissue or bone, they have the greatest risk of transmitting infection. Critical instruments are generally not found in dental laboratories.

- **Semicritical instruments** are instruments that touch mucous membranes or non-intact skin. Semicritical instruments have a lower risk of transmission.

- **Noncritical instruments** pose the least amount of risk of infection. Noncritical instruments touch only intact skin, which can serve as an effective barrier to microorganisms.

The classification of laboratory instruments change depending on the intended use of the instrument.

Reprocessing Summary

Reprocess reusable instruments as follows:

- **Critical instruments** should be 1. Cleaned and 2. Sterilized.

- **Semicritical instruments** should be 1. Cleaned, 2. Disinfected by a Low-Level Disinfectant, and 3. Sterilized. If it cannot be sterilized, then it should be disinfected by a High-Level Disinfectant instead.

- **Noncritical instruments** can be reprocessed by cleaning alone. If the instrument is visibly soiled or contaminated, then a proper low-level disinfectant should be used.

2.1 Single-Use Instruments

11 **You shall dispose of single-use instruments after use.**

GUIDANCE

Single-use instruments

Treat the following instruments (i.e., dental instruments, devices or equipment) as single-use instruments:

- Instruments labelled or recommended by the manufacturer as single-use.
- Small and/or sharp instruments that are difficult to clean in a safe manner.
- Steel burs, due to oxidation as a result of sterilization.
- Or if the manufacturer does not provide reprocessing or reusable instructions, treat the instrument as single-use.

2.2 Reprocessing Area

In dental laboratory settings, all instrument cleaning, disinfecting, and sterilizing should occur in a designated reprocessing area in order to more easily control quality and ensure safety.

12 **You shall designate a distinct reprocessing area.**

GUIDANCE

Establish a reprocessing area which is ideally separate from the work area and has the following:

- sufficient bench space to allow for all reprocessing activities and associated equipment
- adequate ventilation and light
- smooth bench surfaces for easy and effective cleaning
- a sink for cleaning contaminated instruments, deep enough to submerge the instruments for cleaning
- a separate facility for hand washing
- covered storage areas for reprocessing supplies; separate from the storage area for sterilized instruments.
- When it is not possible to establish a reprocessing area separate from the work bench, establish a reprocessing area as far away from the contaminated zone as possible.

Establish distinct areas in the reprocessing area for the following procedures:

- receiving, cleaning, and decontamination
- preparation and packaging
- sterilization
- storage

2.3

Step 1: Cleaning of Contaminated Reusable Instruments

Cleaning is the removal of contamination (e.g., soil, debris and organic/non-organic material) from objects and is always required before disinfection and/or sterilization. If blood, saliva, and other contamination are not removed and dried on the instruments, these materials can shield microorganisms and potentially compromise the disinfection or sterilization process. An instrument that has not been cleaned cannot be assuredly disinfected or sterilized.

13 **You shall use the appropriate cleaning procedure for the various types of instruments.**

GUIDANCE

Cleaning

Cleaning can be performed manually, or with the use of automated cleaning equipment (e.g., ultrasonic cleaner, washer-disinfector).

- Automated cleaning is the preferred cleaning method as it is more efficient, reduces the risk of exposure to blood and reduces the risk of penetrating skin injuries from sharp or pointed instruments.
- Wear puncture-resistant, heavy duty utility gloves, a mask, outer protective clothing and eye protection during cleaning of contaminated instruments, to protect from splashing and potential injury.
- Clean contaminated instruments (i.e., with blood, saliva, cements and other contaminants) as soon as possible to prevent the substances drying on them. If they are unable to be cleaned immediately, soaked in detergent or an enzymatic cleaner to prevent hardening of residue.
- Avoid use of identification colour-coded tapes on instruments (i.e., they may compromise the cleaning, disinfection and sterilization processes).
- Inspect instruments after cleaning and drying to ensure all debris are removed.

Ultrasonic cleaners

Ultrasonic cleaners work by subjecting instruments to high frequency, high-energy sound waves, thereby loosening and dislodging dirt.

- Follow the manufacturer's instructions for operation, maintenance and evaluation of the ultrasonic cleaner to ensure that it works properly.
- Remove gross debris from instruments prior to placement in an ultrasonic cleaner.
- Do not overload the tank and always keep the lid on the tank while running.
- Rinse instruments with water after cleaning (with minimal splashing) to remove chemical or detergent residue.

Washer-disinfectors

Washer-disinfectors are generally computer-controlled units for cleaning, disinfecting, and drying solid and hollow surgical and dental equipment. Note that disinfection is not a required step in the safe reprocessing of critical or semi-critical instruments.

- Follow the manufacturer's instructions for the operation, maintenance and evaluation of the washer-disinfector to ensure that it works properly.
- Monitor the cleaning and disinfecting process regularly according to the manufacturer's instructions.
- Avoid stacking or overloading of instruments in the washer-disinfectors; and disassemble devices as much as possible.
- Maintain and clean the washer-disinfectors regularly to prevent formation of biofilms that could contaminate the instruments being processed.

Manual cleaning

Cleaning is performed manually in reprocessing area without automatic cleaners.

- Soak contaminated instruments in a puncture-resistant container or dedicated instrument-cleaning sink that is filled with a solution of warm water and detergent (i.e., a mildly alkaline, low foaming, non-abrasive liquid detergent intended for cleaning reusable instruments) if manual cleaning is not performed immediately.
- Use long-handled brushes to keep the hand as far away as possible from sharp instruments and use non-abrasive cleaning methods. The brushes must also be cleaned, disinfected and stored dry. Brushes with metal bristles are not recommended.
- Keep instruments low in the sink or container, and fully submerged in the cleaning solution while cleaning to minimise splashing, when manufacturer's instructions permit.
- Rinse instruments with water after cleaning to remove detergent and residue.
- Inspect all instruments visually to ensure all debris have been removed and if not, repeat the cleaning procedure.

Drying of instruments

Drying is an important step in reducing the potential of re-contamination during inspection and assembly.

- Follow the manufacturer's instructions for drying of the instruments.
- Dry instruments (e.g., by using a drying cabinet, air-dried, or dried by hand with a clean and lint-free towel).
- Dry stainless steel instruments immediately after rinsing to prevent spotting.
- Inspect the instruments for any malfunction or damage after drying.

2.4

Step 2: Disinfection of Reusable Instruments

Disinfection is a process that kills or destroys nearly all disease-producing microorganisms, except bacterial spores or prions. Disinfection of reusable instruments falls into two major categories:

High-Level Disinfection (HLD): The level of disinfection required when reprocessing heat-sensitive semicritical instruments. Instruments that touch mucous membranes or non-intact skin are considered to be semicritical instruments. Sterilization is always the preferred method of reprocessing semicritical instrument. However, for instruments that cannot tolerate sterilization, HLD must be used. Disinfection does not destroy bacterial spores or prions.

Low-Level Disinfection (LLD): The Level of disinfection required when reprocessing noncritical instruments. Instruments either touch only intact skin or not directly touch the patients are considered to be noncritical instruments. This procedure kills most vegetative (live) bacteria except Mycobacterium tuberculosis, some fungi, and inactivates some viruses.

14	**You shall use the appropriate disinfection procedure for the various types of instruments.**

GUIDANCE

Disinfection

- Wear appropriate Personal Protective Equipment (PPE) during disinfection.
- Select an appropriate disinfection procedure for reprocessing of reusable instruments according to:
    - If the instrument is noncritical– use Low-Level Disinfection (LLD). If it is not visibly soiled.
    - If the instrument is heat-sensitive semicritical– use High-Level Disinfection (HLD), at minimum. Sterilization of semicritical instruments is always the preferred method whenever possible.
      The majority of semi-critical instruments used in a dental laboratory are available in heat-tolerant or disposable alternatives. Avoid the use of heat-sensitive semi-critical instruments that must be processed with HLD.

Low-Level Disinfection (LLD)

- Thoroughly clean reusable noncritical instruments prior to LLD.
- Select an appropriate disinfectant for reprocessing noncritical instruments. You must ensure that the disinfectant has:
    - a Drug Identification Number (DIN) from Health Canada
    - proper efficacy for the intended use
    - compatibility with the instrument to be disinfected (information may be obtained from Health Canada's drug information website).
- Follow the manufacturer's instructions regarding:
    - the usage of disinfectants (e.g., amount, dilution, contact time, safe use, shelf life, storage and disposal).
    - the method for monitoring the disinfectant's concentration.
    - instruction for rinsing the disinfectant (e.g., water quality, volume, time) after disinfection.

- Use low-level disinfectants (e.g., chlorine-based products, 0.5% accelerated hydrogen peroxide, 3% hydrogen peroxide, 60 to 95% alcohols, iodophors, phenolics and quaternary ammonium compounds) according to manufacturer's recommendations.
- Do not top up prepared solutions with fresh solution.
- If manual disinfection is performed, wash, rinse and dry the container used for disinfection when the solution is changed.
- Ensure that ventilation in the dental laboratory setting is appropriate to the disinfectant being used, to protect staff from toxic vapours.

High-Level Disinfection (HLD)

- Avoid the use of heat-sensitive semi-critical instruments that must be processed with HLD. Use heat-tolerant or disposable alternatives instruments.
- Meticulously clean reusable heat-sensitive semicritical instruments prior to HLD.
- Select an appropriate disinfectant for reprocessing heat-sensitive semicritical instruments. You must ensure that the disinfectant has:
    - a Drug Identification Number (DIN) from Health Canada
    - proper efficacy for the intended use
    - compatibility with the instrument to be disinfected (information may be obtained from Health Canada's drug information website).
- Follow the manufacturer's instructions regarding:
    - the usage of disinfectants (e.g., amount, dilution, contact time, safe use, shelf life, storage and disposal).
    - the method for monitoring the disinfectant's concentration.
    - instruction for rinsing the disinfectant (e.g., water quality, volume, time) after disinfection.
- Use high-level disinfectants (e.g., 2% glutaraldehyde, 7% accelerated hydrogen peroxide, 6% hydrogen peroxide, 0.2% peracetic acid and 0.55% ortho-phthalaldehyde) according to manufacturer's recommendations.
- Do not top up prepared solutions with fresh solution.
- Use chemical test strips to determine whether an effective concentration of active ingredients is present according to manufacturer's recommendations.
- Rinse instrument thoroughly following chemical disinfection, according to the chemical manufacturer's instructions; the quality of the rinse water (i.e., sterile, filtered or tap water, volume, time) will depend on the intended use of the device.
- If manual disinfection is performed, wash, rinse and dry the container used for disinfection when the solution is changed.
- Perform manual disinfection in an area that is vented appropriately to protect against toxic vapours.
- Do not use high-level disinfectants solution beyond the expiration date and for environmental surface disinfection.

Ensure that ventilation in the dental laboratory setting is appropriate to the disinfectant being used, to protect staff from toxic vapours. Comply with Ontario regulations for the use of chemical disinfectants (e.g., *Reg. 67/93 Health Care and Residential Facilities* and *Reg. 860, Workplace Hazardous Materials Information System (WHMIS)*) under the *Occupational Health and Safety Act.*

2.5

Step 3: Sterilization of Reusable Instruments

Sterilization is the elimination of all disease-producing microorganisms, including spores. Sterilization is conducted using medical sterilization equipment that is registered with Health Canada. There are many types of sterilization techniques but the most common and preferred is steam sterilization.

15	**You shall use the appropriate sterilization procedure for the various types of instruments, noting that steam sterilization be used whenever possible.**

GUIDANCE

Preparation and packaging before sterilization

- Inspect instruments for cleanliness to ensure all debris are removed.
- All instruments are then wrapped or placed onto trays or containers designed to maintain sterility during storage.
- Use a container system or wrapping compatible with the type of sterilization process used.
- Use an internal chemical indicator in each package. If the internal indicator cannot be seen from outside the package, use an external indicator.

Sterilization

- Develop written policies and procedures for sterilization of reusable instruments used in the dental laboratory setting that include cleaning, drying, inspection, disassembly, wrapping, sealing and labelling.
- All sterilization must be performed by using medical sterilization equipment registered with Health Canada.
- Follow the manufacturer's instructions for installation, operation, cleaning and preventive maintenance of the sterilizing equipment.
- Staff must be trained to operate sterilizers.
- Test all sterilizers for performance using physical, chemical and biological monitors and indicators.
- Keep records of any preventive maintenance and repairs of sterilizer.

Steam sterilization

The preferred method for heat-resistant instruments is steam sterilization (i.e., autoclaving).

- Follow the manufacturer's instructions for load and operating the sterilizer to ensure steam can circulate freely and touch all instrument surfaces.
- Allow the sterilizer to complete its entire cycle, including drying, before removing the load and handling. Allow instrument packs to dry inside the sterilizer chamber before removing and handling, in order to avoid wicking of moisture and, potentially, microorganisms from hands or gloves.
- Please follow the manufactures instruction for the cleaning of steam sterilization machine, the daily maintenance and the validation test for steam sterilization.

Dry-heat sterilization

There are two types of dry-heat sterilizers: the static-air type (i.e., oven) and the forced-air type.

- Use dry heat only for the instruments that cannot be sterilized by steam (e.g., sharp reusable instruments) based on the manufacturer's instructions.

- Allow the load to cool prior to handling or use.

Liquid chemical sterilization

In all dental and other health-care settings, indications for the use of liquid chemical germicides to sterilize instruments are limited.

- Use liquid chemical germicides to sterilize only semicritical instruments that cannot withstand steam or heat sterilization, and are not available as single-use instruments.
- Choose only chemical germicides that have Drug Identification Numbers (DIN) from Health Canada.
- Follow the manufacturer's instructions to achieve sterilization of instruments.
- Instruments sterilized by chemical solutions are not wrapped and therefore must be used immediately or stored in a sterile container.
- Have ventilation systems appropriate to the process/product being used, to protect staff from toxic vapours.
- Comply with Ontario regulations (e.g., *Reg. 833, Control of Exposure to Biological or Chemical Agents*) under the Occupational Health and Safety Act.

Monitoring the Sterilization Process

The sterilization process must be monitored to ensure the integrity of the process. Performance monitoring includes:

- Physical indicators must be checked, documented and signed for each sterilizer cycle by the person sterilizing the instrument. Physical indicators may include:
    - mechanical printouts from the sterilizer.
    - assessing the cycle time, temperature, and pressure of sterilization equipment by observing the gauges or displays on the sterilizer.
- A biological indicator (spore test) must be used to test the sterilizer at least weekly.
- An internal chemical indicator must be placed inside each package, container or bundle that is undergoing sterilization.
- If a dynamic air removal-type sterilizer is used, an air removal test with a Class II chemical indicator shall be performed every day the sterilizer is used.

Sterilization failures

If failure of any parameter is detected, consider the sterilization cycle unsatisfactory.

- Remove the load, allow the load to cool before re-packaging for re-sterilizing later.
- Document as a failed cycle and repeat the sterilization cycle with an empty chamber.
- If the repeated process indicates success, there is no indication of a system malfunction, continue as normal.
- Re-sterilize the failed cycle load once the results of the sterilizer indicators are acceptable.

2.6

Step 4: Storage of Reusable Instruments

16	**You shall ensure instruments are protected from contamination during storage and before reuse.**

GUIDANCE

- Store instruments in a clean, dry, dust-free area (close shelves), outside the contaminated zone, and handle minimally before use.
- Do not store instruments under sinks or in other locations where they might become wet and contaminated.
- Before using a packaged instrument, check the integrity of the pack:
    - Visually inspect for discolouration, dampness, dust, soil, tears; if present, send for reprocessing.
    - Validate results of chemical tape and internal monitors, if present (e.g., no change in colour), send for reprocessing.

Part 3:

Blood or Body Fluid Exposure Management

Blood or body fluid exposure is an event where a person is exposed to potentially infectious blood or body fluid of others through the following:

- Percutaneous exposure: where the skin is punctured accidently by a sharp object potentially contaminated with blood or body fluid of others.
- Mucous membranes exposure: where the mucous membranes are exposed to direct contact with blood or body fluid of others.
- Non-intact skin: where the integrity of the skin is compromised (e.g., scratches, cut, open wound, abrasion, burns, or eczema) and the skin is exposed to direct contact with blood or body fluid of others.

3.1 Blood or Body Fluid Exposure Management

All blood and body fluids shall be treated as infectious because a person with bloodborne infection can be asymptomatic or unaware of the infection. Saliva has always been considered a potentially infectious material in dental infection control. Transmission of bloodborne viruses such as hepatitis B, hepatitis C and Human Immunodeficiency Virus (HIV) are the main concerns.

Preventive practices used to reduce the exposures, particularly percutaneous exposures, include:

- Careful handling of sharp instruments
- Handwashing
- Use of Personal Protective Equipment (PPE) (e.g., gloves, masks, protective eyewear, and gowns)

17 **You shall immediately follow appropriate procedures in the event of accidental exposure to blood or body fluids. This will minimize the risk of transmission of infectious diseases.**

GUIDANCE

In the event of blood or body fluid exposure:

- Stop working immediately and apply first aid care to the wound.
- Inform the exposed person of the incident.

First aid care

Apply first aid care to the exposed person following a blood or body fluid exposure, if it is exposure of:

Penetrating injury (Wound/needle stick):

- Allow the wound to bleed briefly and freely.
- Do not promote bleeding by squeezing the wound. This may damage the tissues and increase uptake of any pathogen(s).
- Wash with soap and water (do not apply bleach to wound) and bandage as needed.

Mucous membrane or eye:

- Rinse well with water or normal saline (remove contact lenses after rinsing the eye and clean normally).

Intact skin:

- Wash with soap and water.

Management of blood or body fluid exposure

- Refer the exposed person for immediate advice to her/his family physician, an infectious disease specialist or the hospital emergency department depending on severity.
- Test to determine if they have been susceptible to hepatitis B, hepatitis C or HIV.
- Inform the source patient of the incident.

- Document the following:
    - Name of the exposed person and details regarding her/his vaccination status.
    - Date and time of the exposure.
    - Type of exposure (i.e., percutaneous injury, mucous membrane or non-intact skin exposure), nature of the incident, and how it occurred.
    - Type of fluid (e.g., blood, visibly bloody fluid, other potentially infectious fluid).
    - Length of time since fluids left source's body (minutes).
    - Name of the source patient and details regarding his or her known or suspected status related to bloodborne pathogens. The source patient consent or refusal, for medical advice.
    - Actions taken; including who was informed and when.

Information only:

If necessary, post-exposure prophylaxis should be administered as soon as possible:

- In the event of a high-risk exposure to hepatitis B without immunization, it would likely be recommended to receive a single dose of hepatitis B immunoglobulin within 48-72 hours and start a course of hepatitis B immunization.
- In the event of a high-risk exposure to HIV infection, anti-retroviral drugs should be administered within hours.
- There is no effective post-exposure prophylaxis for hepatitis C. However early pre-emptive therapy may be offered if you receive a positive test result for hepatitis C RNA following testing at 1 month post-exposure.

Part 4:

Training and Documentation

4.1 Training

Regular education (including orientation and training) and support must be provided in all dental laboratory settings to help dental laboratory personnel (including non-registered and registered dental technologists) consistently implement and maintain appropriate infection prevention and control practices.

18 **You shall be up to date on the current knowledge of infection prevention and control.**

GUIDANCE

- Maintain current knowledge of infection prevention and control by refreshing your knowledge on the infection prevention and control:
  - when starting in a new practice.
  - at least annually (e.g., participating in continuing education).
  - after a safety incident.
- Educate dental laboratory personnel/staff about infection prevention and control where appropriate (e.g., new hires, after a safety incident).

4.2 Documentation

19 **You shall ensure your infection prevention and control record keeping is kept and readily accessible.**

GUIDANCE

- Keep any laboratory records for a minimum of 10 years – including any health and safety related documents.
- Should any dental laboratory personnel or staff attend training, orientations, courses or professional development activities, it is advisable to document the dates, persons attending and topics covered for your record keeping.
- Document any health and safety incident records according to the *Part 3: Blood and Body Fluid Exposure Management*.
- It is advisable (if possible) to maintain immunization status records for dental laboratory personnel and note whether an individual has been vaccinated for Hepatitis B.

Glossary of Terms

Alcohol-Based Hand Rub: An alcohol-containing preparation (e.g., liquid, gel or foam formulation) designed for reducing the number of viable microorganisms on the hands.

Antiseptic: A chemical agent that destroys microorganisms on human skin or mucosa.

Bacterial spore: A form assumed by some bacteria that are resistant to heat, drying and chemicals. Under the right environmental conditions, the bacterial spore may revert to the actively multiplying form of the bacteria.

Bioburden: Microbiological load (i.e., number of viable organisms in or on an object or surface) or organic material on a surface or object before decontamination, or sterilization.

Biological Indicator (BI): A test system containing viable microorganisms providing a defined resistance to a specified sterilization process.

Bloodborne infections: Infections spread through infected blood or body fluids, (e.g., human immunodeficiency virus (HIV), hepatitis B virus (HBV) and hepatitis C virus (HCV)).

Bloodborne pathogens: Pathogenic microorganisms that may be present in human blood and can cause disease in humans. These pathogens include, but are not limited to human immunodeficiency virus (HIV), hepatitis B virus (HBV) and hepatitis C virus (HCV).

Body fluids: Fluids produced by the human body, including tears, saliva. People who come in contact with human body fluids may be exposed to health risks (e.g., HIV, HBV and HCV).

Chemical Indicator (CI): A system that reveals a change in one or more predefined process variables based on a chemical or physical change resulting from exposure to the process.

Cleaning: The physical removal of contamination (e.g., soil, debris and organic material). Cleaning physically removes rather than kills microorganisms. It is accomplished with water, detergents and mechanical action. Thorough cleaning is required before disinfection and/or sterilization.

Contact Time: The defined time for which surfaces of the receiving items or the dental instruments (e.g., articulators, facebows, shade guides) are exposed to a chemical or thermal disinfection process to achieve the appropriate level of disinfection.

Critical Instruments: Dental instruments that enter sterile tissues, including the vascular system (e.g., surgical instruments and periodontal scalers) are not used in a dental laboratory setting. Critical instruments present a high risk of infection if the instruments are contaminated with any microorganism, including bacterial spores. Reprocessing critical instruments involves meticulous cleaning followed by sterilization.

Cross-contamination: The transfer of contamination from a contaminated source to a previously noncontaminated zone.

Decontamination: The process of cleaning, followed by the inactivation of microorganisms, in order to render an object safe for handling, use, or disposal.

Dental Laboratory Personnel: Individuals who work in a dental laboratory setting, whether paid or unpaid, who have the potential for exposure to infectious materials, including body substances, contaminated dental supplies and equipment, contaminated shipping materials, contaminated environmental surfaces, or contaminated air.

Dental Laboratory Setting/Dental Technology Setting: Any location where dental technology services are provided, including dental laboratories or other professional offices.

Detergent: A synthetic cleansing agent that can emulsify oil and suspend soil. A detergent contains surfactants that do not precipitate in hard water and may also contain protease enzymes and whitening agents.

Disinfectant: A chemical agent used on inanimate objects (e.g., dental instruments, receiving items, floors, walls, or sinks) to destroy virtually all recognized pathogenic microorganisms, but not necessarily all microbial forms (e.g., bacterial spores).

Disinfection: The inactivation of disease-producing microorganisms. Disinfection does not destroy bacterial spores. Dental instruments must be cleaned thoroughly before effective disinfection can take place. See also, *Disinfectant*.

Drug Identification Number (DIN): In Canada, disinfectants are regulated as drugs under the Food and Drugs Act and Regulations. Disinfectant manufacturers must obtain a drug identification number (DIN) from Health Canada prior to marketing, which ensures that labelling and supporting data have been provided and that it has undergone and passed a review of its formulation, labelling and instructions for use.

Enzymatic Cleaner: A pre-cleaning agent that contains protease enzymes that break down proteins such as blood, body fluids, secretions and excretions from surfaces and equipment. Most enzymatic cleaners also contain a detergent. Enzymatic cleaners are used to loosen and dissolve organic substances prior to cleaning.

High-Level Disinfection (HLD): The level of disinfection required when processing semicritical instruments. High-level disinfection processes destroy vegetative bacteria, mycobacteria, fungi and enveloped (lipid) and non-enveloped (non-lipid) viruses, but not necessarily bacterial spores. Dental instruments must be thoroughly cleaned prior to high-level disinfection.

High-Level Disinfectant: A chemical agent that achieves high-level disinfection when applied to surfaces or reusable instruments. Do not use high-level disinfectants/ liquid chemical sterilants for environmental surface disinfection or as holding solutions.

Hand Hygiene: A general term referring to any action of hand cleaning. Hand hygiene relates to the removal of visible soil and removal or killing of transient microorganisms from the hands. Hand hygiene may be accomplished using soap and running water or an alcohol-based hand rub.

Health Care Setting/Health Care Facility: Any location where health care is provided, including hospitals, dental offices, denturist offices, independent health facilities, clinics, out-of-hospital premises, settings where emergency care is provided, offices of other health professionals and home health care.

Immunization: Process by which a person becomes immune, or protected against a disease.

Instruments/Dental Instruments: Any dental instruments, devices or equipment whether used alone or in combination, in a dental laboratory setting.

Indicator: A system that reveals a change in one or more of the sterilization process parameters. Indicators do not verify sterility, but they do allow the detection of potential sterilization failures due to factors such as incorrect packaging, incorrect loading of the sterilizer, or equipment malfunction. See also, *Biological Indicator* and *Chemical Indicator*.

Low-Level Disinfection (LLD): Level of disinfection required when processing noncritical instruments. Instruments must be thoroughly cleaned prior to low-level disinfection.

Low-Level Disinfectant: A chemical agent that achieves low-level disinfection when applied to surfaces or reusable instruments. This disinfection level is required when processing noncritical instruments or contaminated environmental surfaces.

Manufacturer: Any person, partnership or incorporated association that manufactures and sells dental or medical instruments, equipment or devices under its own name or under a trade mark, design, trade name or other name or mark owned or controlled by it.

Mucous Membrane Exposure: Contact of mucous membrane (e.g., mucous membranes of eyes, nose, mouth) with blood or body fluid of others.

Noncritical Instruments: Instruments that either touch only intact skin (but not mucous membranes) or do not directly touch the patient. Reprocessing of noncritical instruments involves cleaning and may also require low-level disinfection if visibly soiled or contaminated.

Non-Intact Skin: Areas of the skin that have been opened by scratches, cuts, abrasions, dermatitis, chapped skin, etc.

Non-Intact Skin Exposure: Contact of non-intact skin with the blood or body fluids of others.

Non-Registered Staff: Anyone who is not registered in College of Dental Technologists of Ontario (CDTO) and conducting activities in dental laboratory settings where dental technology services are provided.

Penetrating Injury/Percutaneous Injury: An exposure event occurring when any sharp object penetrates the skin.

Percutaneous Exposure: where the skin is punctured accidently by a sharp object (e.g., needle, sharp instrument) potentially contaminated with blood or body fluid of others.

Personal Protective Equipment (PPE): Wearable equipment that is designed to protect healthcare personnel from exposure to potentially infectious agents and hazards.

Practitioner: Any person delivering care to a patient. This includes, but is not limited to, the following: Dental technologists, dentists, physicians, nurses, respiratory therapists and other health professionals. In some non-acute settings, volunteers or students might provide care under supervision of registered practitioners and would be included as practitioners. See also, *Staff*.

Prion: Protein particle lacking nucleic acid that has been implicated as the cause of certain neurodegenerative diseases (e.g., scrapie, CJD, and bovine spongiform encephalopathy [BSE]).

RDT: A dental technologist who is registered with the College of Dental Technologists of Ontario (CDTO) is called Registered Dental Technologist (RDT). As dental technology is a regulated health care profession, it is illegal for anyone other than a member of CDTO to use the restricted title or its abbreviation or variation.

Reprocessing: The steps performed to prepare used dental instruments for use (e.g., cleaning, disinfection, sterilization).

Reusable: A term given by the manufacturer of dental or medical instruments that allows it, through the selection of materials and/or components, to be reused.

Semicritical Instruments: Dental instruments that come in contact with non-intact skin or mucous membranes but ordinarily do not penetrate them (e.g., shade guide, facebow, and reusable dental impression trays). Sterilization by heat is always the preferred method of reprocessing semicritical instrument. However, for instruments that cannot tolerate heat, high level disinfection must be used.

Sharps: Items that may penetrate the skin and are capable of causing punctures or cuts (e.g., blades, burs, needles, orthodontic wires).

Single-Use/Disposable: A term given to dental instruments designated by the manufacturer for single-use only. Single-use instrument must not be reprocessed.

Staff: Anyone conducting activities in settings where health care is provided, including but not limited to, health care providers. See also, *Health Care Providers*.

Sterilant: A chemical used on dental instruments which results in sterilization of the instruments. Do not use sterilants or high-level disinfectants for environmental surface disinfection or as holding solutions.

Sterilization: The level of reprocessing required when processing critical instruments. Sterilization results in the destruction of all forms of microbial life including bacteria, viruses, spores and fungi. Instruments must be cleaned thoroughly before effective sterilization can take place.

Ultrasonic Cleaner: A machine that cleans reusable instruments by the cavitations produced by ultrasound waves.

Vaccination: process of administering a killed or weakened infectious organism or a toxoid.

Washer-Disinfector: A washing system that removes soil and cleans reusable instruments prior to high-level disinfection or sterilization. A washer-disinfector can provide low-level disinfection. Noncritical instruments that do not require high-level disinfection or sterilization may be reprocessed in a washer-disinfector (e.g., articulators and case pans).

Workplace Hazardous Materials Information System (WHMIS): The Workplace Hazardous Materials Information System (WHMIS) is Canada's national hazard communication standard. The key elements of the system are cautionary labelling of containers of WHMIS ‘controlled products’, the provision of Material Safety Data Sheets (MSDSs) and staff education and training.

Additional Resources

Best Practices for Cleaning, Disinfection and Sterilization of Medical Equipment/Devices in All Health Care Settings, 2013
Provincial Infectious Diseases Advisory Committee (PIDAC), Public Health Ontario
https://www.publichealthontario.ca/en/eRepository/PIDAC_Cleaning_Disinfection_and_Sterilization_2013.pdf

Best Practices for Environmental Cleaning for Prevention and Control of Infections, 2012
Provincial Infectious Diseases Advisory Committee (PIDAC), Public Health Ontario
https://www.publichealthontario.ca/en/eRepository/Best_Practices_Environmental_Cleaning_2012.pdf

Best Practices for Hand Hygiene in All Health Care Settings, 2014
Provincial Infectious Diseases Advisory Committee (PIDAC), Public Health Ontario
https://www.publichealthontario.ca/en/eRepository/2010-12%20BP%20Hand%20Hygiene.pdf

Canadian Immunization Guide for 2006
Public Health Agency of Canada
http://publications.gc.ca/collections/Collection/HP40-3-2006E.pdf

Decontamination of Reusable Medical Devices (CSA Z314.8-08, 2008) (CSA Z314.8-14), 2014
Canadian Standards Association
https://www.scc.ca/en/standardsdb/standards/27342

Guideline C-4: The Management of Biomedical Waste in Ontario, 2009
Ontario Ministry of the Environment
https://www.ontario.ca/document/management-biomedical-waste-ontario

Infection Prevention and Control in Dental Office, 2010
Royal College of Dental Surgeons of Ontario
http://www.rcdso.org

Summary of Infection Prevention Practices in Dental Settings Basic Expectations for Safe Care, 2016
Centers for Disease Control and Prevention
https://www.cdc.gov/oralhealth/infectioncontrol/pdf/safe-care2.pdf

Routine Practices and Additional Precautions in All Heath Care Settings, 2012
Provincial Infectious Diseases Advisory Committee, Ontario Ministry of Health and Long-Term Care
https://www.publichealthontario.ca/en/eRepository/RPAP_All_HealthCare_Settings_Eng2012.pdf

Workplace Hazardous Materials Information System (WHMIS): A Guide to the Legislation, 2008
Ontario Ministry of Labour
http://www.labour.gov.on.ca/english/hs/pubs/whmis/index.php

RETURN TO PRACTICE GUIDANCE FOR REGISTERED DENTAL TECHNOLOGISTS

Revised: June 4, 2020

College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

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INTRODUCTION

This document will guide Registered Dental Technologists (RDTs) in making the appropriate considerations for returning to practice during the COVID-19 pandemic. We have engaged with the regulators of Ontario, the associations, the Ministry of Health (MOH) and our national counterparts to provide this guidance. It should be considered in conjunction with the College's Standards of Practice and Practice Advisories.

The directives from the MOH and the Chief Medical Officer of Health (CMOH) take precedence over guidance in this document. The College relies on RDTs to use their professional judgement in deciding whether they can return to practice. Considerations include incidences of COVID-19 cases in the area, workplace configuration and the availability of Personal Protective Equipment (PPE) and cleaning supplies.

On May 26, 2020, Directive #2 from the CMOH was revised for the gradual restart of all health services, including deferred, non-essential and elective services. Health care providers are required to comply with the COVID-19 Operational Requirements: Health Sector Restart in order to resume services. As the situation evolves and more is known about COVID-19, the College will continue to update the guidance contained in this document.

PRINCIPLES

The oral health regulators of Ontario and our respective associations have created the following principles that will underpin our return to practice guidance:

1. The health and safety of patients/clients, the public and practitioners is our top priority.
2. Return to practice will occur in well-defined stages to balance a return to the 'new normal' with the risks of spreading COVID-19, including the risks of a second wave of COVID-19.
3. Guidance will be based on best available evidence and data. In the absence of clear evidence, prioritize caution and safety.
4. Patients/clients must have continuity of care. Patients/clients of record should have reliable access to their oral healthcare providers to ensure they get the guidance and support they need.
5. Patient/client needs for access to oral healthcare must be balanced with the risks of spreading COVID-19.
6. Technology should be used to assess risks and triage patient/client needs remotely.
7. Any treatment plan must prioritize care with the lowest risk of COVID-19 transmission.
8. Communication with patients/clients is critical. Risks or changes to care related to COVID-19 must be highlighted.

INFECTION PREVENTION AND CONTROL STANDARD

This document highlights additional considerations necessary during the COVID-19 pandemic. It builds upon the foundation of the College's Infection Prevention and Control Standard. Refer to this standard for specific guidance in areas such as routine practices and procedures for reprocessing instruments.

COMMUNICATION

Changes to protocols upon the return to practice should be communicated to staff, clients, patients and visitors. Signage should be posted that explains physical distancing and PPE requirements of the workplace. There should also be accessible signage (i.e., plain language, symbols, other languages where appropriate) that explains the signs and symptoms of COVID-19 and how to reduce the risk of spread. Some examples of signage:

- Government of Ontario's COVID-19 Symptoms for Visitors
- Public Health Ontario's Cover Your Cough

WORKPLACE CONSIDERATIONS

The College recognizes that RDTs practice in a variety of settings (e.g., dental laboratories, dental offices) and may not always be in a decision-making role. RDTs should not return to practice if these guidelines cannot be followed or the required PPE is not available. In addition, any employee in Ontario has the right to refuse dangerous work if they consider their workplace to be unsafe.

RDTs are advised to familiarize themselves with guidelines issued by the Government of Ontario and their employers for preventing the spread of COVID-19. Many practices can be applied across workplaces such as removing unnecessary items at reception and limiting the sharing of stationary.

Screening

The MOH has developed guidance to support COVID-19 screening. These screening questions are subject to change (i.e., symptoms may be updated). It is important to ensure that the most recent screening questions are being used.

- Fitness to work must be assessed on an ongoing basis. All staff should self-monitor for COVID-19 symptoms and not go to work if feeling ill.
    - Staff who screen positive should seek direction from their primary care provider, Telehealth Ontario at 1-866-797-0000, or visit a COVID-19 Assessment Centre to be tested before entering the workplace.
    - Staff who exhibit symptoms while at work should immediately leave and not return until they have consulted their primary care provider for advice on continuation of work.
- The person who conducts the on-site screening (screener) for patients and essential visitors (e.g., a parent accompanying a young child or a patient who requires accommodation) should ideally be behind a physical barrier (e.g., plexiglass) to be protected from contact or droplet spread. If a physical barrier is not available, a physical distance of two meters should be maintained.
    - Screeners who do not have a barrier and cannot maintain physical distancing should wear a surgical/procedure mask, isolation gown, gloves, eye protection (goggles or face shield).
- Each RDT should maintain a record of daily screening results for themselves, the individuals they supervise, visitors and patients. This information is private and should be kept confidential but made available to health authorities if requested. Important data includes roles of persons

working in the workplace, dates and times persons working in the workplace were present, and names of patients and visitors by date and time.

Potential Exposure Guidance

COVID-19 is a designated disease of public health significance and reportable under the *Health Protection and Promotion Act, 1990* to the local public health unit.

- A process should clearly identify how to respond should staff or visitors screen or test positive for COVID-19, who is responsible for reporting probable and confirmed cases to the local public health unit, ensuring proper documentation and implementing any advice given by the public health unit.
- Patients and visitors should be advised to inform staff if they experience any symptoms of COVID-19 within the next 14 days.
- If anyone tests positive for COVID-19, all individuals who were present at the workplace should be informed and reminded to monitor their symptoms.
- All individuals who experience COVID-19 symptoms should seek direction from their primary care provider or Telehealth Ontario at 1-866-797-0000.

Physical Distancing

- A minimum physical distance of two meters should always be maintained. Ways to ensure appropriate physical distancing include staggering shift times, limiting the number of individuals present at one time, and using ground markings and barriers to manage traffic flow.
- If physical distancing cannot be maintained or if a proper physical barrier (e.g., plexiglass) is not in place, an appropriate mask and eye protection (e.g., goggles, face shield) must always be worn.

Hand Hygiene

- Places of practice must have sufficient supplies and effective access to perform frequent hand hygiene. This can be done using sinks supplied with soap and water, or with 70-95% alcohol-based hand rub.
- Hand hygiene should be performed according to Public Health Ontario's Guidelines and posted in applicable areas.
- Ensure that patients and staff have access to tissues and a hands-free waste receptacle (e.g., operated with a foot pedal) that is lined with garbage bags.

Clothing

- Workplace and protective clothing, including gowns and lab-coats, should not be worn outside the workplace.
- Protective clothing should be changed at least daily, and if it becomes visibly soiled or significantly contaminated by potentially infectious fluids or materials.
- Clothing should be changed at work and placed into a bag. If the workplace does not supply uniform and laundry, consider setting up a decontamination station at home.

Ventilation

- Ventilation is a common control for preventing exposure to toxic material. Well-designed and well-maintained ventilation systems can remove toxic vapors, fumes, mists or other airborne contaminate from the workplace preventing staff exposure. Effective ventilation can reduce airborne hazards. Use of high evacuation ventilation is strongly recommended as a best practice.

Environmental Cleaning

Routine practices, which include cleaning and disinfection of surfaces, are important to control the spread of COVID-19.

- All common areas should be regularly cleaned. In addition, physical barriers (e.g., plexiglass) are to be included in routine cleaning (e.g., daily).
- Any high touch surfaces that are visibly soiled should be immediately cleaned and disinfected.
- This is a current list of products that meet EPA's criteria for use against SARS-CoV-2 (the virus that causes COVID-19).

Waste Management

- Waste with potential or known COVID-19 contamination should be managed like any other general or sharp laboratory waste. COVID-19 is not a Category A infectious substance. Follow the waste management guidelines in your region for COVID-19.

PRACTICE CONSIDERATIONS

The following guidance reflects the CMOH's COVID-19 Operational Requirements: Health Sector Restart document which specifies actions based on whether a patient has screened or tested positive or negative for COVID-19. If RDTs are not able to screen the patient, they should coordinate with their client (i.e., dentists) for documentation of the screening results.

Personal Protective Equipment

Personal protective equipment (PPE) is critical to the health and safety of all healthcare workers, as well as the patients you care for. Professional judgement should be used to determine the appropriate PPE for the activity being performed.

- PPE is only effective when it is in good condition and put on (donned) and removed (doffed) correctly. See Public Health Ontario's guidelines.
- Use PPE appropriately to prevent unnecessary use of limited supplies and other PPE resources (e.g., N95 masks).
- N95 masks should be reserved for aerosol-generating procedures on dental prostheses, devices or items that belong to patients who have screened or tested positive for COVID-19 (see Table 1). The proper use of an N95 mask requires each person to be fit-tested.
- PPE should be sourced through the regular supply chain. PPE allocations from the provincial pandemic stockpile will continue. PPE can also be accessed, within available supply on an emergency basis through the established escalation process through the Ontario Health Regions. The provincial government has also created a PPE Supplier Directory website to assist workplaces in sourcing PPE.

Table 1. Use of Personal Protective Equipment (PPE) by Setting and Procedure for COVID-19.

Setting	Procedure	Required PPE
Patient care area or dedicated area for aerosol-generating procedures	Aerosol-generating procedures on a dental prosthesis or device that has had contact with a patient who has screened **positive** for COVID-19	• Fit tested N95 mask (or equivalent as per Health Canada) • Gloves • Eye protection • Protective gown
	Aerosol-generating procedures on a dental prosthesis or device that has had contact with a patient who has screened **negative** for COVID-19	• Fit tested N95 mask, (or equivalent as per Health Canada) or ASTM* level 2 or 3 procedure/surgical mask • Gloves • Eye protection • Protective gown (optional)
	In-person care (non-aerosol-generating procedures) when the patient has screened **positive** for COVID-19	• ASTM level 2 or 3 procedure/surgical mask • Gloves • Eye protection • Protective gown
	In-person care (non-aerosol-generating procedures) when the patient has screened **negative** for COVID-19	• ASTM level 2 or 3 procedure/surgical mask • Gloves • Eye protection
	Cleaning and disinfection of patient care area or dedicated area for aerosol-generating procedures	• ASTM level 1 procedure mask • Gloves • Eye protection
Receiving items area	Disinfection of received contaminated (or potentially contaminated) items when the patient has screened **positive** for COVID-19	• ASTM level 2 or 3 procedure/surgical mask • Gloves • Eye protection • Protective gown
	Disinfection of received contaminated (or potentially contaminated) items when the patient has screened **negative** for COVID-19	• ASTM level 2 or 3 procedure/surgical mask • Gloves • Eye protection • Protective gown (optional)
Reprocessing area	Reprocessing of reusable Instruments	• ASTM level 2 or 3 procedure/surgical mask • Heavy-duty utility-gloves • Eye protection • Protective gown
Fabrication area	Fabrication process – for non-aerosol-generating procedures	• ASTM level 1 procedure mask or maintain physical distancing • Protective clothing (e.g., lab coat, protective gown) • Additional PPE as required by the activity being performed (e.g., gloves, eye protection)
Reception area	On-site screening	• ASTM level 2 or 3 procedure/surgical mask • Gloves • Eye protection • Protective gown OR • ASTM level 1 procedure mask and physical barrier OR • ASTM level 1 procedure mask and maintain physical distancing
Common and administration area	Administrative and other tasks	• ASTM level 1 procedure mask or maintain physical distancing

*ASTM is an international standards organization.

Handling Packages and Items

- A physical distance of at least two meters should be maintained in the handling of packages. Consider contactless shipping and receiving methods such as leaving the package on a doorstep. If physical distancing cannot be maintained, appropriate PPE (i.e., surgical/procedure mask and gloves) should be worn.
- Dispose of all single-use shipping materials (e.g., plastic bags) that have contacted the received items. If the items are reusable, properly disinfect (whenever possible sterilize) them according to manufacturer's instructions.
- Communicate effectively with dental practices to know whether a received item belongs to a patient who has screened positive or negative for COVID-19.
    - Increased caution should be used when handling items that have had contact with a patient who has screened or tested positive. If it is not clear, treat the received item as COVID-19 contaminated. These items must be thoroughly disinfected or sterilized, as appropriate, before proceeding (see Table 1).
- Clean and disinfect the area for receiving incoming cases immediately after decontamination of each case.
- Clean and properly disinfect (whenever possible sterilize) items before sending them out. Package and label to indicate "disinfected".

Aerosol-Generating Procedures

An aerosol-generating procedure is defined as an activity that creates either fine, solid, particulate matter or liquid droplets in the air. Aerosols may be generated when using high-speed, low-speed and other rotary handpieces, ultrasonic and other similar devices on dental prostheses, devices or items (e.g., impressions) that have had direct patient contact. Examples include polishing or grinding of a patient's denture for the purpose of adjustment or repair.

Currently, there is inadequate scientific research to assess the risk of aerosol-generating procedures in the oral healthcare setting including dental laboratories. It is strongly recommended that aerosol-generating procedures be avoided when it is generated on dental prostheses, devices or items that belong to patients who have screened or tested positive for COVID-19. If an aerosol will be generated on prostheses, devices or items that belong to patients who have screened or tested positive for COVID-19, the following precautionary measures must be met:

- A dedicated space, such as a containment box, to prevent the spread of aerosols to other parts of the workplace.
- The use of enhanced precautions as set out below and enhanced PPE (see Table 1), such as a fit-tested N95 mask or equivalent as per Health Canada, gloves, eye protection and protective gown. Where aerosols are contained and there is no exposure (e.g., containment box), enhanced PPE may not be required.
- Delay the cleaning and disinfecting of the dedicated space for three hours unless a ventilated space (e.g., containment box with a suction unit) is used. The time it takes for a 99.9% dilution of any aerosols is assumed to be 3 hours based on 2 Air Changes per Hour (ACH). For ventilated spaces, this time may be reduced and must be calculated based on ACH. For example, an operating theatre in a hospital with 20 ACH may only require 21 minutes.
- Limit the number of people exposed to the aerosols during and after the procedure.

PATIENT CARE

The risks of in-person care should be weighed against the benefits. Professional judgement must be used to make the necessary adjustments to increase protection of patients and staff. When these guidelines cannot be met, the patient must be referred to another practitioner.

Prior to the Appointment

- Maintain a clean and dedicated patient waiting and care area.
- Non-essential items (e.g., magazines, toys, dental equipment) should be removed from patient waiting and care areas to minimize contamination and the potential to become a vehicle to spread the virus.
- Patients and essential visitors (e.g., a parent accompanying a young child or a patient who requires accommodation) should be screened over the phone for COVID-19 using the screening questions developed by the MOH. These screening questions are subject to change (i.e., symptoms may be updated). It is important to ensure that the most recent screening questions are being used.
    - If the patient screens positive, the appointment should be deferred. If the essential visitor screens positive, they should not be permitted to attend with the patient until symptoms have resolved.
    - The patient or essential visitor who screens positive should be advised to seek direction from their primary care provider or Telehealth Ontario at 1-866-797-0000.
    - COVID-19 is a designated disease of public health significance and reportable under the *Health Protection and Promotion Act, 1990* to the local public health unit (see the section on Potential Exposure Guidance under Workplace Considerations).
- Notify patients of policies that limit transmission of COVID-19 including:
    - Requiring individuals accompanying them to wait outside of the workplace unless they are essential.
    - Requiring patients and essential visitors to wear a face covering (e.g., a procedural/surgical mask, cloth covering, other appropriate face covering) prior to entering the workplace.

The Appointment

Patient Arrival Process

- Patients and essential visitors who arrive without a face covering must be provided one or be required to schedule a new appointment.
- Patients should be required to perform hand hygiene with either 70-95% alcohol-based hand rub or soap and running water upon initial entry to the workplace.
- Patients and essential visitors should be screened for COVID-19 using the screening questions developed by the MOH prior to permitting entry to the patient care area. The screener should use proper precautions and PPE as set out in the section on Screening under Workplace Considerations and Table 1.
- If a patient or an essential visitor screens positive for COVID-19:
    - The appointment should be deferred until the patient has consulted with their primary care provider and/or until symptoms have resolved.
    - In-person care must not be provided, except for emergency or urgent care, that cannot be delayed. An RDT must also be able to meet the additional precautions and requirements set out below.

- Where an RDT decides to proceed, the patient must be immediately provided with a surgical/procedure mask and placed in the patient care area with the door closed. Ensure the patient does not leave their mask in the waiting or care areas.

In-Person Care

- PPE that is appropriate for the anticipated procedure or activity (see Table 1) should always be worn when providing direct patient care or working in patient care areas.
  - For a patient who has screened or tested positive for COVID-19, in-person care must not be provided, except for emergency or urgent care, that cannot be delayed. If an RDT proceeds with in-person care, enhanced precautions must be used (see Table 1).
- Patients are recommended to rinse with 1% hydrogen peroxide mouthwash for 30 seconds prior to procedures in the oral cavity to help reduce oral pathogens.

After the Appointment

- Patients should be asked to perform hand hygiene with either 70-95% ABHR or soap and running water before leaving the workplace.
- Patients and essential visitors should be advised to inform staff if they experience any symptoms of COVID-19 within the next 14 days.
- Clean and properly disinfect (whenever possible sterilize) all instruments or devices which have had direct patient contact as soon as possible.
- After every patient visit, patient-contact surfaces (i.e., areas within two meters of the patient) should be disinfected as soon as possible and before another patient is seen.
  - If it involves an aerosol-generating procedure on a dental prosthesis or device for a patient who has screened or tested positive for COVID-19, cleaning and disinfection of the dedicated space must be delayed for 3 hours or less as described in the section on Aerosol-Generating Procedures under Practice Considerations.

TRAINING ON INFECTION PREVENTION AND CONTROL PROTOCOLS

RDTs have a responsibility to ensure that the Infection Prevention and Control Standard is fully met in the practice in which they work. Where RDTs delegate these responsibilities, RDTs remain accountable.

- Maintain current knowledge of infection prevention and control and keep up to date on COVID-19 information.
- Educate staff on COVID-19, how it spreads, risk of exposure, including those who may be at higher risk (i.e., have underlying health conditions) and procedures to follow including reporting, proper handwashing practices and other routine infection control precautions.

The *Occupational Health and Safety Act, 1990* requires employers to take every reasonable action to protect the health and safety of workers. Under this Act, employers have a responsibility to:

- Identify and provide appropriate PPE for employees;
- Maintain PPE in good condition,
- Train employees in the proper use and care of PPE, and
- Ensure that the required PPE is worn by employees.

RESOURCES

College of Dental Technologists of Ontario's Standards and Practice Advisories

Guidance for the Health Sector from the Ministry of Health and Ministry of Long-Term Care

Public Health Ontario's COVID-19 Resources

REVISION HISTORY

Revision #	Date Effective	Key Changes
1	May 22, 2020	• Initial guidance document
2	June 3, 2020	Updated to reflect CMOH's guidance in the COVID-19 Operational Requirements: Health Sector that the approach to care is based on whether a patient screens or tests negative or positive for COVID-19 • Additional guidance in the Patient Care section based on a patient screening or testing negative or positive for COVID-19 • Addition of Table 1 in the section of Personal Protective Equipment, which sets out the use of PPE by setting and procedure based on a patient screening or testing negative or positive for COVID-19 • Edit section on Aerosol-Generating Procedures, guidance now applies only when it is on a dental prosthesis/device or an item that has had direct contact with patients who have screened or tested positive for COVID-19 • Additional guidance in the Screening section to include CMOH recommendation that staff conducting screening of patients and essential visitors are ideally behind a physical barrier

Quality Assurance

The College of Dental Technologists of Ontario (CDTO), like all Ontario health regulators, is required to have a Quality Assurance (QA) Program. The QA Program helps the College fulfil its mandate to protect the public by ensuring its members meet the standards of practice set by the College and continually develop their knowledge, skills and judgement to ensure professional excellence.

QA Program Overview

Ontario Regulation 604/98 of the Dental Technology Act states that the QA program shall include the following components:

1. Self-Assessment
2. Continuing Education and Professional Development (CEPD)
3. Peer and Practice Assessments

The QA Program is designed to be supportive and educational in nature by providing all Registered Dental Technologists (RDTs) with a framework for professional development, and peer to peer encouragement, learning and collaboration.

The goal of the Quality Assurance Program is to:

- Promote continuing competence and continuing quality improvement among the members,
- Address changes in practice environments, and
- Incorporate standards of practice, advances in technology, changes made to entry to practice competencies and other relevant issues in the discretion of the Council.

The QA Program is overseen by the QA Committee, a statutory committee of the CDTO. With operational support from staff, the Committee monitors Member compliance with the program, reviews and takes action on assessment reports as required, and makes determinations regarding practice enhancement and remediation.

Participating in the QA Program

All Members holding a General Certificate of Registration must participate in the program annually.

The College monitors participation in the program by requiring regular submission of information and documents by Members. A QA declaration is completed each year by every General Certificate Member at the time of their annual renewal of registration. Members confirm they have participated in CEPD activities in the form and manner specified by the Council and they have conducted the annual self-assessment using the self-assessment tool approved by the QA Committee.

Failure to participate in any component of the QA Program may be considered an act of professional misconduct.

Self-Assessment

Self-Assessment is a tool for Members to reflect on their practice. Reflecting on their practice assists the Member to identify their priorities for continuous improvement of their professional knowledge, skills and judgement as they relate to the College's Standards of Practice and code of ethics and assists them in identifying their learning goals and appropriate CEPD activities for the year ahead.

After reflecting on their own strengths and areas for improvement, members will then formulate their professional development goals and plan on activities that would enhance or develop their knowledge, skills or judgement.

Learning goals should be SMART (Specific, Measurable, Attainable, Relevant and Timely). A well-written goal contains an action or outcome that will assist in determining when the goal has been achieved.

Continuing Education and Professional Development (CEPD)

All Members are required to participate in CEPD activities to ensure their knowledge, skills and judgement remain current and responsive to changes in practice environments and advances in technology and continue to meet the Standards of Practice set by the College.

Members are required to obtain a minimum of ninety (90) CEPD credits every three (3) years and must document their participation in professional development activities in their Professional Development Portfolio (PDP) and their Summary PDP (SPDP). CEPD credits are earned through participation in a variety of learning activities, giving Members the flexibility to choose the learning approach and activities that best meet their learning goals.

The College has developed the Professional Development Guidelines to assist members in selecting appropriate professional development activities. The guidelines will also inform members in the amount of CEPD credits earned for undertaking such activities.

Peer and Practice Assessment

Through Peer and Practice Assessment, the College determines (by means of an on-site visit) how well an RDT is applying the Standards of Practice in their everyday practice. It is also an opportunity for RDTs to learn from and engage with a Peer Assessor, who is a volunteer of the College, so that they may further develop their professional knowledge, skills and judgement.

Each year, a percentage (between 2%-5%) of the College's membership is randomly selected to take part in a Peer and Practice Assessment. Other members may also be required to undergo an Assessment if they have been referred because of deficiencies in their PDP.

The Assessment includes:

- A start-up meeting
- A tour of the laboratory
- Review of records (i.e. prescriptions, procedure manuals, invoices, maintenance records)
- Observation and interviews to assess performance against the College's Standards of Practice and guidelines
- A summary meeting to discuss findings, review assessment documentation

All those required to take part in a Peer and Practice Assessment will be notified in writing by the College. Members are required to participate in the QA program each year and to co-operate with the QA Committee, College staff and Peer Assessors.

- QA Program Overview and Guide
- Credit Point System for Professional Development Activities

College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

Overview of the Quality Assurance Program

v. April 2018

College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

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College of Dental Technologists of Ontario
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1. Overview

Introduction

The Quality Assurance Program of the College of Dental Technologists of Ontario (CDTO) is founded on the belief that all members (RDTs) are competent oral health care professionals committed to performing within the scope of the dental technology practice. RDTs conform with all relevant regulations and Standards of Practice. They are also committed to supporting quality care by proactively taking the responsibility to maintain and improve their professional practice on a continuous basis.

The Quality Assurance Program

The QA Program is designed to be supportive and educational in nature by providing all Registered Dental Technologists (RDTs) with a framework for professional development, and peer to peer encouragement, learning and collaboration.

The QA Program is overseen by the QA Committee, a statutory committee of the CDTO. With operational support from staff, the Committee monitors Member compliance with the program, reviews and takes action on assessment reports as required, and makes determinations regarding practice enhancement and remediation.

The CDTO must:

- comply with the legislative requirements of the Regulated Health Professions Act, 1991 (RHPA) which requires all Regulatory Health Colleges in Ontario to implement a Quality Assurance Program.
- ensure public protection as part of its mandate
- promote members to continually improve their knowledge, skills and judgement as they progress in their careers as integral members of the oral health care team.

Quality Assurance Program Goals and Objectives

The goal of the Quality Assurance Program is to:

- promote continuing competence and continuing quality improvement among the membership,
- address changes in practice environments, and
- incorporate standards of practice, advances in technology, changes made to entry to practice competencies and other relevant issues in the discretion of the Council.

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Specifically, the program is designed to ensure that:

- all RDTs regularly demonstrate that they meet the baseline competencies in all areas of the dental technology practice
- the baseline requirements of the standards of practice will be raised and new standards will be introduced to reflect innovation and changes in the profession over time
- an environment is created for RDTs to strive for continuous improvement

Overview of QA Components and Tools

The Quality Assurance Program (QAP) comprises of the following key components and tools:

Components:

1. Self-Assessment
2. Continuing Education and Professional Development (CEPD)
3. Peer and Practice Assessments

Tools:

4. Professional Development Profile (PDP)
5. Summary of the Professional Development Profile (SPDP)

1. Self-Assessment

Self-Assessment is a tool for Members to reflect on their practice. Reflecting on their practice assists the Member to identify their priorities for continuous improvement of their professional knowledge, skills and judgement as they relate to the College's Standards of Practice and code of ethics and assists them in identifying their learning goals and appropriate CEPD activities for the year ahead.

After reflecting on their own strengths and areas for improvement, members will then formulate their professional development goals and plan on activities that would enhance or develop their knowledge, skills or judgement.

Learning goals should be SMART (Specific, Measurable, Attainable, Relevant and Timely). A well-written goal contains an action or outcome that will assist in determining when the goal has been achieved.

Embedded within the Professional Development Portfolio (PDP) forms is the self-assessment tool. Members will use the PDP forms to complete their annual self-assessment.

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2. Continuing Education and Professional Development (CEPD)

All Members are required to participate in CEPD activities to ensure their knowledge, skills and judgement remain current and responsive to changes in practice environments and advances in technology and continue to meet the Standards of Practice set by the College.

Members are required to obtain a minimum of ninety (90) CEPD credits every three (3) years and must document their participation in professional development activities in their Professional Development Portfolio (PDP) and their Summary PDP (SPDP). CEPD credits are earned through participation in a variety of learning activities, giving Members the flexibility to choose the learning approach and activities that best meet their learning goals.

The College has developed the Professional Development Guidelines to assist members in selecting appropriate professional development activities. The guidelines will also inform members in the amount of CQI credits earned for undertaking such activities.

3. Peer and Practice Assessments

The Ministry of Health and Long-Term Care has identified on-site practice reviews as crucial to quality assurance. All regulated health professions are required to include in their QAP measures that evaluate members on-going competence, compliance with the College's standards of practice, demonstrate continuous quality improvement, and to provide members with valuable practice feedback. Peer and Practice Assessments will be reviewed in depth.

4. Professional Development Profile

The Professional Development Profile (PDP) is a tool for members to:

- identify learning and performance improvement needs
- set goals and to plan for activities to achieve these goals
- record their professional development activities and track their credits

The PDP forms house the self-assessment forms as well as learning goals and tracking of professional development activities. Members must maintain records in their PDP of their professional development activities and, if requested, submit these to the College. Completed PDPs, including certificates of attendance must be retained for six (6) years from the date of the most recent activity described in the portfolio.

The College will randomly select between 2-5% of the membership each year to review the members PDP. The College will review the learning goals set by the member and review the professional development activities undertaken by the member within their 3-year cycle. Members will be asked to provide proof of completion for all professional development activities.

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5. Summary Professional Development Profile

The Summary Professional Development Profile (SPDP) is a summarized version of the PDP that includes the learning goals the member has developed and the record of the members professional development activities undertaken to meet the goal.

At the end of each three (3) year cycle, Members must submit their SPDP forms to the College for review by August 31st of the third year. This provides the College with an opportunity to ensure the member's ongoing compliance with the program, and to ensure the member is continually striving for professional development.

Summary of Each Member's QA Requirements

Member's must:

- ✓ complete the Self-Assessment Tool found within the PDP forms annually and set learning goals
- ✓ complete 90 CEPD credits in every 3-year cycle
- ✓ record your professional development activities and CEPD credits earned in your PDP and SPDP forms.
- ✓ submit your SPDP forms by August 31st in the third year of every 3-year cycle
- ✓ submit your PDP forms to the College when randomly selected
- ✓ undergo a Peer and Practice Assessment when randomly selected

Failure to Comply

Members who fail to meet the Standards of Practice of the College or fail to demonstrate ongoing compliance with the QAP may be directed by the Quality Assurance Committee to any of the following:

1. Complete specified continuing education or remedial programs within a specified period of time, or
2. Undergo a Peer and Practice Assessment
3. Direct the Registrar to impose terms, conditions or limitations on a member's certificate of registration for a specified period of time

Failing to meet the Standards of Practice of the College is an act of Professional Misconduct. The Quality Assurance Committee may refer the member to the Inquiries, Complaints and Reports Committee should a member continually fail to demonstrate ongoing compliance to QAP. The Quality Assurance Committee rarely exercises this power as the goal of Quality Assurance is non-punitive and educative.

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2. Standards of Practice & Practice Advisories

Standards of Practice set out the professional expectations for dental technologists. They are the minimum knowledge, skills and judgement needed to practice safely and provide quality service to the public. Standards are set by the College of Dental Technologists of Ontario and all Registered Dental Technologists (RDTs) must adhere to them.

Standards of Practice also promote the continuing competence of self-regulated health care professionals by helping Members to identify continuing quality improvement opportunities when members complete their annual self-assessment found within the PDP forms.

The College may from time to time issue practice advisories. Practice advisories provide members with guidance and useful practice information on a particular issue of importance. They assist members with interpreting Standards of Practice, that may otherwise be larger in scope and less concise.

Why do we need Standards of Practice?

The Standards are critical for self-regulation because they reflect what dental technologists believe is the accepted way to practice the profession to ensure that the public interest is served and protected. The Standards set out the minimum requirement that dental technologists need to meet in order to provide care that is safe, competent, and ethical and give the regulator a tool to hold Members accountable if they fall below those requirements.

3. Peer and Practice Assessments

What are Peer and Practice Assessments (Peer Assessments)?

Peer and Practice Assessments, or Peer Assessments, is a review of a fellow RDT's compliance with the College's Standards of Practice at his or her place of practice.

Why conduct Peer Assessments?

- To provide RDTs with valuable practice feedback from an experienced peer
- To meet the requirements of the Regulated Health Professions Act, 1991 and associated regulations.
- To be accountable to the public by providing evidence of an RDTs ongoing competence and professionalism

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When will an RDT be asked to undergo Peer Assessments?

Peer Assessment will take place when:

- An RDT is randomly selected. (Every year, between 2-5% of practising RDTs will be randomly selected)
- An RDT's professional development profile submission is judged to be deficient by the QA Committee.
- An RDT is referred through the registration, complaints or discipline processes.

Who are Peer Assessors?

Peer Assessors are fellow experienced RDTs registered with the College in good standing and hold a current General Certificate of Registration or have been retired from the College less than 5 years. Peer Assessors undergo a fulsome recruitment process and must demonstrate a strong sense of professional responsibility and commitment. They will represent CDTO during Peer Assessments and utilize their practice experience to provide members with valuable feedback on improving their practice.

What is the process?

An RDT selected to undergo a peer assessment will be given written notice in advance. The assessment will be conducted at the RDT's principle place of practice by a trained Peer Assessor appointed by the QA Committee. Before the actual on-site visit, the RDT will be contacted by the Peer Assessor to decide on a mutually agreed date and time.

The assessment will normally take half a day and follow the processes outlined below. However, because of the different nature of member's practices, the process may be modified.

Peer assessments are meant to be educative and take a more informative approach and is not punitive. Peer assessors are fellow RDTs who act as mentors that provide valuable information on how to better your practice.

1. Start-Up Meeting

At the Start-Up Meeting, the Peer Assessor will provide:

- An estimated length of time for the assessment
- areas of the practice that will be assessed: records, materials, practice activities
- time and format of the summary meeting

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2. Tour of the Laboratory

The Peer Assessor will tour the laboratory to:

- take note of the tasks and activities that the RDT is responsible for performing and/or Supervising;
- determine tasks to be assessed to verify compliance with the Standards of Practice; and
- determine who to interview if necessary e.g. technicians reporting to the RDT understands the location of appropriate manuals, policies or procedures.

3. Observation and Interviews to Assess Performance

The Peer Assessor will:

- look for factual evidence that the RDT is adhering to the criteria outlined in the Standards of Practice applicable to the task being performed;
- review files and records for required elements stipulated in Regulations, Standards and Guidelines;
- ask for clarification and/or explanation; and
- record observations on the assessment checklist.

4. Summary/Review Meeting

After completing all assessment activities, the Peer Assessor will take time to review his/her notes on the checklists before concluding the review. He/she will hold a summary/review meeting with the assessed RDT to:

- discuss the findings
- answer questions from the RDT
- provide suggestions for improving your practice
- elicit feedback and suggestions from the RDT on the QA Program, the various component processes, Standards of Practice and the Peer Assessment.

Possible Outcomes of the Assessment

The Assessor will report in writing the results of the assessment to the Quality Assurance Committee within 14 days after completing the assessment. A copy of the report will be provided to the member.

The member may make written submission to the QA Committee within 15 days of receiving the assessor's report.

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After reviewing the report, the QA Committee may decide that:

- no further action is required;
- there are no concerns, however, some recommendations may be offered;
- there are minor infractions regarding which the RDT may agree to take remedial actions within a specified period of time.
- contemplate a reassessment
- there are major concerns/infractions of professional misconduct, incompetence or incapacity and that the name of the RDT be referred to the ICRC Committee.
- take action under subsection 80.2 (1) of the Health Professions Procedural Code O. Reg 35/13, s.1.

College of Dental Technologists of Ontario
Continuing Education and Professional Development Credits

Every Registered Dental Technologist (RDT), holding a general certificate of registration, is required to participate in the Quality Assurance Program (QAP) in order to enhance her/his professional knowledge, skill and judgement.

As per Ontario Regulation 604/98 2(1), the first component of QAP is Continuing Education and Professional Development (CEPD) which is designed to:

i. Promote continuing competence and continuing quality improvement among the members,
ii. Address changes in practice environments, and
iii. Incorporate standards of practice, advances in technology, changes made to entry to practice competencies and other relevant issues in the discretion of Council.

The QAP **requires members to obtain a minimum of 90 continuing quality improvement credits in every three-year cycle,** through courses and activities recognized by the College.

CEPD Credits are assigned based on duration, depth of program, degree of difficulty and involvement, and degree of outcome measurement. The QAP encourages flexibility with regard to the type of professional development activities chosen. These activities may be in any format that is appropriate to meet learning needs. Keep in mind that CEPD activities must support the practice of dental technology. The learning needs of an RDT who specializes in Orthodontics will be different from an RDT who works primarily in Crown and Bridge, and both will be different from the learning needs of an RDT whose practice is focused on teaching or supervising others.

The attached guide lists continuing quality improvement credits assigned to various CEPD activities. Activities (such as volunteer work) not listed in this guide may be submitted to the Quality Assurance Committee for consideration and approval in advance of the activity taking place. RDT's are encouraged to explore innovative means of demonstrating their commitment to continuous learning, including the development of courses, study clubs and other interactive means to share one's professional experiences.

RDT's have the flexibility to acquire continuing quality improvement credits from both "technical" and "non-technical" activities provided that the credits obtained from "non-technical" activities do not exceed 1/3 of the total required credits.

- ***Technical*** activities mean those directly related to the scope of practice of dental technology, specifically, the design (includes computer-aided design), construction, repair or alteration of a dental prosthetic, restorative or orthodontic device as defined in the *Dental Technology Act, 1991.*

- ***Non-Technical*** activities mean those that relate to a dental technologists supervisory or administrative responsibilities within a dental technology practice; supervisory, management and human resource skills; business related record keeping, accounting; First Aid, CPR and AED training; WHMIS (Workplace Hazardous Materials Information System) and AODA (Accessibility for Ontarians with Disabilities Act), where applicable.

Every year, the Quality Assurance Committee is required by the Act to randomly select between 2-5% of the members to participate in a Professional Development Profile Review. If selected for the random review, members are asked to provide proof of participation in CEPD activities. Therefore, it is important for members to keep their Professional Development Profile and supporting documentation up to date at all times and retain a copy for 6 years. An annual review of learning objectives also helps to target efforts at smart, relevant and effective continuous learning endeavors.

College of Dental Technologists of Ontario

Continuing Education and Professional Development Credits

Type of Activity	Quality Improvement Credits	Maximum Credits (3 Years)
Approved Non-Core Competency Course set by Council	TBD	No max
Approved Core Competency Course set by Council	TBD	No max
Completion of Dental Technology Technical Training (including Practical and Theoretical) • Less than 3 hours • Half Day (3-6 hours) • Full Day (or 2 Half Days) • Multi-Day (2 Full Days) • More than 2 Days	 3 6 12 18 8 per day after 2nd day	72
Completion of Non-Technical Business-related training • Less than 3 hours • Half Day (3-6 hours) • Full Day (or 2 Half Days) • Multi-Day (2 Full Days)	 2 4 6 8	30
General Attendance at Conferences/Conventions Per Day of Registration and Attendance	2	36
Review Dental Technology Technical Video, Book or Journal** per Year	2	18
Self-Study Program – External Independent Testing • Low Testing (1-page Q &A) • High Testing (High Technical content – more than 1 day)	 4 8	 12 24
Participating in a CDTO Led Consultation • Survey or by Phone • In-Person Focus Group	 Up to 4 points Up to 6 points	 No max No max
Recognized Educational Institute Correspondence courses - multi-session (Technical or Non-Technical)	8	24
Participation as a member of CDTO: Council, Committee, Task Force or Working Group	6 per year/per Council, Committee, Task Force or Working Group	No max

Type of Activity	Quality Improvement Credits	Maximum Credits (3 Years)
Participation in a recognized Dental Technology Professional Association Committee or Task Force	4 per year/per Committee or Task Force	12
Participation in any capacity (examiner, invigilator, etc.) of the entrance to practice examinations	4/day	No max
Participation as a Quality Assurance Peer Assessor	4/day	No max
Participating as a Supervisor in a Field Placement program pre-approved by the Quality Assurance Committee	15/year	45
Serving as Dental Technology related faculty in a recognized Teaching Institution approved by the CDTO • Full Time Instructional • Part Time Instructional • Support Staff (Technologists)	 6/term 3/term 2/term	 36 18 12
Presenting/lecturer of a CDTO approved Course • Half Day • Full Day	 6 12	 No max No max
Publishing an article in an approved Dental Technology publication	10	30
Authoring a Dental Technology related: • Textbook • Chapter(s) of a Textbook	 16 8	 48 24
Develop a Dental Technology related course/self-study module	10	30
Other activities (including Volunteer activities) approved by the CDTO Quality Assurance Committee. Activities will be assessed in a presented format (minimum 60 days prior to activity)	TBD	No max
** QAC list of Approved journals: Spectrum, LMT, Oral Health, Dental Technology Today, Advisor, Dentistry Today, Dental Labor, AACD, ADTO.		

College of Dental Technologists of Ontario
Continuing Education and Professional Development Credits

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Patient Relations

The Patient Relations Program exists to enhance and promote the professional relationship between dental technologists, patients and non-patients by providing education and resources to assist all groups. Administered by the Patient Relations Committee and required under the *Regulated Health Professions Act, 1991* (RHPA), the Program helps patients and non-patients understand what to expect from a dental technologist and what to do if they feel they have not received appropriate care or have been sexually abused.

The Patient Relations Program produces educational documentation and guidelines for Members and training materials for the College's Council and staff. It also produces informational pamphlets on the role of Registered Dental Technologists RDT's in the oral health care field for members of the public and administers the funds set aside for counselling of patients who have experienced sexual abuse by an RDT.

Addressing Sexual Abuse and Sexual Harassment

RDTs are committed to providing quality services in a safe, ethical and professional manner. Dental technologists, as regulated health professionals, are expected to act in a professional manner at all times.

The College has a zero-tolerance policy on sexual abuse, harassment and workplace violence. Sexual abuse or harassment of a patient or non-patient (client of RDT or co-workers of RDT) by a dental technologist is unacceptable and such actions are subject to investigation for professional misconduct.

What is Sexual Abuse?

"Sexual abuse" is very broadly defined in the legislation to include not only physical actions but also behaviours or remarks. Sexual abuse of a patient, as defined in the RHPA's *Health Profession Procedural Code*, occurs when a dental technologist:

- Has sexual intercourse with a patient;
- There is genital to genital, genital to anal, oral to genital or oral to anal contact;
- There is masturbation of the member by, or in the presence of, the patient;
- There is masturbation of the patient by the member;
- The member encourages the patient to masturbate in the presence of the member;
- There is touching of a sexual nature of the patient's genitals, anus, breasts or buttocks;
- Any other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the RHPA.

This definition means that a member of the CDTO cannot have a sexual relationship with a patient, even if the patient consents. This would include spouses if they were seen as a patient. Members are currently not permitted to treat their spouses.

The Code does allow touching, behaviour and remarks that are of a clinical nature and that are appropriate to the services rendered.

The College has extended this definition of sexual abuse to non-patients such as dentists who are clients and co-workers.

What is Sexual Harassment?

In addition, the College considers sexual harassment as an act of professional misconduct, defined as unwelcome sexual conduct when:

- the conduct has the purpose or the effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment/relation; and/or
- submission to such conduct is either an explicit or implicit term or condition of employment; and/or
- submission to or rejection of the conduct is used as a basis for making employment decisions.

What one person finds friendly and kind, may seem too casual or intimate and make another person uncomfortable. Each person's level of comfort with physical contact and informal ways of speaking can be different. Learn more about appropriate conduct for a dental technologist in the Patient Relations Program Policy and Guidelines.

Taking Action Against Sexual Abuse and Harassment

What should you do if you suspect sexual abuse by a dental technologist?

Please know that it is not your fault. The dental technologist is responsible for understanding and maintaining an appropriate, professional relationship. Contact the Coordinator of Professional Conduct with your concerns regarding sexual abuse or harassment by a member of the College at 416-438-5003.

Allegations and complaints regarding sexual abuse and harassment are handled through the College's complaints process. College staff receive training on handling allegations of sexual abuse and harassment to ensure all enquiries and complaints are dealt with sensitively. Your privacy will be respected.

If an employer or a health professional becomes aware that a dental technologist may have sexually abused or harassed a patient, the law requires that they report that abuse to the CDTO. The patient's name is not forwarded to the CDTO as part of the mandatory report unless that patient gives the employer or health professional written permission to identify them as the victim of such abuse.

All healthcare professionals licensed in Ontario including RDTs are required to understand the mandatory reporting requirements.

What happens if a RDT is found to have committed sexual abuse?
According to the legislative framework, if proven sexual abuse involves certain sexual acts, then the member's certificate of registration must be revoked.

These acts include:

- sexual intercourse
- genital to genital, genital to anal, oral to genital, or oral to anal contact
- masturbation of the member by, or in the presence of, the patient
- masturbation of the patient by the member
- encouraging of the patient by the member to masturbate in the presence of the member.
- Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.
- Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the *Regulated Health Professions Act, 1991*.

Further, a member is not allowed to apply for reinstatement to the College for five years. At the end of five years, a member is required to prove to a panel of the Discipline Committee that they are no longer a risk to the public should they be allowed to register with the College again.

The Patient Relations Committee is responsible for developing criteria, managing and administering funding for therapy and counselling of patients who are sexually abused by dental technologists.

- Patient Relations Program Policy and Guidelines

Revised on October 10, 2017

College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

PATIENT RELATIONS PROGRAM
Policy and Guidelines

Part I
Introduction

Dental Technologists, as professionals, may come into contact with patients referred by dentists or other health practitioners on such occasions as "shade taking", "shade adjusting" and "visual assessment".

In April 1995, Council in recognition of the limited contacts between the profession and patients, formally approved that the College of Dental Technologists of Ontario's ("CDTO" or the "College") Patient Relations Committee broaden the scope of its program and guidelines to include, "measures that enhance the relation of the profession with not only patients, but also clients, and co-workers."

Further in April 1998, the Health Colleges were advised by the Health Professions Regulatory Advisory Council (HPRAC) that complaints of "Professional Misconduct of a Sexual Nature" encompasses complaints of both patients and non-patients. HPRAC's interpretation therefore reinforces the scope of the CDTO's Patient Relations Program to include measures that enhance the relation of the dental technologists with patients, clients and co-workers.

Revised on October 10, 2017

Part II
Policy Statement

The CDTO's Patient Relations Committee has an obligation under the Regulated Health Professions Act (RHPA), 1991, to a) develop programs to educate members and staff on sexual abuse and harassment issues, b) develop guidelines for professional behavior, and c) administer a program of funding for therapy and counselling of a sexually abused patient (*RHPA, 1991*, Sched. 2 s. 85).

The College has a policy of "zero tolerance" for sexual abuse, harassment and workplace violence of patients, clients, and co-workers in the practice of dental technology.

The College's Policy on sexual abuse, harassment and workplace violence are set out below:

1) Prevent sexual abuse, harassment, and workplace violence by educating, encouraging open dialogue, assessing and investigating potential incidents and informing members of policy development, complaints processes and guidelines for proper professional relationships;
2) Train College staff, Council and Committee members to be proactive, responsive, sensitive and supportive to the needs of complainants and members; and
3) Inform the public and the target groups mentioned above of their rights, the College's policies and the complaints processes.

Definition

"Patient" as an individual receiving professional treatment referred by a dentist or a health practitioner;

"Client" as a dentist or a health practitioner primarily responsible for the treatment of a patient;

"Co-worker" as a person working in the same place as the dental technologist, including employee of the dental technologist whether working under supervision or not, or a person working in a place where the dental technologist would have professional contact in his/her practice;

"Sexual Abuse" as defined in the *RHPA, 1991*:

- sexual intercourse or other forms of physical sexual relations between the member and the patient;
- touching, of a sexual nature, of the patient by the member; or
- behaviour or remarks, of a sexual nature, by the member towards the patient

"Sexual Harassment in the workplace"

Includes:

- unwelcome sexual advances (verbal, written or physical);
- requests or demands for sexual favours;
- any other type of sexually oriented conduct; and
- verbal abuse or "kidding" that is sex oriented.

When

- the conduct has the purpose or the effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment/relation; and/or
- submission to such conduct is either an explicit or implicit term or condition of employment; and/or
- submission to or rejection of the conduct is used as a basis for making employment decisions.

For the purposes of this policy and guidelines the definition of sexual abuse and sexual harassment of patients apply to clients and co-workers.

1) The member must meet the legislative requirements and conditions of the College as they relate to dental technology practice.

2) The member supports the objectives and purpose of the College and is governed by it's rules and regulations.

3) The member practices in a professional manner, being guided at all times by respect for human dignity.

4) The member keeps all information received in the course of the professional relationship confidential except:
    a. when reporting is required by law; or
    b. when the sharing of pertinent information is appropriate for collaboration with other health care providers involved.

5) The member continues education/training to improve his/her awareness of sexual abuse/harassment issues.

6) The member recognizes what the RHPA considers as "sexual abuse of a patient" and "abuse of a sexual nature" and does not engage in such professional misconduct.

7) The member recognizes the under the RHPA, it is mandatory for members to report information or incidents of suspected sexual abuse of a patient by a member of the same or of a different College to the governing College of the practitioner (*RHPA, 1991,* Sched. 2, s. 85.1, 85.2 and 85.3).

8) The member recognizes the College's definition of sexual harassment in the workplace and does not harass clients and co-workers.

9) The member cooperates with College investigations or inquiries into the professional conduct of any member of a regulated health profession.

10) No member shall falsely impugn the reputation of any colleague.

11) The member maintains professional relationship with patient, client and co-worker and does not exploit the relationship for personal advantage.

12) The member conducts himself/herself in an honourable and professional manner so as to merit the respect of the public for members of the Dental Technology profession.

Suggested Preventive Measures – When Contacting Patients

This section of the policy and guidelines suggests measures that may be considered when dental technologists see patients. Council has adopted the preventive measures set out below as a minimum standard. The objective is to protect public interest and eliminate the risk of sexual abuse allegations.

1) Whenever possible, schedule patient appointments for procedures prescribed by a dentist or another health practitioner during normal business hours.

2) If appointments must be made before or after normal laboratory hours, make sure that at least one other staff member - preferably, of the same sex as the patient - is present.

3) It may not be possible to avoid physical contact with patients during dental technology procedures, such as, "shade taking", but **avoid**
    a. unnecessary touching, pinching, etc.;
    b. gestures, tone of voice or behaviour that may cause awkwardness or embarrassment;
    c. unwelcome remarks/jokes about a person's body, attire or sex; and
    d. displaying pornographic or other offensives materials in the laboratory.

4) Explain procedures in detail to the patient and obtain the patient's **written** consent before providing service.

5) Dress appropriately, in a professional manner. Both female and male dental technologists are advised to wear laboratory coats or smocks.

6) While you are expected to treat the patient pleasantly and with courtesy, be sensitive to cultural and individual differences. Avoid familiarity, pleasantries need be limited to businesslike manner. These preventative measures should also be adopted when dental technologists contact clients and co-workers.

Mandatory Reporting

The RHPA requires all regulated health professionals, including dental technologists and employers to report the health professional, who committed the alleged abuse of a patient, to the governing College concerned. The report must be made in writing within thirty days of learning or witnessing of the incident. If there are reasonable grounds to believe that the health professional will continue to sexually abuse the patient or other patients, the report must be filed immediately. On the other hand, if the identity of the health professional is not known, it is not necessary to report.

The RHPA states that failure to report, when a health professional had reasonable grounds to do so, is an offence punishable by a fine of not more than $50,000 for an individual.

Complaints, Investigation and Penalties

The College of Dental Technologists of Ontario will not tolerate sexual abuse or harassment of any kind committed by its members. On receipt of any complaint, the College will:

1) Promptly appoint an independent investigator to interview the complainant to verify and gather facts.

2) The investigator will interview in person the alleged RDT, present allegations made by the complainant and collect relevant information.

3) On completion of the investigation, the investigator will present a report to the College.

4) The Complaints, Inquiries and Reports Committee (ICRC) will assess the facts to decide whether to refer the case to the Discipline Committee, take another action appropriate of the ICRC such as requiring the member to appear before the panel to be cautioned or to take no further action.

Penalties

The legislation states that when a panel of the Discipline Committee finds a member guilty of committing an act of professional misconduct by "sexually abusing" a patient, at a minimum, it must:

1) Reprimand the member.

2) Suspend the member's certificate of registration if the sexual abuse does not consist of or include conduct listed in paragraph 3 and the panel has not otherwise made an order revoking the member's certificate of registration under subsection (2).

3) Revoke the member's certificate of registration if the sexual abuse consisted of, or included any of the following:
    a. sexual intercourse;
    b. genital to genital, genital to anal, oral to genital, or oral to anal contacts;

c. masturbation of the patient by the member; or
d. encouragement of the patient by the member to masturbate in the presence of the member
e. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks; and/or
f. Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the Regulated Health Professions Act, 1991. 2017, c. 11, Sched. 5, s. 19 (3).

In addition, it may make an order doing any one or more of the following:

1) Require the member to pay a fine of not more than $35,000 to the Minister of Finance.

2) Require the member to reimburse the College for funding provided for therapy and counselling for patients who were "sexually abused" by the member up to the actual cost of the therapy provided.

3) Require the member to post security acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse.

4) Require the member to reimburse the college for an amount up to the actual cost of the college investigation and the hearing, including all legal costs incurred by the college.

Funding for Therapy and Counselling

1) As required by the RHPA, the Patient Relations Committee is responsible for developing criteria and managing funding for therapy and counselling of patients who are sexually abused by dental technologists. Council has guaranteed the Patients Relations Committee access to the College's general contingency funds for the purpose of obtaining funding for therapy and counselling of patients (*RHPA, 1991*, Sched. 2 s. 85.7(2) and 85.7(3)).

2) Funding for therapy and counseling will be made available to a patient if it is alleged, in a complaint or report, that the person was sexually abused by a member while the person was a patient of the member; or the alternative requirements prescribed in the regulations made by the Council are satisfied. The Patient Relations Committee will administer the program.

3) A person's eligibility for funding is not affected by an appeal from the panel's finding.

Complaints & Reports

Members of the public, other regulated health professionals, employers of dental technologists and dental technologists themselves should, and in some cases, must notify the College if they have concerns about the professional conduct, competence or capacity of a member of the College.

There are several ways to let the College know if you have a concern about a dental technologist in Ontario: (1) Mandatory Reporting, (2) File a Complaint and (3) Self-Reporting.

Mandatory Reporting

The Regulated Health Professions Act, 1991 (RHPA) specifies that an employer, facility operator or regulated health professional has a mandatory duty to report certain concerns to the College. These concerns include suspicion of sexual abuse of a patient, professional misconduct, incapacity and incompetence.

File a Complaint

The process the College uses to receive, investigate and make decisions about complaints is designed to be impartial, transparent and fair to both the complainant and the member who is the subject of the complaint. The steps the College takes to act on a complaint are set out in the RHPA.

The College investigates all formal complaints. The Registrar also has the authority to initiate an investigation when certain information comes to his or her attention. These are referred to as Registrar's Reports and also go before the Inquiries, Complaints and Reports Committee.

The RHPA gives the College's Inquiries, Complaints and Reports Committee the authority to do one of the following actions with both a formal complaint and Registrar's Report:

- Refer a specified allegation of the member's professional misconduct or incompetence to the Discipline Committee if the allegation is related to the complaint or the report.
- Refer the member to a panel of the Inquiries, Complaints and Reports Committee under section 58 for incapacity proceedings.
- Require the member to appear before a panel of the Inquiries, Complaints and Reports Committee to be cautioned.
- Take action it considers appropriate that is not inconsistent with the health profession Act, this Code, the regulations or by-laws. 2007, c. 10, Sched. M, s. 30.
- Take no further action on the matter.

The College cannot normally act on anonymous complaints.

Self-Reporting

Dental technologists are required to file a self-report to the College if he or she has been found guilty of an offense or is the subject of a current investigation (except an investigation by the College of Dental Technologists of Ontario). Dental technologists should review the self-reporting requirements to ensure they understand and comply with these obligations.

Where to Send Your Complaint

By mail: The Complaints Department, College of Dental Technologists of Ontario
305 Milner Ave., Suite 904, Toronto, ON M1B 3V4
Email: complaints@cdto.ca
Fax: 416-438-5004

Discipline

The Discipline Committee holds hearings in cases where a member of the College has been referred by the Inquiries, Complaints and Reports Committee (ICRC) on reasonable and probable grounds that act(s) of professional misconduct have occurred. A discipline hearing is a formal process, much like that of a court of law, conducted by a panel of the Discipline Committee. At a discipline hearing, the College and the member against whom the allegations have been made are the parties to the proceedings.

Who represents the Discipline Committee and what do they do?

The Discipline Committee is represented at the hearing by a panel of Committee members appointed by the Chair of the Discipline Committee. A panel is composed of at least three (3) and no more than five (5) members of the Discipline Committee, of which least two (2) must be public members of Council. At a hearing, the panel will:

- consider the allegations, hear the evidence and determine the facts of the case;
- determine whether the evidence proves the allegations against the registered dental technologist (RDT);
- determine whether the RDT has committed an act of professional misconduct;
- determine whether the RDT's actions constitutes incompetence; and
- make orders with respect to the penalty to be imposed where a finding of guilt or incompetence is made.

What outcomes are possible from a Discipline hearing?

If a panel of the Discipline Committee finds a member has committed an act of professional misconduct, it may make an order doing any or all of the following:

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

4. Requiring the Member to appear before the discipline panel to be reprimanded;
5. Requiring the Member to pay a fine of not more than $35,000 to the Minister of Finance; and
6. If the act of professional misconduct was sexual abuse of a patient, requiring the Member to reimburse the College for funding provided for that patient.

If a discipline panel finds that a Member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do as mentioned above:

1. Reprimand the Member; and
2. Revoke the Member's certificate of registration if the sexual abuse consisted of, or included, any of the following:
    1. Sexual intercourse.
    2. Genital to genital, genital to anal, oral to genital, or oral to anal contact.
    3. Masturbation of the member by, or in the presence of, the patient.
    4. Masturbation of the patient by the Member.
    5. Encouragement of the patient by the Member to masturbate in the presence of the Member.
    6. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.
    7. Other conduct of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the Regulated Health Professions Act, 1991.

See the *Regulated Health Professions Act, 1991* (RHPA) for more detail.

If a dental technologist's certificate is revoked, the person may not use the title "Dental Technologist", Registered Dental Technologist (RDT) or hold herself or himself out as a Dental Technologist or Registered Dental Technologist. A former member whose registration has been revoked or suspended can apply for reinstatement to the Discipline Committee within one (1) year, unless the revocation was for sexual abuse of a client, in which case they cannot apply for reinstatement for five (5) years.

Can a decision of the Discipline Committee be appealed?

Decisions of the Discipline Committee can be appealed to Ontario's Divisional Court for judicial review within ninety (90) days of the decision being issued. There must be a question of law, fact or both in order or an appeal to be granted. The court may affirm, rescind or rehear the matter in whole or in part. A notation of the appeal and its outcome will appear on the College's public register.

Discipline Hearing Schedule

Discipline hearings are public except under special circumstances prescribed in the RHPA, such as when the safety of a person may be jeopardized. Current referrals are posted to the College's website including the Notice of Hearing for a summary of allegations against the Member.

Discipline Decisions

In accordance with section 56(1) of the Health Professions Procedural Code, Schedule 2 of the RHPA, the College is required to publish a Discipline panel's decision and its reasons. The College publishes these under the Member's Public Register, website, Annual Report and newsletters.

Fitness to Practise

The ICRC can form a separate health inquiries panel to investigate a Member's physical and/or mental capacity. If the health inquiries panel believes on reasonable and probable grounds that the Member's mental and/or physical health will affect their professional practice and pose a threat of harm to the public, they can refer the matter to the Fitness to Practise Committee.

The Fitness to Practise Committee then conducts a hearing to determine whether a member of the College is suffering from a physical and/or mental condition that impairs their professional function as an RDT.

How do Discipline hearings and Fitness to Practise hearings differ?

Procedurally, incapacity and discipline proceedings are similar. Incapacity hearings focus on the physical and/or mental state of a member and their ability to perform their professional role, whereas Discipline proceedings focus on a member's conduct and whether or not their conduct has breached a standard of the profession.

Unlike Disciplinary hearings, a Fitness to Practise hearing will only be open to the public if the member involved makes a written request in advance to the Registrar. Before agreeing to an open hearing, the panel must be satisfied that any negative consequences of revealing the information will not outweigh the benefits of an open hearing.

Who represents the Fitness to Practise Committee and what orders can they make?

The Fitness to Practise Committee is represented at the hearing by a panel of the Committee members appointed by the Chair of the Fitness to Practise Committee. A panel is composed of at least three (3) members of the Fitness to Practise Committee, including at least one (1) public member of Council. If a panel of the Fitness to Practise Committee finds a Member is incapacitated, it shall make an order doing any one or more of the following:

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

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

The results of a Fitness to Practise hearing where a member was revoked or suspended, or had terms, limitations or conditions applied to their Certificate of Registration is published on the Member's Public Register.

If a dental technologist's certificate is revoked, the person may not use the title "dental technologist", "dental technician", Registered Dental Technologist (RDT) or hold herself or himself out as a dental technologist in providing service. The revoked individual can apply for reinstatement to the Fitness to Practise Committee within one (1) year.

Can a decision of the Fitness to Practise Committee be appealed?

Decisions of the Fitness to Practise Committee can be appealed to Ontario's Divisional Court for judicial review within ninety (90) days of the decision being issued. There must be a question of law, fact or both in order or an appeal to be granted. The court may affirm, rescind or rehear the matter in whole or in part. A notation of the appeal and its outcome will appear on the Public Register.

College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

Practice Advisory: Conflict of Interest

This practice advisory of the College of Dental Technologists of Ontario provides Members with guidance and useful information as they continue to practice ethically while respecting conflict of interest.

Purpose

All Members of the College, and all health care professionals in Ontario must adhere to the *Regulated Health Professions Act, 1991,* the Ontario legislation that governs health care professionals. According to O. Reg. 798/93 s. 11, it is an act of professional misconduct for a dental technologist to practice the profession while in a conflict of interest.

What constitutes a conflict of interest?

Simply put, a conflict of interest is created when you put yourself in a position where a reasonable person would conclude that you, the dental technologist, are making arrangements that may compromise, or affect your professional judgement, or that of your client(s).

In this context, a "client" of a dental technologist would include the referring health professional. Where a member directly, or through an affiliated corporation, offers financial or other inducements to a dentist to make a referral to the member, the interests of the patient(s) may become secondary to the self-interest of the referring dentist, the client.

It is the College's function to protect the public interest by eliminating arrangements of this nature. Whether actual or perceived, conflicts of interest give the public the impression that their care or the cost of their care may be compromised by unethical health care professionals. It is for this reason that conflicts of interest must be avoided. As a result, acting while having a conflict of interest may constitute professional misconduct.

Types of conflict of interest

1. Inappropriate "Arrangements" or "Business Relationships" with other health professionals

Dental technologists are entitled to profit appropriately from the use of their training and experience in providing professional dental technology services. Attempts to enter into any "arrangements" or "business relationships" with other regulated health professionals or providers or health care facilities for the purpose of inducing referrals, generating service volume, or any type of financial profit or material gain are likely to constitute conflicts of interest.

For example, the following actions must be avoided:

- offering quantity discounts or discounts for prompt payments to dentists;
- offering gifts, airline tickets or air miles as incentive programs to dentists;
- offering rebates, credit or other benefits to dentists;
- making special arrangements to finance dentists' purchases of equipment, facilities and supplies;
- providing benefits that do not directly benefit patients.

2. Fee or Income Splitting

Dental technologists may not fee or income split with anyone other than

- a dental technologist who engages in the practice of dental technology as an employee of yours;
- another dental technologist who, while not employed, comes to your office to provide services as an independent contractor for your laboratory;
- a dental technologist who engages in the practice of dental technology as your partner.

As a result, contractual arrangements, such as a lease or use of premises or equipment which provides for fee or income splitting, create a conflict of interest. This would prevent a dental technologist who rents space or equipment from paying rent based on his/her billings.

3. Self-referral

In the process of a dental technologist's involvement in the treatment of a patient, it is a conflict for a dental technologist to refer a patient or a regulated health professional to individuals, facilities, services, or suppliers without disclosing his/her ownership or controlling interest in the entity to which the referral was made, or from which the dental technologist, his/her family or corporation derives any financial or material benefits.

It is also a conflict for a dental technologist to exercise their influence to promote the sale of materials, devices, products or other supplies without disclosure of their ownership, controlling interest or interest of a person/corporation related to them.

To avoid problems that might arise from self-referral, members must ensure full disclosure to the prescribing health professional prior to providing the services. The member must ensure that the use of the product, device, facilities etc. is in accordance with the standards of practice of the profession and, in the circumstances, is appropriate.

4. Personal, moral or philosophical conflicts

A dental technologist's personal, moral or philosophical beliefs or practices must not impede patient's appropriate and timely access to services.

College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

Practice Advisory: Display of the General Certificate of Registration

This practice advisory of the College of Dental Technologists of Ontario provides Members with guidance on displaying their certificates of registration appropriately.

Purpose

The General Certificate of Registration (the "display certificate") is issued by the College of Dental Technologists of Ontario to every Registered Dental Technologist (RDT) upon initial registration with the College. The display certificate provides proof to the public that the RDT is registered with the College.

For this reason, the display certificate must be handled in a safe and secure manner by the Member to prevent unauthorized use by individuals who are not permitted to practice dental technology in Ontario in accordance with the Regulated Health Professions Act, 1991 and the Dental Technology Act, 1991.

Guidelines

1. Only one display certificate will be issued to each Member. The display certificate is the property of the College at all times. If it is lost, stolen or destroyed it must be reported to the College immediately.

2. In the event a Member's display certificate is lost/ stolen or destroyed he/ she must request the replacement of the display certificate in writing, providing the reasons for the request. The request must be approved by the Registrar before a replacement display certificate is issued.

3. There will be a document replacement fee as required by Schedule 5 of the College By-laws.

4. The display certificate must be prominently displayed in the RDT's principle place of practice.

5. It is considered an act of professional misconduct to rent, lease, transfer, copy or duplicate his/her display certificate in any manner or to allow use of the same by another person and/or organization.

6. If a Member's General Certificate of Registration is suspended by the College, he/she is no longer a member of the College and must remove the display certificate from any place of practice and from public view. If a Member's General Certificate of Registration is revoked by the College, he/ she must return the display certificate to the College immediately.

Original Publication Date: July, 2017 Revision Date: October, 2017

College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

Practice Advisory: Supervision Stamp

This practice advisory of the College of Dental Technologists of Ontario contains useful practice guidance and is intended to assist you in understanding the professional responsibilities of all RDTs with respect to the issuance and use of the College stamp.

PURPOSE

The College's Standard of Practice for Laboratory Supervision sets out the expectation of its Members in regards to supervision and the use of the RDT stamp. With the advancement of technology, the College would like to issue guidance on the appropriate use of the College stamp and address the prohibited use of electronic stamping.

OVERVIEW AND RESPONSIBILITIES

The College must ensure that any completed dental device meets the highest of quality standards and conforms to the specifications of the prescription or work order. The College requires that every invoice or other authorization documents[1] for the release of any dental devices be physically stamped by the dental technologist taking responsibility for the case. The stamp displays the RDT's name, registration number, and expiration date.

Dentists and other regulatory healthcare professionals recognize the College issued stamp as a certification that the case was designed, constructed, repaired, or altered under the personal supervision of an RDT. The stamp also certifies that the completed work order accurately reflects the processes, materials, and charges appropriate for the prescription. In essence, proper use of the stamp represents the RDT's commitment to upholding the College's standards and requirements.

USE OF THE STAMP

Only an RDT can authorize a laboratory to impress his/her College issued stamp, and each RDT will be responsible for ensuring that his/her stamp is not used by any laboratory without his/her authority. It is important to note that in either case, the RDT-in-charge will be held completely responsible for the case which is released on the authority of his/her stamp.

With the advancement of technology, the modern-day laboratory has adapted to new and emerging technologies. For example, laboratories may use CAD CAM, 3D vector modelling, electronic record keeping and computers to generate invoices and other documents.

The duplication, replication, creation and electronic use of the College stamp is not permissible. The College stamp cannot be electronically replicated and affixed to electronic documents as a substitute to a physically applied stamp. The stamp must be physically applied to every invoice and other authorizing documents. It is acceptable to apply the stamp physically and then convert the stamped paper documents into a digital file.

[1] Other authorization documents may include, but not limited to: design consultations, colour matching/custom staining, and "no charge" invoices for interim stages or repairs or alterations.

College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

Legislative Context

Ontario Regulation 798/93 – Professional Misconduct

The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code, as it pertains to laboratory supervision and the use of the College stamp:

2. Failing to maintain a standard of practice of the profession.

5. Using materials that are not fit for the purpose for which they are used, or that differ from those prescribed by the registered practitioner on whose order the work is being performed.

6. Knowingly subcontracting dental technological services in breach of section 32 (1) or (3) of the *Regulated Health Professions Act, 1991*.

14. Inappropriately using a term, title or designation in respect of the member's practice.

15. Using a name other than the member's name as set out in the register in the course of providing or offering to provide services within the scope of practice of dental technology.

21. Failing to keep records as required.

22. Falsifying a record relating to the member's practice.

24. Signing or issuing, in the member's professional capacity, a document that the member knows contains a false or misleading statement.

25. Submitting an account or charge for services that the member knows is false or misleading.

31. Contravening the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts.

34. Engaging in conduct or performing an act, in the course of practising the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. O. Reg. 798/93, s. 1; O. Reg. 603/98, s. 1.

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College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

Practice Advisory: Administrative Suspension of Registered Dental Technologists

This advisory of the College of Dental Technologists of Ontario informs Members of their registration obligations and implications of being administratively suspended.

What are your registration obligations under the Dental Technology Act?

According to the Registration regulation, it is a condition of every certificate of registration that a Registered Dental Technologist (RDT) pay all outstanding and applicable fees by August 31st of each year, maintain his/her employment eligibility status to practice dental technology in Canada, and maintain professional liability insurance (current and runoff) as required by the By-laws.

What happens if you do not meet your registration obligations?

An RDT who fails to meet his or her registration obligation will be reminded in writing that they are in default of their administrative obligation and provided with a notice to comply. If the RDT fails to comply within the notice period, a referral will be made to the Registrar for formal suspension of the RDT's certificate of registration for administrative reasons.

An RDT will not meet their registration obligations if the RDT fails to do any of the following:

1. fails to pay any outstanding and applicable fees
2. fails to provide evidence that he/she is a Canadian citizen, a permanent resident of Canada, or is authorized under the Immigration and Refugee Protection Act (Canada) to engage in the practice of the profession
3. fails to maintain professional liability insurance in the amount and in the form as required by the College By-laws.

What does administrative suspension mean to you?

On the date that an RDT's certificate of registration is administratively suspended, the reasons of the administrative suspension will be posted on the online Public Register, which is accessed by the public on the College's website.

Administrative suspension also means:

- You cannot use the restricted title "Registered Dental Technologists", "dental technologists", "RDT", "dental technician" or any variation, abbreviation or an equivalent in another language.

- You must update your marketing material including your website to reflect the change in your registration status.
- You cannot supervise the design, construction, repair or alteration of a dental prosthetic, restorative or orthodontic devise as of your suspension date. You lose the ability to release a dental device or case in your authority using the Supervision Stamp or your signature.
- You cannot hold yourself out as a person who is qualified to practice in Ontario as a Dental Technologist or in a speciality of dental technology.
- You must return the Supervision Stamp to the College. The stamp is the property of the College and must be returned immediately once a Member is suspended, revoked, or has resigned.

If you continue to use the protected title or perform supervisory functions contrary to the *Regulated Health Professions Act*, *Dental Technology Act,* and rules and regulations thereunder, an investigation for professional misconduct may be brought against you. If this occurs, you may be liable for up to 100% of the costs associated with this investigation.

Can an administrative suspension be lifted?

The Registrar may lift the suspension if the Member provides evidence of eligible employment status and/ or professional liability insurance and/ or payment of all outstanding fees and penalties.

Please note, all outstanding fees must be received by the Registrar within 2 years of the suspension plus the applicable late fees and reinstatement fees. If the suspension of a Members certificate of registration is not lifted, the certificate is automatically revoked as of the second anniversary of the suspension.

As it can get quite costly to be administratively suspended, the College stresses to the Membership that they must renew their certificates of registration timely, and/or pay any outstanding fees as soon as possible.

For more information about this process, please contact the College.

SECTION 6

Health Profession Corporations & Registered Business Names

Health Profession Corporations

As a result of amendments to the Regulated Health Professions Act (RHPA), the Health Professions Procedural Code, the Ontario Business Corporations Act (BCA), and a regulation made under the RHPA, regulated health professionals are permitted to incorporate for the purpose of practising a health profession, providing they obtain Certificates of Authorization from their respective health profession Colleges.
A Certificate of Authorization is required in order for members of the College to practice the profession of dental technology through a health profession corporation (HPC).

If the Member chooses to incorporate after seeking out their own legal and financial advice, they will need to apply through the College of Dental Technologists of Ontario. The Certificate of Authorization must be renewed annually. The Guide to Registering and Renewing Health Profession Corporations explains the process for application and how to maintain the corporation's authorization to practice.

Any Member who is registered with the College is eligible to obtain a Certificate of Authorization (i.e. a certificate of registration for a professional corporation). However, if the Member's business is not yet incorporated in Ontario, the Member will have to incorporate under the Ontario *Business Corporations Act, 1990.*
Prior to obtaining a Certificate of Authorization Members should refer to the Guide to Registering and Renewing Health Profession Corporations and visit the Ministry of Government and Consumer Services.

Public Register

Each Member's record on the College's Public Register will contain the name of every HPC for which the Member is a shareholder, as well as the practice name(s), associated business address and telephone number.

Each practice name associated with the HPC will be searchable on the Public Register.

- Guide to Registering and Renewing Health Profession Corporations

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Guide to Registering and Renewing Health Profession Corporations

College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

College of Dental Technologists of Ontario
305 Milner Avenue, Suite 904
Scarborough Ontario M1B 3V4
Tel: 416-438-5003 Fax: 416-438-5004

Contents

Applicable forms may be found on the CDTO Website

- Application for Certificate of Authorization for a Health Profession Corporation
- Renewal Form for Certificate of Authorization for a Health Profession Corporation
- Shareholder Undertaking for a Health Profession Corporation

A Certificate of Authorization is required in order for Members of the College to practice the profession of dental technology through a health profession corporation (HPC).

If the Member chooses to incorporate after seeking out their own legal and financial advice, they will need to apply for a Certificate of Authorization from the College of Dental technologists of Ontario (the College or CDTO).

The Certificate of Authorization must be renewed annually. This guide will explain the process for obtaining a Certificate of Authorization and how to renew the Certificate each year in order to maintain the corporation's authorization to practice. If, after reading this guide, a Member has questions regarding the process, they may contact the College.

Eligibility for Registering a Health Profession Corporation

When a Member chooses to incorporate their practice, there are two separate and distinct steps to follow. The first step is to incorporate the practice with the Ministry of Government and Consumer Services. The second step is to apply for a Certificate of Authorization from the College.

It is important to understand that in order to be eligible to obtain a Certificate of Authorization, the corporation must meet the eligibility requirements of ***Ontario Regulation 39/02*** and Section 3.2 of the ***Business Corporations Act of Ontario.*** These requirements include the following:

1. The corporation cannot carry on any business other than the practice of the profession of dental technology and the activities related to or ancillary to this practice.
2. All issued and outstanding shares of the corporation must be owned by one or more Members of the College. Shares may not be held by non-Members.
3. The name of the corporation must include the words "Professional Corporation" or "Société professionnelle" and shall also include the surname of one or more shareholders of the corporation, as well as indicating that the members will be practicing dental technology through the corporation. The name may also include given names and/or initials of the shareholders.
4. The name of the corporation must not include any information other than that listed above.

Members must be aware that when they incorporate with the Ministry of Government and Consumer Services, the Ministry will require that the documents meet the requirements of corporate law. **It is the Member's responsibility to ensure that the documents are <u>also</u> in compliance with health profession regulation.**

Therefore, the College encourages all Members who are considering incorporation to carefully read *Ontario Regulation 39/02,* made under the *Regulated Health Professions Act, 1991* (RHPA). This legislation outlines eligibility specifically directed to health profession corporations. The College **will not** issue a Certificate of Authorization to a corporation that is not in compliance with the RHPA.

Please note that no dental technology practice shall hold itself out as a dental technology professional corporation unless it holds a valid Certificate of Authorization from the College (RHPA, s. 34.1).

Applying for a Certificate of Authorization

After a Member has incorporated their practice with the Ministry of Government and Consumer Services and has received a Certificate of Incorporation and a Corporation Profile Report from the Ministry, they can then apply to the College for a Certificate of Authorization. The Application for Certificate of Authorization for a Health Profession Corporation is located on the "Registration" menu under "Forms" page of the College's website.

Members applying for a Certificate of Authorization are required to submit the following:

1. Application for Certificate of Authorization for a Health Profession Corporation, signed by the director of the corporation;
2. Shareholder Undertaking for a Health Profession Corporation completed by each shareholder including all directors;
3. A copy of the Corporation Profile Report from the Ministry of Government and Consumer Services, that is dated **not more than 30 days before** the application is submitted to the College, and that indicates that the corporation is active;
4. A copy of every Certificate of Incorporation of the corporation that has been endorsed under the *Business Corporations Act of Ontario*, as of the day that the application is submitted;
5. A copy of the Articles of Incorporation of the corporation; and
6. Application fee (non-refundable). Please refer to Schedule 5 of the College By-Laws for the current fees.

Please note:

- The Declaration of the Director, Section 5 of the Application for Certificate of Authorization for a Health Profession Corporation, must be signed **no more than fifteen (15) days before** the application is submitted to the College; and,
- A copy of the Corporation Profile Report issued by the Ministry of Government Services, indicating that the corporation is active, must be sent to the College **not more than thirty (30) days before** submission of the application form.

Every shareholder of the corporation, including all directors and officers, must each sign a copy of the Shareholder Undertaking for a Professional Corporation. You must print or photocopy one undertaking to be signed by each shareholder including all directors and submit the form(s) to the College by mail, courier or hand-delivery.

In addition, a copy of every Certificate of Incorporation that has been issued under the *Business Corporations Act of Ontario* for the corporation must accompany the application form. A checklist of required documents is included on the Application for Certificate of Authorization for a Professional Corporation.

When the College has received the Application for Certificate of Authorization for a Health Profession Corporation including all supporting documents, the director will be notified. If the application is incomplete, the director of the corporation will be sent a notice regarding the missing information. Please note that the application fee for a Certificate of Authorization is a non-refundable payment.

If the application and documents are complete and meet the requirements of the College, the director will be notified of the provisional approval and advised to submit payment for the Certificate of Authorization. Please refer to Schedule 5 of the College By-Laws for the current fees. When the College has received the payment from the director, the College will issue the Certificate of Authorization to the director.

The following information is intended to assist Members in completing the application form.

SECTION 1: HEALTH PROFESSION CORPORATION INFORMATION

Section 1.a) Health Profession Corporation Name and Number

Enter the information exactly as it appears on the Corporation Profile Report issued by the Ministry of Government and Consumer Services.

Please note that the corporation cannot have a number as a name. The corporation name must include the legal last name of at least one shareholder (it may include the legal last name of more than one shareholder) and must include the words: “Dental Technology Professional Corporation.” It may also include the legal first name of a shareholder, the initials of one or more shareholders, or a combination of names and initials. The corporation name must **not** include any information other than what is permitted or required under the *Business Corporations Act* or *Ont. Reg 39/02*.

Please note that shareholders are required to report any changes to the name of the corporation to the College **within thirty (30) days**. The College may issue a revised Certificate of Authorization if the corporation changes its name after the original Certificate of Authorization has been issued.

Section 1.b) Practice Name of the Health Profession Corporation

Professional corporations are not required to use the corporate name as the name of the practice. However, any core documents (such as letterhead, business cards, invoices, receipts, contracts and cheques) that includes the practice name should also have the corporation name on it if the two are different. Owners of professional corporations must inform the College of every practice name under which the professional corporation practices. If the practice name is the same as the health profession corporation name, please indicate so by entering the same name in this section.

Section 1.c) Contact Information for the Principle Place of Practice of the Health Profession Corporation

Please enter only the principle address of the health profession corporation. This address will appear on the Public Register. Please note that shareholders are required to report any changes to practice locations to the College within thirty (30) days. Note: This contact information cannot be the contact information of the corporation's legal counsel.

Section 1.d) – 1.f) Alternate Locations

Members may use these sections to enter any alternate practice locations of the health profession corporation, excluding client addresses. Please note that shareholders are required to report any changes to practice locations to the College **within thirty (30) days**. If there are no alternate practice locations, these sections may be left blank. If there are more practice locations of the corporation than the pages of the application provide, you must attach additional pages listing the information.

SECTION 2: SHAREHOLDER INFORMATION

Enter the name and primary business address contact information of each shareholder of the corporation including all directors. Ensure that the information listed in this section matches the information listed on the Public Register for each Member. If the shareholder is a director or officer of the corporation, please check the appropriate box and indicate the title of office if applicable.

Only Members of the College can be shareholders of the dental technology professional corporation. Each shareholder must hold a current Certificate of Registration with the College. Other corporations, holding companies, trusts, and any other entities, including members of other health regulatory colleges, cannot be shareholders.

If there are more shareholders of the corporation than the pages of the application provide, you must attach additional pages listing the information.

Please note that shareholders are required to **report any change in shareholders to the College within thirty (30) days**, and any future shareholder of the corporation must complete and submit a Shareholder Undertaking with the College **within thirty (30) days** of becoming a shareholder.

SECTION 3: PROFESSIONAL ACTIVITIES

Provide a brief description of the activities that the health profession corporation plans to carry out. Keep in mind that the health profession corporation can only carry out the practice of the profession governed by the College and activities related to or ancillary to the practice of dental technology.

Related activities refer to things that are directly related to dental technology practice, such as seminars and workshops about dental technology. Practising another profession, such as denturism, is not a related activity and should not be done through a dental technology professional corporation.

Ancillary activities refer to supporting services such as office management, management of real estate out of which the practice operates, and investment of surplus funds, etc.

SECTION 4: MEMBERS PRACTISING ON BEHALF OF THE CORPORATION

Enter the names and registration numbers of all Members who will be practising the profession on behalf of the corporation. Include all directors and shareholders in this section, as well as all employees who are not shareholders of the corporation. Please note that the names and registration numbers must match the information as it currently appears on the Public Register.

Please note that according to the *Health Professions Procedural Code, Schedule 2* of the RHPA, 1991, an employer is required to report to the Registrar the termination of an employee that results from professional misconduct, incompetence or incapacity. A person who dissolves a partnership, a health profession corporation or association with a Member for reasons of professional misconduct, incompetence or incapacity shall file with the Registrar **within thirty (30) days** after the termination, revocation, suspension, imposition or dissolution a written report setting out the reasons (RHPA, s. 85.5).

SECTION 5: DECLARATION OF THE DIRECTOR

The declaration must be completed by a director of the corporation. The declaration must be signed **no more than fifteen (15) days before** the application is submitted to the College.

SHAREHOLDER UNDERTAKING FOR A HEALTH PROFESSION CORPORATION

Every shareholder must complete and submit an undertaking, including all directors of the corporation. Photocopy or print one undertaking to be completed by each shareholder. Enclose all pages with the submission of the Application for Certificate of Authorization for a Health Profession Corporation.

Public Register

Each Member's record on the College's Public Register will contain the name of every Health Profession Corporation of which the Member is a shareholder as well as the practice name(s), associated business address and telephone number.

Each practice name associated with the Health Profession Corporation will be searchable on the Public Register and will contain:

1. All Registered Dental Technologists (RDTs) for that location
2. All supervising RDTs at that location
3. Corporate name, if any, that the practice name is associated with
4. All shareholders of the Health Profession corporation

Renewing the Certificate of Authorization

The Certificate of Authorization for a Professional Corporation expires one year from the date of issue. In order for Members to continue to practice the profession of dental technology through a corporation, they must renew the Certificate of Authorization annually by completing the Renewal Form, submitting all required documents, and paying the Renewal Fee. Please refer to Schedule 5 of the College By-Laws for the current fees. **It is the responsibility of the Member to ensure that the Certificate of Authorization is renewed before the expiry date each year.**

The College will send a reminder to the corporation about six weeks in advance of the renewal deadline, but the College assumes no responsibility for initiating the application for renewal.

Supporting documents for the Renewal Form include the following:

1. A copy of every Certificate of Incorporation that has been endorsed under the *Business Corporations Act of Ontario* since the corporation's most recent application for or renewal of the Certificate of Authorization;
2. A copy of the Corporation Profile Report from the Ministry of Government and Consumer Services, that is dated **not more than 30 days before** the application is submitted to the College, and that indicates that the corporation is active;
3. Shareholder Undertaking for a Health Profession Corporation for every new shareholder of the corporation who has not already submitted an undertaking;
4. A copy of the Articles of Incorporation of the corporation (*only if the Articles have been revised or altered after they were originally submitted with the application form for a Certificate of Authorization*);
5. Renewal Fee for a Certificate of Authorization. Please refer to Schedule 5 of the College By-Laws for the current fees.

If a corporation does not apply for or fails to comply with one or more of the requirements for renewal, the College will issue a notice proposing to revoke the corporation's Certificate of Authorization. Revocation will occur **sixty (60) days** from the date of the notice, if grounds for revocation still exist. Upon revocation, the corporation ceases to be a professional corporation and its authority to practise the profession under a corporation structure ceases. The College shall notify the corporation if the Certificate of Authorization is revoked.

In order to renew a Certificate of Authorization, the director of the corporation must download and print the Renewal Form for Certificate of Authorization for a Health Profession Corporation, located on the "Registration" menu under "Forms" page of the College's website. A checklist of required documents is included on the Renewal Form.

Please note that the Declaration of the Director, Section 5 of the Renewal Form, must be signed **no more than fifteen days** before the Renewal Form is submitted to the College. A copy of the Corporation Profile Report, issued by the Ministry of Government and Consumer Services, must be sent to the College **not more than thirty (30) days** before submission of the Renewal Form.

Every new shareholder of the corporation, including directors and officers, must each sign a copy of the Shareholder Undertaking for a Health Profession Corporation. Keep in mind that shareholders are required to report any future shareholder to the College **within ten (10) days**, therefore submitting the undertaking with the Renewal Form would apply to those future shareholders whose position as shareholder will take effect **within ten (10) days** of the director submitting the Renewal Form. You must print or photocopy one undertaking to be completed by each new shareholder.

When the College has received the Renewal Form for Certificate of Authorization for a Health Profession Corporation and the documents listed above, the director will be notified. If the Renewal Form is incomplete, the director of the corporation will be sent a notice regarding the missing information. If the Renewal Form and documents are complete, the payment will be processed and the director will be notified that the Certificate of Authorization has been renewed for the registration year.

Excerpts from the Regulated Health Professions Act, 1991 of Ontario and related Schedules

Regulated Health Professions Act, 1991

"health profession corporation" means a corporation incorporated under the *Business Corporations Act* that holds a valid certificate of authorization issued under this Act or the Code;

Holding out as a health profession corporation

34.1 (1) No corporation shall hold itself out as a health profession corporation unless it holds a valid certificate of authorization. 2000, c. 42, Sched., s. 30.

Same

(2) No person shall hold himself or herself out as a shareholder, officer, director, agent or employee of a health profession corporation unless the corporation holds a valid certificate of authorization. 2000, c. 42, Sched., s. 30.

Onus of proof to show certificate of authorization

37. (2) A person who is charged with an offence to which holding a certificate of authorization would be a defence shall be deemed, in the absence of evidence to the contrary, to have not been issued a certificate of authorization. 2000, c. 42, Sched., s. 31; 2007, c. 10, Sched. M, s. 9 (1).

Injunctions

(3) Subsections (1) and (2) apply, with necessary modifications, to a person who is the subject of an application under section 87 of the Code. 2007, c. 10, Sched. M, s. 9 (2).

Offences

40. (3) Every corporation that contravenes section 31, 32 or 33 or subsection 34 (1), 34.1 (1) or 36 (1) is guilty of an offence and on conviction is liable to a fine of not more than $50,000 for a first offence and not more than $200,000 for a second or subsequent offence. 2007, c. 10, Sched. M, s. 12.

Responsibility of employment agencies

41. Every person who procures employment for an individual and who knows that the individual cannot perform the duties of the position without contravening subsection 27 (1) is guilty of an offence and on conviction is liable to a fine of not more than $25,000 for a first offence, and not more than $50,000 for a second or subsequent offence. 1991, c. 18, s. 41; 2007, c. 10, Sched. M, s. 13.

Responsibility of employers

42. (1) The employer of a person who contravenes subsection 27 (1) while acting within the scope of his or her employment is guilty of an offence and on conviction is liable to a fine of not more than $25,000 for a first offence, and not more than $50,000 for a second or subsequent offence. 1991, c. 18, s. 42 (1); 2007, c. 10, Sched. M, s. 14 (1).

Responsibility of directors of corporate employers

(2) In addition, if the employer described in subsection (1) is a corporation, every director of the corporation who approved of, permitted or acquiesced in the contravention is guilty of an offence and on conviction is liable to a fine of not more than $25,000 for a first offence, and not more than $50,000 for a second or subsequent offence. 1991, c. 18, s. 42 (2); 2007, c. 10, Sched. M, s. 14 (2).

Exception

(3) Subsection (2) does not apply with respect to a corporation that operates a public hospital within the meaning of the *Public Hospitals Act* or to a corporation to which Part III of the *Corporations Act* applies. 1991, c. 18, s. 42 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "Part III of the *Corporations Act"* and substituting "the *Not-for-Profit Corporations Act, 2010"*. See: 2010, c. 15, ss. 241 (1), 249.

Health Professions Procedural Code, Schedule 2 of the Regulated Health Professions Act, 1991

Register

23. (1) The Registrar shall maintain a register. 2007, c. 10, Sched. M, s. 28.

Contents of register

(2) The register shall contain the following:

1. Each member's name, business address and business telephone number, and, if applicable, the name of every health profession corporation of which the member is a shareholder.
2. The name, business address and business telephone number of every health profession corporation.
3. The names of the shareholders of each health profession corporation who are members of the College.

Reporting by employers, etc.

85.5 (1) A person who terminates the employment or revokes, suspends or imposes restrictions on the privileges of a member or who dissolves a partnership, a health profession corporation or association with a member for reasons of professional misconduct, incompetence or incapacity shall file with the Registrar within thirty days after the termination, revocation, suspension, imposition or dissolution a written report setting out the reasons. 1993, c. 37, s. 23; 2000, c. 42, Sched., s. 36.

Same

(2) If a person intended to terminate the employment of a member or to revoke the member's privileges for reasons of professional misconduct, incompetence or incapacity but the person did not do so because the member resigned or voluntarily relinquished his or her privileges, the person shall file with the Registrar within thirty days after the resignation or relinquishment a written report setting out the reasons upon which the person had intended to act. 1993, c. 37, s. 23.

Application

(3) This section applies to every person, other than a patient, who employs or offers privileges to a member or associates in partnership or otherwise with a member for the purpose of offering health services. 1993, c. 37, s.23.

Health Profession Corporations Professional corporations

85.8 (1) Subject to the regulations made under subsection 43 (1) of the *Regulated Health Professions Act, 1991* and the by-laws, one or more members of the same health profession may establish a health profession corporation for the purposes of practising their health profession. 2005, c. 28, Sched. B, s. 2(1).

Same

(2) The provisions of the *Business Corporations Act*, including the regulations made under that Act, that apply with respect to professional corporations apply with respect to a health profession corporation established under subsection (1). 2005, c. 28, Sched. B, s. 2 (1).

Notice of change of shareholder

85.9 A health profession corporation shall notify the Registrar within the time and in the form and manner determined under the by-laws of a change in the shareholders of the corporation who are members of the College. 2000, c. 42, Sched., s. 37; 2007, c. 10, Sched. M, s. 69.

Application of Act, etc.

85.10 The following things apply to a member who practises a health profession through a health profession corporation:

1. The Regulated Health Professions Act, 1991 and the regulations made under that Act.
2. The health profession Act governing the member's health profession and the regulations and by-laws made under that Act. 2001, c. 8, s. 220; 2007, c. 10, Sched. M, s. 65.

Professional, fiduciary and ethical obligations to patients

85.11 (1) The professional, fiduciary and ethical obligations of a member to a person on whose behalf the member is practising a health profession,

(a) are not diminished by the fact that the member is practising through a health profession corporation; and

(b) apply equally to the corporation and to its directors, officers, shareholders, agents and employees. 2000, c. 42, Sched., s. 37; 2001, c. 8, s. 221 (1).

Investigation

(2) Subsections (3) and (4) apply if an action or the conduct of a member practising on behalf of a health profession corporation is the subject of one of the following:

1. A complaint.
2. A mandatory report.
3. A specified allegation of professional misconduct or incompetence.
4. An investigation, review or hearing by the Board.
5. An investigation, inspection or assessment by an investigator or assessor appointed under the Code.
6. An inquiry by a panel of the Inquiries, Complaints and Reports Committee.
7. A referral to the Discipline Committee or the Fitness to Practise Committee.
8. A hearing by a committee of the college. 2001, c. 8, s. 221 (2); 2007, c. 10, Sched. M, s. 66.

Same

(3) In the circumstances described in subsection (2), any power that the College may exercise in respect of the member may be exercised in respect of the health profession corporation. 2001, c. 8, s. 221 (2).

Liability

(4) In the circumstances described in subsection (2), the health profession corporation is jointly and severally liable with the member for all fines, costs and expenses that the member is ordered to pay. 2001, c. 8, s. 221 (2).

Conflict in duties

85.12 If there is a conflict between a member's duty to a patient, the college or the public and the member's duty to a health profession corporation as a director or officer of the corporation, the duty to the patient, the college or the public prevails. 2001, c. 8, s. 222.

Restrictions apply to corporation's certificate

85.13 A term, condition or limitation imposed on the certificate of registration of a member practising a health profession through a health profession corporation applies to the certificate of authorization of the corporation in relation to the practice of the health profession through the member. 2000, c. 42, Sched., s. 37.

Prohibition, professional misconduct

85.14 (1) In the course of practising a health profession, a health profession corporation shall not do, or fail to do, something that would constitute professional misconduct if a member of the health profession did, or failed to do, it. 2001, c. 8, s. 223.

Prohibition, contraventions

(2) A health profession corporation shall not contravene any provision of,

(a) the *Regulated Health Professions Act, 1991* and the regulations made under that Act; or

(b) the health profession Act governing the member's health profession and the regulations and by-laws made under that Act. 2001, c. 8, s. 223; 2007, c. 10, Sched. M, s. 67.

Prohibition, corporate matters

(3) A health profession corporation shall not practise a health profession when it does not satisfy the requirements for a professional corporation under subsection 3.2 (2) of the *Business Corporations Act* or a requirement established under subsection 3.2 (6) of that Act. 2005, c. 28, Sched. B, s. 2 (2).

Excerpts from the College of Dental Technologists of Ontario Bylaws, Sept. 25, 2015

22. PROFESSIONAL CORPORATIONS

22.01 - Duty to Provide Information

Every Member shall, for every professional corporation of which the Member is a shareholder, provide in writing the following information: (i) on the application and annual renewal forms for a certificate of authorization; (ii) upon the written request of the Registrar, or (iii) within 30 days and upon any change in the information within 30 days of the change:

(i) the name of the professional corporation as registered with the Ministry of Government and Consumer Services;

(ii) any business names used by the professional corporation;

(iii) the name, as set out in the register, and registration number of each shareholder of the professional corporation;

(iv) the name, as set out in the register, of each officer and director of the professional corporation, and the title or office held by each officer and director;

(v) the principal practice address, telephone number, facsimile number and email address of the professional corporation;

(vi) the address and telephone number of all other locations, other than residences of clients, at which the professional services offered by the professional corporation are provided; and

(vii) a brief description of the professional activities carried out by the professional corporation.

Business Corporations Act of Ontario, R.S.O. 1990, Chapter B-16 – Section 3.2

Last amendment December 31, 2011

Application of Act to professional corporations

3.2 (1) This Act and the regulations apply with respect to a professional corporation except as otherwise set out in this section and sections 3.1, 3.3 and 3.4 and the regulations. 2000, c. 42, Sched., s. 2.

Conditions for professional corporations

(2) Despite any other provision of this Act but subject to subsection (6), a professional corporation shall satisfy all of the following conditions:

1. All of the issued and outstanding shares of the corporation shall be legally and beneficially owned, directly or indirectly, by one or more members of the same profession.
2. All officers and directors of the corporation shall be shareholders of the corporation.
3. The name of the corporation shall include the words "Professional Corporation" or "société professionnelle" and shall comply with the rules respecting the names of professional corporations set out in the regulations and with the rules respecting names set out in the regulations or by-laws made under the Act governing the profession.
4. The corporation shall not have a number name.
5. The articles of incorporation of a professional corporation shall provide that the corporation may not carry on a business other than the practice of the profession but this paragraph shall not be construed to prevent the corporation from carrying on activities related to or ancillary to the practice of the profession, including the investment of surplus funds earned by the corporation. 2000, c. 42, Sched., s. 2; 2002, c. 22, s. 8; 2005, c. 28, Sched. B, s. 1 (1).

Deemed compliance

(2.1) A professional corporation that has a name that includes the words "société professionnelle" shall be deemed to have complied with the requirements of subsection 10 (1). 2004, c. 19, s. 3 (1).

Corporate acts not invalid

(3) No act done by or on behalf of a professional corporation is invalid merely because it contravenes this Act. 2000, c. 42, Sched., s. 2.

Voting agreements void

(4) An agreement or proxy that vests in a person other than a shareholder of a professional corporation the right to vote the rights attached to a share of the corporation is void. 2000, c. 42, Sched., s. 2.

Unanimous shareholder agreements void

(5) Subject to subsection (6), a unanimous shareholder agreement in respect of a professional corporation is void unless each shareholder of the corporation is a member of the professional corporation. 2000, c. 42, Sched., s. 2; 2005, c. 28, Sched. B, s. 1 (2).

Special rules, health profession corporations

(6) The Lieutenant Governor in Council may make regulations,

(a) exempting classes of health profession corporations, as defined in section 1 (1) of the *Regulated Health Professions Act, 1991*, from the application of subsections (1) and (5) and such other provisions of this Act and the regulations as may be specified and prescribing terms and conditions that apply with respect to the health profession corporations in lieu of the provisions from which they are exempted;

(b) exempting classes of the shareholders of those health profession corporations from the application of subsections 3.4 (2), (4) and (6) and such other provisions of this Act and the regulations as may be specified and prescribing rules that apply with respect to the shareholders in lieu of the provisions from which they are exempted;

(c) exempting directors and officers of those health profession corporations from the application of such provisions of this Act and the regulations as may be specified and prescribing rules that apply with respect to the directors and officers in lieu of the provisions from which they are exempted. 2005, c. 28, Sched. B, s. 1 (3).

Ontario Regulation 39/02 – Made under the *Regulated Health Professions Act, 1991*

Last amendment O. Reg. 264/14. Consolidation period: from December 12, 2014

CERTIFICATES OF AUTHORIZATION

This Regulation is made in English only.

Definitions

0.1 In this Regulation,

"child", in relation to a shareholder, includes a person whom the shareholder has demonstrated a settled intention to treat as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;

"family member" means, in relation to a shareholder, the shareholder's spouse, child or parent;

"parent", in relation to a shareholder, includes a person who has demonstrated a settled intention to treat the shareholder as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;

"spouse" means, in relation to a shareholder, a person to whom the shareholder is married or with whom the shareholder is living in a conjugal relationship outside marriage;

"voting dentist shareholder" means, in relation to a corporation, a member of the Royal College of Dental Surgeons of Ontario who owns voting shares of the corporation;

"voting physician shareholder" means, in relation to a corporation, a member of the College of Physicians and Surgeons of Ontario who owns voting shares of the corporation. O. Reg. 666/05, s. 1; O. Reg. 264/14, s. 1.

Eligibility

1. (1) A corporation is eligible to hold a certificate of authorization issued by a College if all the following conditions are met:

1. The articles of the corporation provide that the corporation cannot carry on a business other than the practice of the profession governed by the College and activities related to or ancillary to the practice of that profession.
2. In the case of a certificate of authorization issued by a College other than the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, all of the issued and outstanding shares of the corporation are legally and beneficially owned, directly or indirectly, by one or more members of the issuing College.

2.1 In the case of a certificate of authorization issued by the College of Physicians and Surgeons of Ontario, each issued and outstanding voting share of the corporation is legally and beneficially owned, directly or indirectly, by a member of the College and each issued and outstanding non-voting share of the corporation is owned in one of the following ways:

i. It is legally and beneficially owned, directly or indirectly, by a member of the College.

ii. It is legally and beneficially owned, directly or indirectly, by a family member of a voting physician shareholder.

iii. It is owned legally by one or more individuals, as trustees, in trust for one or more children of a voting physician shareholder who are minors, as beneficiaries.

2.2 In the case of a certificate of authorization issued by the Royal College of Dental Surgeons of Ontario, each issued and outstanding voting share of the corporation is legally and beneficially owned, directly or indirectly, by a member of the College and each issued and outstanding non-voting share of the corporation is owned in one of the following ways:

i. It is legally and beneficially owned, directly or indirectly, by a member of the College.

ii. It is legally and beneficially owned, directly or indirectly, by a family member of a voting dentist shareholder.

iii. It is owned legally by one or more individuals, as trustees, in trust for one or more children of a voting dentist shareholder who are minors, as beneficiaries.

3. The name of the corporation meets the standards described in subsections (2) to (5). O. Reg. 39/02, s. 1 (1); O. Reg. 666/05, s. 2 (1).

(2) The name of the corporation must meet the requirements in section 3.2 of the *Business Corporations Act* and must not violate the provisions of any other Act. O. Reg. 39/02, s. 1 (2).

(3) The name of the corporation must include the surname of one or more shareholders of the corporation who are members of the College, as the surname is set out in the College register, and may also include the shareholder's given name, one or more of the shareholder's initials or a combination of his or her given name and initials. O. Reg. 666/05, s. 2 (2).

(4) The name of the corporation must indicate the health profession to be practised by members of the College through the corporation. O. Reg. 666/05, s. 2 (2).

(5) The name of the corporation must not include any information other than the information permitted or required by subsections (2), (3) and (4). O. Reg. 39/02, s. 1 (5).

Issuance of certificate

2. (1) A College shall issue a certificate of authorization to a corporation in respect of a particular profession if the corporation is eligible to hold one and applies for the certificate by giving the following information and documents to the Registrar:

1. A completed application in a form approved by the College.
2. The application fee required by the by-laws of the College.
3. A copy of a corporation profile report, issued by the Ministry of Government and Consumer Services or by a service provider which is under contract with the Ministry of Government and Consumer Services, that is dated not more than 30 days before the application is submitted to the Registrar and that indicates that the corporation is active.
4. A copy of the certificate of incorporation of the corporation.
5. A copy of every certificate of the corporation that has been endorsed under the *Business Corporations Act* as of the day the application is submitted.
6. The declaration of a director of the corporation, signed not more than 15 days before the application is submitted to the Registrar, stating,
    i. that the corporation is in compliance with section 3.2 of the *Business Corporations Act*, including the regulations made under that section, as of the date the declaration is signed,
    ii. that the corporation does not carry on, and does not plan to carry on, any business that is not the practice of the profession governed by the College or activities related to or ancillary to the practice of that profession,
    iii. that there has been no change in the status of the corporation since the date of the corporation profile report referred to in paragraph 3, and
    iv. that the information contained in the application is complete and accurate as of the day the declaration is signed.
7. In the case of an application submitted to the Registrar of either the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, the name of each person who is both a voting shareholder and a member of the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, as the case may be, as of the day the application is submitted and his or her business address, business telephone number and registration number with the College as of that day.
8. In the case of an application submitted to any College other than the Colleges referred to in paragraph 7, the name of each person who is a shareholder of the corporation as of the day the application is submitted and his or her business address, business telephone number and registration number with the College as of that day.

9. The names of the directors and the officers of the corporation as of the day the application is submitted.

10. The address of the premises at which the corporation carries on activities as of the day the application is submitted. O. Reg. 264/14, s. 2.

(2) A College may issue a revised certificate of authorization to a corporation if the corporation changes its name after the certificate of authorization has been issued to it. O. Reg. 39/02, s. 2 (2).

Refusal to issue

3. The College shall refuse to issue a certificate of authorization if the corporation is not eligible to hold one or if the corporation does not comply with section 2. O. Reg. 39/02, s. 3.

Duty to notify College of change of name or articles

4. (1) If a corporation that holds a certificate of authorization changes its name or its articles of incorporation, the corporation shall promptly notify the College and give the College a copy of a certificate of the corporation that has been endorsed under the *Business Corporations Act* indicating the change. O. Reg. 39/02, s. 4 (1).

(2) A corporation ceases to be eligible to hold a certificate of authorization if the corporation fails to notify the College when the corporation changes its name or its articles of incorporation or fails to give the College the certificate described in subsection (1). O. Reg. 39/02, s. 4 (2).

Declaration upon shareholder changes

4.1 At the time that a corporation holding a certificate of authorization issued by the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario notifies the Registrar under section 85.9 of the Code of a change in the shareholders of the corporation, the corporation shall also give the Registrar the declaration of a director of the corporation, signed after the change of shareholders, stating that the corporation is in compliance with section 3.2 of the *Business Corporations Act*, including the regulations made under that section, as of the date the declaration is signed. O. Reg. 264/14, s. 3.

Annual renewal

5. The College shall renew a certificate of authorization for a corporation in respect of a particular profession on an annual basis if the corporation applies for the renewal by giving the following information and documents to the Registrar:

1. A completed application for renewal in a form approved by the College.

2. The annual renewal fee required by the by-laws of the College.

3. A copy of a corporation profile report, issued by the Ministry of Government and Consumer Services or by a service provider which is under contract with the Ministry of Government and Consumer Services that is dated not more than 30 days before the application is submitted to the Registrar and that indicates that the corporation is active.

4. A copy of every certificate of the corporation that has been endorsed under the *Business Corporations Act* since the corporation's most recent application for a certificate of authorization or for renewal of its certificate of authorization.

   The declaration of a director of the corporation, signed not more than 15 days before the application for renewal is submitted to the Registrar, stating,

   i. that the corporation is in compliance with section 3.2 of the *Business Corporations Act*, including the regulations made under that section, as of the date the declaration is signed,

   ii. that the corporation does not carry on, and does not plan to carry on, any business that is not the practice of the profession governed by the College or activities related to or ancillary to the practice of that profession,

   iii. that there has been no change in the status of the corporation since the date of the corporation profile report referred to in paragraph 3, and

   iv. that the information contained in the application for renewal is complete and accurate as of the date the declaration is signed.

5. In the case of an application for renewal submitted to the Registrar of either the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, the name of each person who is both a voting shareholder and a member of the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, as the case may be, as of the day the application is submitted and his or her business address, business telephone number and registration number with the College as of that day.

6. In the case of an application for renewal submitted to any College other than the Colleges referred to in paragraph 6, the name of each person who is a shareholder of the corporation as of the day the application is submitted and his or her business address, business telephone number and registration number with the College as of that day

7. The names of the directors and officers of the corporation as of the day the application for renewal is submitted.

8. The address of the premises at which the corporation carries on activities as of the day the application for renewal is submitted. O. Reg. 264/14, s. 4.

Revocation of certificate

6. (1) The following are the grounds upon which a corporation's certificate of authorization may be revoked:

1. The corporation ceases to be eligible to hold a certificate of authorization.
2. The corporation ceases to practise the profession in respect of which the certificate of authorization was issued.
3. The corporation fails to comply with one or more of the requirements for a renewal of the certificate.
4. The corporation carries on any business that is not the practice of the profession governed by the College or activities related to or ancillary to the practice of that profession.
5. The corporation fails to notify the Registrar of a change in shareholders in accordance with section 85.9 of the Code.
6. In the case of a corporation that holds a certificate of authorization issued by the College of Physicians and Surgeons of Ontario or the Royal College of Dental Surgeons of Ontario, the corporation fails to give the Registrar a declaration in accordance with section 4.1. O. Reg. 39/02, s. 6 (1); O. Reg. 666/05, s. 6; O. Reg 264/14, s. 5.

(2) If the College proposes to revoke a corporation's certificate of authorization, the College shall give notice of the proposed revocation, setting out the date the revocation will take effect and the grounds for the proposed revocation. O. Reg. 39/02, s. 6 (2).

(3) The College shall revoke the corporation's certificate of authorization 60 days after the date on which the notice is given if any of the grounds for revocation exist on the revocation date specified in the notice. O. Reg. 39/02, s. 6 (3).

(4) The College shall notify the corporation if a corporation's certificate of authorization is revoked. O. Reg. 39/02, s. 6 (4).

Reinstatement after revocation

7. If a corporation's certificate of authorization is revoked, a new certificate of authorization may be issued to the corporation only if the corporation is eligible to hold one and applies for a new certificate in accordance with section 2. O. Reg. 39/02, s. 7.

Contact Information

If you have any questions that have not been answered by this guide, please contact a registration staff member at the College.

College of Dental Technologists of Ontario
Ordre des Technologues Dentaires de l'Ontario

College of Dental technologists of Ontario

Mailing Address: 305 Milner Avenue, Suite 904, Scarborough, Ontario, M1B 3V4
Website: www.cdto.ca
Tel: 416-438-5003
Toll-free in Ontario: 1-877-391-2386
E-mail: info@cdto.ca

Collection of Personal Information

The College of Dental Technologists of Ontario (the College) collects the information in the Application Form and other forms in the registration or reinstatement process under the general authority of the *Regulated Health Professions Act, 1991,* S.O. 1991, c. 18 *(RHPA)*; the *Dental Technology Act, 1991,* S.O. 2007, and its regulations; and the College's Bylaws. The College collects the information for the purpose of assessing eligibility for registration or reinstatement.

Upon registration or reinstatement with the College, the information will become part of your membership file with the College and may be used in the course of the College performing its regulatory role as outlined in the *RHPA 1991*. It may also be used for aggregate statistical reporting and analysis within the College and externally.

Appropriate measures are taken to safeguard the confidentiality of the personal information you provide and all documents become the property of the College.

If you have any questions about the collection, use and/or disclosure of this information, contact the College's Privacy Officer at College of Dental Technologists of Ontario, 305 Milner Avenue, Suite 904, Scarborough, ON M1B 3B7, 416 438-5003, or by email info@cdto.ca

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Stay at home except for essential travel and follow the restrictions and public health measures.

Ontario

ServiceOntario

Registering your business name

An information sheet for corporations about why they need to register their business name, who must register, how to register and other important information.

Registering your business name in Ontario

Business names are registered with the Central Production and Verification Services Branch (CPVSB) of the Ministry of Government and Consumer Services (MGCS) and are placed on the Public Record maintained by CPVSB for public disclosure. Anyone may search business name information contained on the Public Record for a fee to find the owners or principals behind a business name.

Who must register under the *Business Names Act*?

The Ontario *Business Names Act* administered by the Central Production and Verification Services Branch applies to:

- sole proprietorships (one owner) carrying on business under a name other than the individual's full name;
- partnerships carrying on business under a firm name other than the full names of the partners;
- corporations carrying on business under a name other than their corporate name;
- an existing general partnership or limited partnership registering a business name different from the registered firm name;
- limited liability partnerships;
- extra-provincial limited liability partnerships; and
- extra-provincial limited liability companies

Where can I register a business name and obtain a Master Business Licence?

Ontario.ca provides access to the government's electronic services that simplify and streamline registration, renewal and reporting processes for Ontario businesses. New entrepreneurs and existing corporations can electronically complete the most important applications to register their business at one location, including applications for Business Name Registration, Retail Sales Tax Vendor Permit, Employer Health Tax and Workplace Safety and Insurance Board. When registering via Business Registration Online (a partnership between Canada Revenue Agency (CRA) and some provincial governments including Ontario), you may

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apply for the above programs as well as for a Federal Business Number (BN) and other CRA programs.

Business names can be searched and registered through ServiceOntario via the following channels:

- Business name registration (https://www.ontario.ca/page/business-name-registration)
- Public computers located at ServiceOntario service locations (https://www.ontario.ca/locations/serviceontario) across the province
- Business Registration Online (BRO) (http://www.businessregistration.gc.ca)
- By mail: ServiceOntario, P.O. Box 1028 Station B, Toronto ON M5T 3H3

Note: you must enter the business information yourself when using BRO, the ServiceOntario website and self-help workstations. For more information about workstation service locations, fees and processing times or to obtain ServiceOntario applications, please visit the ServiceOntario website or call:

Toronto: 416-314-9151
Toll-Free: 1-800-565-1921
TTY: 416-325-3408

TTY toll-free: 1-800-268-7095

Service providers

Electronic business name searches and registrations are also available through Service Providers under contract with the Ministry of Government and Consumer Services. For information about Service Providers visit the business name registration page (https://www.ontario.ca/page/business-name-registration#section-4)
.

Central Production and Verification Services Branch

Business names may be searched and registered **in person** from 8:30 a.m. to 5:00 p.m. on regular business days at:

Central Production and Verification Services Branch
Ministry of Government and Consumer Services
Second floor, 375 University Avenue
Toronto, ON M5G 2M2

To reach the Central Production and Verification Services Branch Public Office, take the escalator from the lobby of 375 University Avenue to the second floor.

Registrations submitted to the Branch **by mail** should be addressed to:

Central Production and Verification Services Branch
Ministry of Government and Consumer Services
393 University Avenue, Suite 200
Toronto ON M5G 2M2

Ministry fee for registration

The Ministry fee for registering a business name:

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- Through ServiceOntario, electronically $60; by mail $80.
- Through the Service Providers $60; however the Service Providers charge a separate service fee. Contact the Service Providers directly for information about the fees they charge for the immediate online service they provide.
- In person at the Branch (service time is immediate) or by mail (service time is 6 - 8 weeks) is $80.

Business Identification Number (BIN) and Business Number (BN)

The Central Production and Verification Services Branch assigns a Business Identification Number (BIN) when a business name is registered in Ontario.

The provincial BIN is different than the federal Business Number (BN). The BN is assigned by the Canada Revenue Agency (CRA) for federal programs, such as:

- goods and services tax/harmonized sales tax (GST/HST)
- import-export accounts
- payroll deductions
- corporate income tax

Business name registration forms

If you are registering a business name under the *Business Names Act* directly with the Central Production and Verification Services Branch, the following forms must be submitted to the Branch:

Form 1 – Registration of a Sole Proprietorship/General Partnership

Used to register a business name for a sole proprietorship (one owner), or the firm name of a general partnership (more than one owner).

Form 2 - Registration of a Business Name for a Corporation

Used when a corporation wishes to carry on business under a name different from the corporation's name. Not-for-profit corporations must also complete this form to publicly use a name other than their corporation name.

Form 5 –Registration of a Business Name for a Partnership/Limited Partnership (Must be filed in person or by mail to the Central Production and Verification Services Branch)

Used when a registered general partnership or existing limited partnership wishes to carry on business under a name different from the firm name of the partnership or limited partnership.

Form 6 – Ontario Limited Liability Partnership, Extra-Provincial Limited Liability Partnership, Extra-Provincial Limited Liability Company (Must be filed in person or by mail to the Central Production and Verification Services Branch)

- **Limited Liability Partnerships** must register the firm name and can carry on business in Ontario only

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under the registered firm name. An LLP is a partnership with special characteristics related to liability, and may be formed only by professionals whose governing legislation permits LLP's to practice the profession. Currently in Ontario, only lawyers, chartered accountants and certified general accountants may form a Limited Liability Partnership. The words "limited liability partnership" or "société à responsabilité limitée" or the abbreviations "LLP", "L.L.P." or "s.r.l." must appear in the name of a limited liability partnership.

- **Extra-Provincial Limited Liability Partnership** must register the firm name to carry on business in Ontario, and can carry on business only under the registered firm name. An Extra-Provincial LLP may carry on business in Ontario only if it practices a profession that Ontario LLP's are authorized to practice.
- **Extra-Provincial Limited Liability Companies** must register the company name to carry on business in Ontario. A limited liability company is an unincorporated association, other than a partnership, formed under the laws of another jurisdiction that grants its members limited liability. There is no statute to establish an Ontario LLC.

Availability of forms

The forms are available online through ServiceOntario (https://www.ontario.ca/page/serviceontario) .

The forms may also be picked up at the Central Production and Verification Services Branch Public Office during regular business hours (8:30 a.m. to 5:00 p.m., Monday to Friday).

Master Business Licence (MBL)

When registering a business name, you will be issued an MBL, which shows the registration and expiry dates as well as the Business Identification Number (BIN). The MBL can be used as one of the proofs of business name registration at financial institutions and to facilitate any other business-related registration with the Ontario government.

When registering your business name through any of the self-help workstations located at ServiceOntario service locations across the province, the ServiceOntario website (between 8:30 a.m. and 6:00 p.m., Monday to Friday), Business Registration Online (BRO), Service Providers or at the Central Production and Verification Services Branch, you will receive a Master Business Licence (MBL) immediately following registration. If registering after hours through the ServiceOntario website or BRO, you will receive your MBL by mail, within two weeks of registration.

Please note a Master Business Licence is not issued for registration of a business name for a Partnership/Limited Partnership (Form 5) or for an Ontario Limited Liability Partnership, Extra-Provincial Limited Liability Partnership or Extra-Provincial Limited Liability Company (Form 6). You will receive a copy of the application with a validation showing the Business Identification Number, date of registration and the expiry date.

Check to see if another business is already using the business name

Before making a final decision on your business name and ordering business cards or stationery you will want to know if someone else is already using the name. A search of the Companies and Personal Property Security Branch records will determine whether another **Ontario** business is using the name you have selected and where that business is located.

For detailed information about searching a business name and product descriptions, and for information on

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corporate name searches as well as NUANS and trademark searches, please refer to the "Searching the Public Record" information sheet available online through ServiceOntario (https://www.ontario.ca/page/public-record-search) .

Registration expiry/renewal

A business name registration is effective for five years. To continue using the name it must be renewed before the expiry date set out on the registration, and a renewal fee must be paid. It is the registrant's responsibility to keep the information on the registration up to date and to renew the registration on time. **The branch does not issue reminders.** An updated Master Business Licence (MBL) will be issued immediately if renewed in person or mailed within two weeks after a successful online renewal.

Amending or cancelling a registration

To ensure the Public Record is accurate, you must notify the Central Production and Verification Services Branch when the information in your registration has changed. Changes in address, business activity or partners (as long as one of the original partners remains the same), must be filed on the Ministry form within 15 days after the change. There is no filing fee. However, changing the name of your business registration is considered a new registration and the relevant fee applies. Changing the type of registration, e.g. a partnership registration to a sole proprietorship, or changing all the partners in a partnership, is also considered a new registration.

If the business ceases to operate, you should cancel your business name registration. There is no filing fee for the cancellation of a business name.

The amended or cancelled registration can be submitted to the Branch by mail or in person at the Public Office in Toronto. Alternatively, the registrant can amend or cancel a business name registration online through the ServiceOntario website at Ontario.ca. The registrant will receive confirmation of the changes by mail in approximately three weeks.

Does registration protect my business name?

The *Business Names Act* does not protect the exclusivity of a registered name. You may be able to protect your business name by registering a trademark under the *Trade-Marks Act* (federal legislation). It may be useful to talk to your lawyer or contact the FedDev Ontario - Small Business Services (http://www.cbo-eco.ca/en/) (SBS) for more information on trademarks.

The *Business Names Act* does not prohibit registration of identical names, but if you decide to use a name that is the same as or confusingly similar to that of an existing business, it could result in a lawsuit. The person registering the name also assumes full responsibility for any risk of confusion with an existing corporation, business name or trademark.

You may also wish to do some research to see if incorporating is a better alternative for your business. Identical corporation names cannot be incorporated in Ontario. If you incorporate and carry on business under the corporate name set out in the Articles of Incorporation, there is no requirement to register under the *Business Names Act*. However, if the corporation is operating with a name that is different from its corporate name, the operating name must be registered under the *Business Names Act*.

Liability

The registrant of a business name who has suffered damages because someone else has registered the same

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name or one that is deceptively similar can take legal action through the courts. The *Business Names Act* entitles you to recover compensation for damages suffered and provides for a court order cancelling the registration that was the cause of the action.

Central Production and Verification Services Branch staff cannot provide specific advice on name selection. If you are not sure about the use of a name, you should consult a lawyer.

If you need a lawyer, you may wish to contact the Law Society Referral Service of the Law Society of Upper Canada. You will be referred to a lawyer for up to one half-hour free legal consultation. You must be 18 years of age to access this service. The Law Society Referral Service can be reached by telephoning 1-800-268-8326.

Penalties for not registering

Under the *Business Names Act*, fines of up to $2,000 can be levied against individuals and up to $25,000 for corporations for failure to register or for registering false or misleading information.

Choosing a business name

Choosing the right name for your new business is an important decision. You want a name that will draw potential customers, help clients identify your company and build your business image. A name that is easy to remember and provides information about the products or services you offer is always a good choice. Choose a distinctive name to stand out from your competitors. Make sure the name is not misleading or confusing in its description of the goods or services you will provide.

Restrictions on business names

When choosing your business name, remember that certain words or expressions cannot be used.

- Words or expressions, in any language, that are obscene or objectionable in nature.
- Words that imply the business is a different type of organization. For example, you may not imply that a sole proprietorship is a partnership. You may not use numbers or words that imply the business name is a corporate number name. Also the registered name of a business carried on for profit should not contain words that imply it is a not-for-profit organization. (e.g. “The Ontario Society of Social Workers”).
- The words “college,” “institute” and “university” have special meaning to indicate a postsecondary educational institution. You may not use these words in a business name without written permission from the Ministry of Training, Colleges and Universities. To request permission to use “college” or “institute”, complete an online application (https://www.pcc.tcu.gov.on.ca/PARISExtWeb/public/login.xhtml) . If you have a question about using the word “college” or “institute,” contact the private career colleges branch at pccceu@ontario.ca (mailto:pccceu@ontario.ca) . To request permission to use “university,” contact the universities branch at PostsecondaryAccountability@ontario.ca (mailto:PostsecondaryAccountability@ontario.ca)
- You may not use the words “Limited”, “Limitée”, “Incorporated”, “Incorporée”, “Corporation”, or the corresponding abbreviations “Ltd.”, “Ltée”, “Inc.” or “Corp.”, unless the word “limited” is used in the name of a limited liability partnership, extra-provincial limited liability company or in the name of a limited partnership formed under the *Limited Partnerships Act*.
- You may not use the words “Limited Liability Partnership” or the abbreviation “LLP” in the business name unless you are registering an Ontario limited liability partnership or an extra-provincial limited liability partnership.
- You may not use the words “Limited Liability Company” or the abbreviation “LLC” in the business

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name unless you are registering an extra-provincial limited liability company.
- Words that are prohibited under federal or Ontario laws or words that are restricted unless the restriction is satisfied.
- Words that imply the business is connected with the Crown, the Government of Canada, of a province or of a territory, a municipality, or an agency of the Crown, government or municipality, without written consent of the appropriate authority.
- Names of individuals may not be used unless they have or had a material interest in the business activity and have given their written permission. If the individual is deceased and his or her name is used within 30 years of the date of death, the written consent of the estate or the estate trustee (i.e. the executor or administrator) must be obtained.

It's your responsibility to make sure your business name does not contain any of the above words or expressions unless proper consent has been obtained. If you register a name that is contrary to the Act or regulations, the name is subject to cancellation at any time.

Business names must be registered in the Roman alphabet (English, French, Spanish, Italian, Latin, etc.) and may contain numerals. Business names composed of characters from other alphabets must be translated and registered in a language using the Roman alphabet. A business name in a language other than one using the Roman alphabet may be used in advertising and signs, but the business name must also be displayed in a language using the Roman alphabet. For example, a business that registers its name in English may have letterhead or signs in Chinese characters as long as the English name is also displayed at the place of business.

The following marks may also be included in the name, but may not be used as the first character:
@ ! " # $ % & ' ( ) * + , - . / : ; > = < ? [ ] \ ^ ` ´ .

Where can I find more help and information?

The Ministry of Economic Development, Job Creation and Trade operates enterprise centres and business self-help offices across the province to assist anyone wanting to start a new business. They provide information, access to resource material and advice on preparing a business plan, managing a new business and governmental assistance available to entrepreneurs.

Ministry of Economic Development, Job Creation and Trade
General Inquiries
8th Floor, Hearst Block
900 Bay St.
Toronto ON M7A 2E1
Toll-free: 1-866-668-4249 or 1-866-ONT4BIZ
In Toronto: 416-325-6666
Email: info@edt.gov.on.ca

For more information visit the Ministry of Economic Development, Job Creation and Trade (https://www.ontario.ca/page/ministry-economic-development-job-creation-trade) page.

FedDev Ontario – Small Business Services

Small Business Services (SBS) provides access to accurate, timely and relevant information on federal and provincial business-related programs, services and regulations. SBS works with ServiceOntario, the Ministry of Economic Development, Job Creation and Trade (https://www.ontario.ca/page/ministry-economic-development-job-creation-trade) and community partners to ensure consistency of information across multiple levels of government. The SBS has a contact centre staffed by knowledgeable information officers

who can respond to business-related inquiries in both official languages between 8:30 a.m. and 4:00 p.m., Monday to Friday (every Government business day).

For more information, call 1-888-576-4444 (TTY: 1-800-457-8466) or visit the FedDev Ontario – Small Business Services website (http://www.cbo-eco.ca/en/) .

Other related information sheets

Searching the Public Record (https://www.ontario.ca/page/public-record-search)
Business Name and Limited Partnership Search Products (https://www.ontario.ca/page/product-searches-business-names-and-limited-partnerships)

Updated: February 18, 2021
Published: August 22, 2016

SECTION 7

Other Legislation

- Other Legislation that Impacts the Dental Technology Practice
- Occupational Health and Safety Act
- Workplace Hazardous Material Information System (WHMIS)

Other Legislation that Impacts Dental Technology Practice

Ontario Government Legislation

- Business Corporations Act, R.S.O. 1990
- Evidence Act, R.S.O. 1990
- Fair Access to Regulated Professions Act, 2006
- Health Care Consent Act, 1996
- Health Insurance Act, R.S.O. 1990
- Health System Improvement Act, 2007
- Human Rights Code, R.S.O. 1990
- Patient Restraints Minimization Act, 2001
- Public Hospitals Act, R.S.O. 1990
- Public Inquiries Act, 2009

Note: This is not an exhaustive list and is subject to change.

Français

Occupational Health and Safety Act

R.S.O. 1990, CHAPTER O.1

Consolidation Period: From July 21, 2020 to the e-Laws currency date.

Last amendment: 2020, c. 18, Sched. 13.

Legislative History: 1992, c. 14, s. 2; 1992, c. 21, s. 63; 1993, c. 27, Sched.; 1994, c. 24, s. 35; 1994, c. 25, s. 83; 1994, c. 27, s. 120; 1995, c. 1, s. 84; 1995, c. 5, s. 28-32; 1997, c. 16, s. 2; 1997, c. 4, s. 84; 1998, c. 8, s. 49-60; 2001, c. 13, s. 22; 2001, c. 26; 2001, c. 9, Sched. I, s. 3 (But see Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - December 31, 2011); 2004, c. 3, Sched. A, s. 93; 2006, c. 19, Sched. D, s. 14; 2006, c. 19, Sched. M, s. 5; 2006, c. 21, Sched. F, s. 136 (1); 2006, c. 34, Sched. C, s. 25; 2006, c. 35, Sched. C, s. 93; 2007, c. 8, s. 221; 2009, c. 23; 2009, c. 33, Sched. 20, s. 3; 2011, c. 1, Sched. 7, s. 2; 2011, c. 11, s. 1-18; 2014, c. 10, Sched. 4; 2015, c. 27, Sched. 4, s. 2-7, 11; 2016, c. 2, Sched. 4; 2016, c. 37, Sched. 16; 2017, c. 22, Sched. 1, s. 71; 2017, c. 22, Sched. 3; 2017, c. 25, Sched. 9, s. 104; 2017, c. 34, Sched. 30; 2018, c. 3, Sched. 5, s. 41 (see: 2019, c. 1, Sched. 3, s. 5); 2018, c. 14, Sched. 2, s. 21; 2019, c. 1, Sched. 4, s. 39; 2019, c. 7, Sched. 17, s. 127; 2019, c. 9, Sched. 10; 2019, c. 14, Sched. 13; 2020, c. 18, Sched. 13.

CONTENTS

Definitions

1 (1) In this Act,

"Board" means the Ontario Labour Relations Board; ("Commission")

"Building Code" means any version of the Ontario Building Code that was in force at any time since it was made under the *Building Code Act, 1974*, the *Building Code Act* of the Revised Statutes of Ontario, 1980, the *Building Code Act* of the Revised Statutes of Ontario, 1990, the *Building Code Act, 1992* or a successor to the *Building Code Act, 1992*; ("code du bâtiment")

"certified member" means a committee member who is certified under section 7.6; ("membre agréé")

"Chief Prevention Officer" means the Chief Prevention Officer appointed under subsection 22.3 (1); ("directeur général de la prévention")

"committee" means a joint health and safety committee established under this Act; ("comité")

"competent person" means a person who,

(a) is qualified because of knowledge, training and experience to organize the work and its performance,

(b) is familiar with this Act and the regulations that apply to the work, and

(c) has knowledge of any potential or actual danger to health or safety in the workplace; ("personne compétente")

"construction" includes erection, alteration, repair, dismantling, demolition, structural maintenance, painting, land clearing, earth moving, grading, excavating, trenching, digging, boring, drilling, blasting, or concreting, the installation of any

machinery or plant, and any work or undertaking in connection with a project but does not include any work or undertaking underground in a mine; ("construction")

"constructor" means a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer; ("constructeur")

"Deputy Minister" means the Deputy Minister of Labour; ("sous-ministre")

"designated substance" means a biological, chemical or physical agent or combination thereof prescribed as a designated substance to which the exposure of a worker is prohibited, regulated, restricted, limited or controlled; ("substance désignée")

"Director" means an inspector under this Act who is appointed as a Director for the purposes of this Act; ("directeur")

"employer" means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services; ("employeur")

"engineer of the Ministry" means a person who is employed by the Ministry and who is licensed as a professional engineer under the *Professional Engineers Act*; ("ingénieur du ministère")

"factory" means,

(a) a building or place other than a mine, mining plant or place where homework is carried on, where,

(i) any manufacturing process or assembling in connection with the manufacturing of any goods or products is carried on,

(ii) in preparing, inspecting, manufacturing, finishing, repairing, warehousing, cleaning or adapting for hire or sale any substance, article or thing, energy is,

(A) used to work any machinery or device, or

(B) modified in any manner,

(iii) any work is performed by way of trade or for the purposes of gain in or incidental to the making of any goods, substance, article or thing or part thereof,

(iv) any work is performed by way of trade or for the purposes of gain in or incidental to the altering, demolishing, repairing, maintaining, ornamenting, finishing, storing, cleaning, washing or adapting for sale of any goods, substance, article or thing, or

(v) aircraft, locomotives or vehicles used for private or public transport are maintained,

(b) a laundry including a laundry operated in conjunction with,

(i) a public or private hospital,

Note: On a day to be named by proclamation of the Lieutenant Governor, subclause (b) (i) of the definition of "factory" in subsection 1 (1) of the Act is repealed and the following substituted: (See: 2017, c. 25, Sched. 9, s. 104)

(i) a public hospital or a community health facility within the meaning of the *Oversight of Health Facilities and Devices Act, 2017* that was formerly licensed under the *Private Hospitals Act*,

(ii) a hotel, or

(iii) a public or private institution for religious, charitable or educational purposes, and

(c) a logging operation; ("usine")

"hazardous material" means a biological or chemical agent named or described in the regulations as a hazardous material; ("matériau dangereux")

"hazardous physical agent" means a physical agent named or described in the regulations as a hazardous physical agent; ("agent physique dangereux")

"health and safety management system" means a coordinated system of procedures, processes and other measures that is designed to be implemented by employers in order to promote continuous improvement in occupational health and safety; ("système de gestion de la santé et de la sécurité")

"health and safety representative" means a health and safety representative selected under this Act; ("délégué à la santé et à la sécurité")

"homework" means the doing of any work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or thing or any part thereof by a person for wages in premises occupied primarily as living accommodation; ("travail à domicile")

"industrial establishment" means an office building, factory, arena, shop or office, and any land, buildings and structures appertaining thereto; ("établissement industriel")

"inspector" means an inspector appointed for the purposes of this Act and includes a Director; ("inspecteur")

"labour relations officer" means a labour relations officer appointed under the *Labour Relations Act, 1995*; ("agent des relations de travail")

"licensee" means a person who holds a licence under Part III of the *Crown Forest Sustainability Act, 1994*; ("titulaire d'un permis")

"logging" means the operation of felling or trimming trees for commercial or industrial purposes or for the clearing of land, and includes the measuring, storing, transporting or floating of logs, the maintenance of haul roads, scarification, the carrying out of planned burns and the practice of silviculture; ("exploitation forestière")

"mine" means any work or undertaking for the purpose of opening up, proving, removing or extracting any metallic or non-metallic mineral or mineral-bearing substance, rock, earth, clay, sand or gravel; ("mine")

"mining plant" means any roasting or smelting furnace, concentrator, mill or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any substance mentioned in the definition of "mine"; ("installation minière")

"Minister" means the Minister of Labour; ("ministre")

"Ministry" means the Ministry of Labour; ("ministère")

"occupational illness" means a condition that results from exposure in a workplace to a physical, chemical or biological agent to the extent that the normal physiological mechanisms are affected and the health of the worker is impaired thereby and includes an occupational disease for which a worker is entitled to benefits under the *Workplace Safety and Insurance Act, 1997*; ("maladie professionnelle")

"Office of the Employer Adviser" means the office continued under subsection 176 (2) of the *Workplace Safety and Insurance Act, 1997*; ("Bureau des conseillers des employeurs")

"Office of the Worker Adviser" means the office continued under subsection 176 (1) of the *Workplace Safety and Insurance Act, 1997*; ("Bureau des conseillers des travailleurs")

"owner" includes a trustee, receiver, mortgagee in possession, tenant, lessee, or occupier of any lands or premises used or to be used as a workplace, and a person who acts for or on behalf of an owner as an agent or delegate; ("propriétaire")

"prescribed" means prescribed by a regulation made under this Act; ("prescrit")

"project" means a construction project, whether public or private, including,

(a) the construction of a building, bridge, structure, industrial establishment, mining plant, shaft, tunnel, caisson, trench, excavation, highway, railway, street, runway, parking lot, cofferdam, conduit, sewer, watermain, service connection, telegraph, telephone or electrical cable, pipe line, duct or well, or any combination thereof,

(b) the moving of a building or structure, and

(c) any work or undertaking, or any lands or appurtenances used in connection with construction; ("chantier")

"regulations" means the regulations made under this Act; ("règlements")

"shop" means a building, booth or stall or a part of such building, booth or stall where goods are handled, exposed or offered for sale or where services are offered for sale; ("magasin")

"supervisor" means a person who has charge of a workplace or authority over a worker; ("superviseur")

"trade union" means a trade union as defined in the *Labour Relations Act, 1995* that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in a workplace and includes an organization representing workers or persons to whom this Act applies where such organization has exclusive bargaining rights under any other Act in respect of such workers or persons; ("syndicat")

"worker" means any of the following, but does not include an inmate of a correctional institution or like institution or facility who participates inside the institution or facility in a work project or rehabilitation program:

1. A person who performs work or supplies services for monetary compensation.
2. A secondary school student who performs work or supplies services for no monetary compensation under a work experience program authorized by the school board that operates the school in which the student is enrolled.
3. A person who performs work or supplies services for no monetary compensation under a program approved by a college of applied arts and technology, university, private career college or other post-secondary institution.
4. REPEALED: 2017, c. 22, Sched. 1, s. 71 (2).
5. Such other persons as may be prescribed who perform work or supply services to an employer for no monetary compensation; ("travailleur")

"workplace" means any land, premises, location or thing at, upon, in or near which a worker works; ("lieu de travail")

"workplace harassment" means,

(a) engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or

(b) workplace sexual harassment; ("harcèlement au travail")

"workplace sexual harassment" means,

(a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or

(b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome; ("harcèlement sexuel au travail")

"workplace violence" means,

(a) the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,

(b) an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,

(c) a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker. ("violence au travail") R.S.O. 1990, c. O.1, s. 1 (1); 1993, c. 27, Sched.; 1994, c. 24, s. 35; 1994, c. 25, s. 83 (1); 1997, c. 16, s. 2 (1-3); 1998, c. 8, s. 49; 2009, c. 23, s. 1; 2009, c. 33, Sched. 20, s. 3 (1); 2011, c. 11, s. 1; 2014, c. 10, Sched. 4, s. 1; 2016, c. 2, Sched. 4, s. 1 (1, 2); 2016, c. 37, Sched. 16, s. 1; 2017, c. 22, Sched. 1, s. 71.

Ship under repair

(2) For the purposes of this Act and the regulations, a ship being manufactured or under repair shall be deemed to be a project. R.S.O. 1990, c. O.1, s. 1 (2).

Limitation

(3) An owner does not become a constructor by virtue only of the fact that the owner has engaged an architect, professional engineer or other person solely to oversee quality control at a project. R.S.O. 1990, c. O.1, s. 1 (3).

Workplace harassment

(4) A reasonable action taken by an employer or supervisor relating to the management and direction of workers or the workplace is not workplace harassment. 2016, c. 2, Sched. 4, s. 1 (3).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991; 1994, c. 24, s. 35 - 1/01/1995; 1994, c. 25, s. 83 (1) - 1/04/1995; 1997, c. 16, s. 2 (1-3) - 1/01/1998; 1998, c. 8, s. 49 - 29/06/1998

2009, c. 23, s. 1 - 15/06/2010; 2009, c. 33, Sched. 20, s. 3 (1) - 15/12/2009

2011, c. 11, s. 1 - 1/06/2011

2014, c. 10, Sched. 4, s. 1 - 20/11/2014

2016, c. 2, Sched. 4, s. 1 (1-3) - 08/09/2016; 2016, c. 37, Sched. 16, s. 1 - 08/12/2016

2017, c. 22, Sched. 1, s. 71 (1, 2) - 01/01/2018; 2017, c. 25, Sched. 9, s. 104 - not in force

PART I
APPLICATION

Crown and other Acts

Crown

2 (1) This Act binds the Crown and applies to an employee in the service of the Crown or an agency, board, commission or corporation that exercises any function assigned or delegated to it by the Crown.

Other Acts

(2) Despite anything in any general or special Act, the provisions of this Act and the regulations prevail. R.S.O. 1990, c. O.1, s. 2.

Private residences, farming, teaching

Private residences

3 (1) This Act does not apply to work performed by the owner or occupant or a servant of the owner or occupant to, in or about a private residence or the lands and appurtenances used in connection therewith.

Farming operations

(2) Except as is prescribed and subject to the conditions and limitations prescribed, this Act or a Part thereof does not apply to farming operations.

Teachers, etc.

(3) Except as is prescribed and subject to the conditions and limitations prescribed, this Act or a Part thereof does not apply to,

(a) a person who is employed as a teacher as defined in the *Education Act*; or

(b) a person who is employed as a member or teaching assistant of the academic staff of a university or a related institution. R.S.O. 1990, c. O.1, s. 3.

Self-employed persons

4 Subsection 25 (1), clauses 26 (1) (c), (e), (f) and (g), subsection 33 (1) and sections 37, 38, 39, 40, 41, 51, 52, 54, 57, 59, 60, 61, 62, 66, 67, 68 and 69, and the regulations in relation thereto, apply with necessary modifications to a self-employed person. 2001, c. 9, Sched. I, s. 3 (1); 2019, c. 14, Sched. 13, s. 1.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (1) - 29/06/2001; 2001, c. 9, Sched. I, s. 3 (2) - See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2019, c. 14, Sched. 13, s. 1 - 10/12/2019

PART II
ADMINISTRATION

Administration of Act

4.1 (1) The Minister is responsible for the administration of this Act. 2011, c. 11, s. 2.

Powers of Minister

(2) In administering this Act, the Minister's powers and duties include the following:

1. To promote occupational health and safety and to promote the prevention of workplace injuries and occupational diseases.
2. To promote public awareness of occupational health and safety.
3. To educate employers, workers and other persons about occupational health and safety.

4. To foster a commitment to occupational health and safety among employers, workers and others.
5. To make grants, in such amounts and on such terms as the Minister considers advisable, to support occupational health and safety. 2011, c. 11, s. 2.

Duty to consider

(3) In administering this Act, the Minister shall consider advice that is provided to the Minister under this Act. 2011, c. 11, s. 2.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 2 - 1/04/2012

Delegation of powers

5 Where under this Act or the regulations any power or duty is granted to or vested in the Minister or the Deputy Minister, the Minister or Deputy Minister may in writing delegate that power or duty from time to time to any employee in the Ministry subject to such limitations, restrictions, conditions and requirements as the Minister or Deputy Minister may set out in the delegation. R.S.O. 1990, c. O.1, s. 5; 2006, c. 35, Sched. C, s. 93 (1).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 93 (1) - 20/08/2007

Appointment of inspectors and Directors

6 (1) Such persons as may be necessary to administer and enforce this Act and the regulations may be appointed as inspectors by the Deputy Minister and the Deputy Minister may designate one or more of the inspectors as a Director or Directors.

Director may act as inspector

(2) A Director may exercise any of the powers or perform any of the duties of an inspector under this Act or the regulations. R.S.O. 1990, c. O.1, s. 6.

Certificate of appointment

7 (1) The Deputy Minister shall issue a certificate of appointment, bearing his or her signature or a facsimile thereof, to every inspector.

Production of certificate

(2) Every inspector, in the exercise of any powers or duties under this Act, shall produce his or her certificate of appointment upon request. R.S.O. 1990, c. O.1, s. 7.

Standards – training programs

7.1 (1) The Chief Prevention Officer may establish standards for training programs required under this Act or the regulations. 2011, c. 11, s. 3.

Approval — training program

(2) The Chief Prevention Officer may approve a training program that is established before or after this subsection comes into force if the training program meets the standards established under subsection (1). 2011, c. 11, s. 3.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 3 - 1/06/2011

Standards – persons who provide training

7.2 (1) The Chief Prevention Officer may establish standards that a person shall meet in order to become an approved training provider. 2011, c. 11, s. 3.

Approval – persons who provide training

(2) The Chief Prevention Officer may approve a person who meets the standards described in subsection (1) as a training provider with respect to one or more approved training programs. 2011, c. 11, s. 3.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 3 - 1/06/2011

Amendment of standard

7.3 (1) The Chief Prevention Officer may amend a standard established under subsection 7.1 (1) or 7.2 (1). 2011, c. 11, s. 3.

Publication of standards

(2) The Chief Prevention Officer shall publish the standards established under subsections 7.1 (1) and 7.2 (1) promptly after establishing or amending them. 2011, c. 11, s. 3.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 3 - 1/06/2011

Validity of approval

7.4 (1) An approval given under subsection 7.1 (2) or 7.2 (2) is valid for the period that the Chief Prevention Officer specifies in the approval. 2011, c. 11, s. 3.

Revocation, etc., of approval

(2) The Chief Prevention Officer may revoke or amend an approval given under subsection 7.1 (2) or 7.2 (2). 2011, c. 11, s. 3.

Information to be provided to Chief Prevention Officer

(3) The Chief Prevention Officer may require any person who is seeking an approval or is the subject of an approval under subsection 7.1 (2) or 7.2 (2) to provide the Chief Prevention Officer with whatever information, records or accounts he or she may require pertaining to the approval and the Chief Prevention Officer may make such inquiries and examinations as he or she considers necessary. 2011, c. 11, s. 3.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 3 - 1/06/2011

Collection and use of training information

7.5 (1) The Chief Prevention Officer may collect information about a worker's successful completion of an approved training program for the purpose of maintaining a record of workers who have successfully completed approved training programs. 2011, c. 11, s. 3.

Disclosure by training provider

(2) The Chief Prevention Officer may require an approved training provider to disclose to him or her the information described in subsection (1). 2011, c. 11, s. 3.

Same

(3) The Chief Prevention Officer may specify the time at which, and the form in which, the information shall be provided. 2011, c. 11, s. 3.

Disclosure by Chief Prevention Officer

(4) The Chief Prevention Officer may disclose information collected under subsection (1) to any person, including but not limited to a current or potential employer of a worker, if the worker consents to the disclosure. 2011, c. 11, s. 3.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 3 - 1/06/2011

Certification of members

7.6 (1) The Chief Prevention Officer may,

(a) establish training and other requirements that a committee member shall fulfil in order to become a certified member; and

(b) certify a committee member who fulfils the requirements described in clause (a). 2011, c. 11, s. 4.

Transition

(2) A person who is certified under paragraph 5 of subsection 4 (1) of the *Workplace Safety and Insurance Act, 1997* on the date section 20 of the *Occupational Health and Safety Statute Law Amendment Act, 2011* comes into force is deemed to be certified under this section. 2011, c. 11, s. 4.

Amendment

(3) The Chief Prevention Officer may amend training and other requirements established under clause (1) (a). 2019, c. 9, Sched. 10, s. 1.

Conditions

(4) The Chief Prevention Officer may establish conditions that a committee member certified under clause (1) (b) must meet in order to maintain their certification. 2019, c. 9, Sched. 10, s. 1.

Validity of certification

(5) A certification granted under clause (1) (b) is valid for the period that the Chief Prevention Officer specifies in the certification. 2019, c. 9, Sched. 10, s. 1.

Revocation, etc., of certification

(6) The Chief Prevention Officer may revoke or amend a certification granted under clause (1) (b). 2019, c. 9, Sched. 10, s. 1.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 4 - 1/04/2012

2019, c. 9, Sched. 10, s. 1 - 06/06/2019

Accreditation of health and safety management systems

7.6.1 (1) The Chief Prevention Officer may accredit a health and safety management system if the system meets any applicable standards established under subsection (2). 2016, c. 37, Sched. 16, s. 2.

Standards

(2) The Chief Prevention Officer may establish standards that a health and safety management system must meet in order to become an accredited health and safety management system. 2016, c. 37, Sched. 16, s. 2.

Amendment

(3) The Chief Prevention Officer may amend standards established under subsection (2). 2016, c. 37, Sched. 16, s. 2.

Section Amendments with date in force (d/m/y)

2016, c. 37, Sched. 16, s. 2 - 08/12/2016

Recognition of employers

7.6.2 (1) The Chief Prevention Officer may give recognition to an employer in respect of one or more of its workplaces, upon the employer's application, if,

(a) the employer satisfies the Chief Prevention Officer that it is a certified user of an accredited health and safety management system in its workplace or workplaces; and

(b) the employer meets any applicable criteria established under subsection (2). 2016, c. 37, Sched. 16, s. 2.

Criteria

(2) The Chief Prevention Officer may establish criteria that an employer must meet for the purposes of clause (1) (b). 2016, c. 37, Sched. 16, s. 2.

Amendment

(3) The Chief Prevention Officer may amend criteria established under subsection (2). 2016, c. 37, Sched. 16, s. 2.

Section Amendments with date in force (d/m/y)

2016, c. 37, Sched. 16, s. 2 - 08/12/2016

Validity of accreditations, recognitions

7.6.3 (1) An accreditation given under subsection 7.6.1 (1) or a recognition given under subsection 7.6.2 (1) is valid for the period that the Chief Prevention Officer specifies in the accreditation or recognition. 2016, c. 37, Sched. 16, s. 2.

Revocation, etc., of accreditations, recognitions

(2) The Chief Prevention Officer may revoke or amend an accreditation or recognition. 2016, c. 37, Sched. 16, s. 2.

Section Amendments with date in force (d/m/y)

2016, c. 37, Sched. 16, s. 2 - 08/12/2016

Information re accreditations, recognitions

7.6.4 (1) The Chief Prevention Officer may require any person who is seeking an accreditation under subsection 7.6.1 (1) or recognition under subsection 7.6.2 (1), or who is the subject of an accreditation or recognition, to provide the Chief Prevention Officer with whatever information, records or accounts he or she may require pertaining to the accreditation or recognition and the Chief Prevention Officer may make such inquiries and examinations as he or she considers necessary. 2016, c. 37, Sched. 16, s. 2.

Disclosure by Director

(2) A Director may communicate or allow to be communicated or disclosed any information that was collected under the authority of this Act or the regulations to the Chief Prevention Officer or to a delegate for the purposes of determining whether the employer should receive recognition or should keep such recognition. 2016, c. 37, Sched. 16, s. 2.

Same

(3) Any disclosure of personal information that is authorized under subsection (2) shall be deemed to be in compliance with clause 42 (1) (d) of the *Freedom of Information and Protection of Privacy Act.* 2016, c. 37, Sched. 16, s. 2.

Section Amendments with date in force (d/m/y)

2016, c. 37, Sched. 16, s. 2 - 08/12/2016

Publication

7.6.5 (1) The Chief Prevention Officer may publish or otherwise make available to the public information relating to health and safety management systems accredited under subsection 7.6.1 (1) and employers given recognition under subsection 7.6.2 (1), including the names of the systems and employers. 2016, c. 37, Sched. 16, s. 2.

Same

(2) The Chief Prevention Officer shall publish the standards for accreditation of health and safety management systems and the criteria for recognition of employers promptly after establishing or amending them. 2016, c. 37, Sched. 16, s. 2.

Section Amendments with date in force (d/m/y)

2016, c. 37, Sched. 16, s. 2 - 08/12/2016

Delegation

7.7 The Chief Prevention Officer may delegate, in writing, any of his or her powers or duties under subsections 7.1 (2) and 7.2 (2), sections 7.4 and 7.5, clause 7.6 (1) (b), subsections 7.6 (5) and (6), 7.6.1 (1) and 7.6.2 (1), sections 7.6.3 and 7.6.4 and subsection 7.6.5 (1) to any person, including any person outside the Ministry, subject to such limitations, restrictions, conditions and requirements as the Chief Prevention Officer may set out in the delegation. 2016, c. 37, Sched. 16, s. 3; 2019, c. 9, Sched. 10, s. 2.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 5 - 1/06/2011

2016, c. 37, Sched. 16, s. 3 - 08/12/2016

2019, c. 9, Sched. 10, s. 2 - 06/06/2019

Mandatory selection of health and safety representative

8 (1) At a project or other workplace where no committee is required under section 9 and where the number of workers regularly exceeds five, the constructor or employer shall cause the workers to select at least one health and safety representative from among the workers at the workplace who do not exercise managerial functions. R.S.O. 1990, c. O.1, s. 8 (1).

Order appointing health and safety representatives

(2) If no health and safety representative is required under subsection (1) and no committee is required under section 9 for a workplace, the Minister may, by order in writing, require a constructor or employer to cause the workers to select one or more health and safety representatives from among the workers at the workplace or part thereof who do not exercise managerial functions, and may provide in the order for the qualifications of such representatives. R.S.O. 1990, c. O.1, s. 8 (2).

Idem

(3) The Minister may from time to time give such directions as the Minister considers advisable concerning the carrying out of the functions of a health and safety representative. R.S.O. 1990, c. O.1, s. 8 (3).

What Minister shall consider

(4) In exercising the power conferred by subsection (2), the Minister shall consider the matters set out in subsection 9 (5). R.S.O. 1990, c. O.1, s. 8 (4).

Selection of representatives

(5) The selection of a health and safety representative shall be made by those workers who do not exercise managerial functions and who will be represented by the health and safety representative in the workplace, or the part or parts thereof, as the case may be, or, where there is a trade union or trade unions representing such workers, by the trade union or trade unions. R.S.O. 1990, c. O.1, s. 8 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 8 is amended by adding the following subsections:

Training requirement

(5.1) Unless otherwise prescribed, a constructor or employer shall ensure that a health and safety representative selected under subsection (5) receives training to enable him or her to effectively exercise the powers and perform the duties of a health and safety representative. 2011, c. 11, s. 6.

Same

(5.2) The training described in subsection (5.1) shall meet such requirements as may be prescribed. 2011, c. 11, s. 6.

Entitlement to be paid

(5.3) A health and safety representative is deemed to be at work while he or she is receiving the training described in subsection (5.1), and the representative's employer shall pay the representative for the time spent, at the representative's regular or premium rate as may be proper. 2011, c. 11, s. 6.

See: 2011, c. 11, ss. 6, 29 (2).

Inspections

(6) Unless otherwise required by the regulations or by an order by an inspector, a health and safety representative shall inspect the physical condition of the workplace at least once a month. R.S.O. 1990, c. O.1, s. 8 (6).

Idem

(7) If it is not practical to inspect the workplace at least once a month, the health and safety representative shall inspect the physical condition of the workplace at least once a year, inspecting at least a part of the workplace in each month. R.S.O. 1990, c. O.1, s. 8 (7).

Schedule of inspections

(8) The inspection required by subsection (7) shall be undertaken in accordance with a schedule agreed upon by the constructor or employer and the health and safety representative. R.S.O. 1990, c. O.1, s. 8 (8).

Inspections

(9) The constructor, employer and workers shall provide a health and safety representative with such information and assistance as the member may require for the purpose of carrying out an inspection of the workplace. R.S.O. 1990, c. O.1, s. 8 (9).

Idem

(10) A health and safety representative has power to identify situations that may be a source of danger or hazard to workers and to make recommendations or report his or her findings thereon to the employer, the workers and the trade union or trade unions representing the workers. R.S.O. 1990, c. O.1, s. 8 (10).

Powers of representative

(11) A health and safety representative has the power,

(a) to obtain information from the constructor or employer concerning the conducting or taking of tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace for the purpose of occupational health and safety;

(b) to be consulted about, and be present at the beginning of, testing referred to in clause (a) conducted in or about the workplace if the representative believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid; and

(c) to obtain information from the constructor or employer respecting,

(i) the identification of potential or existing hazards of materials, processes or equipment, and

(ii) health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge. R.S.O. 1990, c. O.1, s. 8 (11).

Response to recommendations

(12) A constructor or employer who receives written recommendations from a health and safety representative shall respond in writing within twenty-one days. R.S.O. 1990, c. O.1, s. 8 (12).

Idem

(13) A response of a constructor or employer under subsection (12) shall contain a timetable for implementing the recommendations the constructor or employer agrees with and give reasons why the constructor or employer disagrees with any recommendations that the constructor or employer does not accept. R.S.O. 1990, c. O.1, s. 8 (13).

Notice of accident, inspection by representative

(14) Where a person is killed or critically injured at a workplace from any cause, the health and safety representative may, subject to subsection 51 (2), inspect the place where the accident occurred and any machine, device or thing, and shall report his or her findings in writing to a Director. R.S.O. 1990, c. O.1, s. 8 (14).

Entitlement to time from work

(15) A health and safety representative is entitled to take such time from work as is necessary to carry out his or her duties under subsections (6) and (14) and the time so spent shall be deemed to be work time for which the representative shall be paid by his or her employer at the representative's regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 8 (15).

Additional powers of certain health and safety representatives

(16) A health and safety representative or representatives of like nature appointed or selected under the provisions of a collective agreement or other agreement or arrangement between the constructor or the employer and the workers, has, in addition to his or her functions and powers under the provisions of the collective agreement or other agreement or arrangement, the functions and powers conferred upon a health and safety representative by this section. R.S.O. 1990, c. O.1, s. 8 (16).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 6 - not in force

Joint health and safety committee

Application

9 (1) Subject to subsection (3), this section does not apply,

(a) to a constructor at a project at which work is expected to last less than three months; or

(b) to a prescribed employer or workplace or class of employers or workplaces. R.S.O. 1990, c. O.1, s. 9 (1).

Joint health and safety committee

(2) A joint health and safety committee is required,

(a) at a workplace at which twenty or more workers are regularly employed;

(b) at a workplace with respect to which an order to an employer is in effect under section 33; or

(c) at a workplace, other than a construction project where fewer than twenty workers are regularly employed, with respect to which a regulation concerning designated substances applies. R.S.O. 1990, c. O.1, s. 9 (2).

Minister's order

(3) Despite subsections (1) and (2), the Minister may, by order in writing, require a constructor or an employer to establish and maintain one or more joint health and safety committees for a workplace or a part thereof, and may, in such order, provide for the composition, practice and procedure of any committee so established. R.S.O. 1990, c. O.1, s. 9 (3).

Same

(3.1) Despite subsections (1) and (2), the Minister may, by order in writing, permit a constructor or an employer to establish and maintain one joint health and safety committee for more than one workplace or parts thereof, and may, in the order, provide for the composition, practice and procedure of any committee so established. 1994, c. 27, s. 120 (1).

Same

(3.2) In an order under subsection (3.1), the Minister may,

(a) provide that the members of a committee who represent workers may designate a worker at a workplace who is not a member of the committee to inspect the physical condition of the workplace under subsection 9 (23) and to exercise a committee member's rights and responsibilities under clause 43 (4) (a) and subsections 43 (7), (11) and (12); and

(b) require the employer to provide training to the worker to enable the worker to adequately perform the tasks or exercise the rights and responsibilities delegated by the committee. 2001, c. 9, Sched. I, s. 3 (3).

Same

(3.3) If a worker is designated under clause (3.2) (a), the following apply:

1. The designated worker shall comply with this section as if the worker were a committee member while exercising a committee member's rights and responsibilities.
2. Subsections 9 (35) and 43 (13), section 55, clauses 62 (5) (a) and (b) and subsection 65 (1) apply to the designated worker as if the worker were a committee member while the worker exercises a committee member's rights and responsibilities.
3. The worker does not become a member of the committee as a result of the designation. 2001, c. 9, Sched. I, s. 3 (3).

Establishment of committee

(4) The constructor or employer shall cause a joint health and safety committee to be established and maintained at the workplace unless the Minister is satisfied that a committee of like nature or an arrangement, program or system in which the workers participate was, on the 1st day of October, 1979, established and maintained pursuant to a collective agreement or other agreement or arrangement and that such committee, arrangement, program or system provides benefits for the health and safety of the workers equal to, or greater than, the benefits to be derived under a committee established under this section. R.S.O. 1990, c. O.1, s. 9 (4); 1993, c. 27, Sched.

What Minister shall consider

(5) In exercising the power conferred by subsection (3) or (3.1), the Minister shall consider,

(a) the nature of the work being done;

(b) the request of a constructor, an employer, a group of the workers or the trade union or trade unions representing the workers in a workplace;

(c) the frequency of illness or injury in the workplace or in the industry of which the constructor or employer is a part;

(d) the existence of health and safety programs and procedures in the workplace and the effectiveness thereof; and

(e) such other matters as the Minister considers advisable. R.S.O. 1990, c. O.1, s. 9 (5); 1994, c. 27, s. 120 (2).

Composition of committee

(6) A committee shall consist of,

(a) at least two persons, for a workplace where fewer than fifty workers are regularly employed; or

(b) at least four persons or such greater number of people as may be prescribed, for a workplace where fifty or more workers are regularly employed. R.S.O. 1990, c. O.1, s. 9 (6).

Idem

(7) At least half the members of a committee shall be workers employed at the workplace who do not exercise managerial functions. R.S.O. 1990, c. O.1, s. 9 (7).

Selection of members

(8) The members of a committee who represent workers shall be selected by the workers they are to represent or, if a trade union or unions represent the workers, by the trade union or unions. R.S.O. 1990, c. O.1, s. 9 (8).

Idem

(9) The constructor or employer shall select the remaining members of a committee from among persons who exercise managerial functions for the constructor or employer and, to the extent possible, who do so at the workplace. R.S.O. 1990, c. O.1, s. 9 (9).

Requirement for committee membership

(10) A member of the committee who ceases to be employed at the workplace ceases to be a member of the committee. R.S.O. 1990, c. O.1, s. 9 (10).

Committee to be co-chaired

(11) Two of the members of a committee shall co-chair the committee, one of whom shall be selected by the members who represent workers and the other of whom shall be selected by the members who exercise managerial functions. R.S.O. 1990, c. O.1, s. 9 (11).

Certification requirement

(12) Unless otherwise prescribed, a constructor or employer shall ensure that at least one member of the committee representing the constructor or employer and at least one member representing workers are certified members. R.S.O. 1990, c. O.1, s. 9 (12).

Idem

(13) Subsection (12) does not apply with respect to a project where fewer than fifty workers are regularly employed or that is expected to last less than three months. R.S.O. 1990, c. O.1, s. 9 (13).

Designation of member to be certified

(14) If no member representing workers is a certified member, the workers or the trade unions who selected the members representing workers shall select from among them one or more who are to become certified. R.S.O. 1990, c. O.1, s. 9 (14).

Designation of certified members

(15) If there is more than one certified member representing workers, the workers or the trade unions who selected the members representing workers shall designate one or more certified members who then become solely entitled to exercise the rights and required to perform the duties under this Act of a certified member representing workers. R.S.O. 1990, c. O.1, s. 9 (15).

Idem

(16) If there is more than one certified member representing the constructor or employer, the constructor or employer shall designate one or more of them who then become solely entitled to exercise the rights and required to perform the duties under this Act of a certified member representing a constructor or an employer. R.S.O. 1990, c. O.1, s. 9 (16).

Replacement of certified member

(17) If a certified member resigns or is unable to act, the constructor or employer shall, within a reasonable time, take all steps necessary to ensure that the requirement set out in subsection (12) is met. R.S.O. 1990, c. O.1, s. 9 (17).

Powers of committee

(18) It is the function of a committee and it has power to,

(a) identify situations that may be a source of danger or hazard to workers;

(b) make recommendations to the constructor or employer and the workers for the improvement of the health and safety of workers;

(c) recommend to the constructor or employer and the workers the establishment, maintenance and monitoring of programs, measures and procedures respecting the health or safety of workers;

(d) obtain information from the constructor or employer respecting,

(i) the identification of potential or existing hazards of materials, processes or equipment, and

(ii) health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge;

(e) obtain information from the constructor or employer concerning the conducting or taking of tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace for the purpose of occupational health and safety; and

(f) be consulted about, and have a designated member representing workers be present at the beginning of, testing referred to in clause (e) conducted in or about the workplace if the designated member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid. R.S.O. 1990, c. O.1, s. 9 (18).

Idem

(19) The members of the committee who represent workers shall designate one of them who is entitled to be present at the beginning of testing described in clause (18) (f). R.S.O. 1990, c. O.1, s. 9 (19).

Powers of co-chairs

(19.1) If the committee has failed to reach consensus about making recommendations under subsection (18) after attempting in good faith to do so, either co-chair of the committee has the power to make written recommendations to the constructor or employer. 2011, c. 11, s. 7 (1).

Response to recommendations

(20) A constructor or employer who receives written recommendations from a committee or co-chair shall respond in writing within twenty-one days. R.S.O. 1990, c. O.1, s. 9 (20); 2011, c. 11, s. 7 (2).

Idem

(21) A response of a constructor or employer under subsection (20) shall contain a timetable for implementing the recommendations the constructor or employer agrees with and give reasons why the constructor or employer disagrees with any recommendations that the constructor or employer does not accept. R.S.O. 1990, c. O.1, s. 9 (21).

Minutes of proceedings

(22) A committee shall maintain and keep minutes of its proceedings and make the same available for examination and review by an inspector. R.S.O. 1990, c. O.1, s. 9 (22).

Inspections

(23) Subject to subsection (24), the members of a committee who represent workers shall designate a member representing workers to inspect the physical condition of the workplace. R.S.O. 1990, c. O.1, s. 9 (23).

Idem

(24) If possible, the member designated under subsection (23) shall be a certified member. R.S.O. 1990, c. O.1, s. 9 (24).

Idem

(25) The members of a committee are not required to designate the same member to perform all inspections or to perform all of a particular inspection. R.S.O. 1990, c. O.1, s. 9 (25).

Idem

(26) Unless otherwise required by the regulations or by an order by an inspector, a member designated under subsection (23) shall inspect the physical condition of the workplace at least once a month. R.S.O. 1990, c. O.1, s. 9 (26).

Idem

(27) If it is not practical to inspect the workplace at least once a month, the member designated under subsection (23) shall inspect the physical condition of the workplace at least once a year, inspecting at least a part of the workplace in each month. R.S.O. 1990, c. O.1, s. 9 (27).

Schedule of inspections

(28) The inspection required by subsection (27) shall be undertaken in accordance with a schedule established by the committee. R.S.O. 1990, c. O.1, s. 9 (28).

Inspections

(29) The constructor, employer and the workers shall provide a member designated under subsection (23) with such information and assistance as the member may require for the purpose of carrying out an inspection of the workplace. R.S.O. 1990, c. O.1, s. 9 (29).

Information reported to the committee

(30) The member shall inform the committee of situations that may be a source of danger or hazard to workers and the committee shall consider such information within a reasonable period of time. R.S.O. 1990, c. O.1, s. 9 (30).

Idem

(31) The members of a committee who represent workers shall designate one or more such members to investigate cases where a worker is killed or critically injured at a workplace from any cause and one of those members may, subject to subsection 51 (2), inspect the place where the accident occurred and any machine, device or thing, and shall report his or her findings to a Director and to the committee. R.S.O. 1990, c. O.1, s. 9 (31).

Posting of names and work locations

(32) A constructor or an employer required to establish a committee under this section shall post and keep posted at the workplace the names and work locations of the committee members in a conspicuous place or places where they are most likely to come to the attention of the workers. R.S.O. 1990, c. O.1, s. 9 (32).

Meetings

(33) A committee shall meet at least once every three months at the workplace and may be required to meet by order of the Minister. R.S.O. 1990, c. O.1, s. 9 (33).

Entitlement to time from work

(34) A member of a committee is entitled to,

(a) one hour or such longer period of time as the committee determines is necessary to prepare for each committee meeting;

(b) such time as is necessary to attend meetings of the committee; and

(c) such time as is necessary to carry out the member's duties under subsections (26), (27) and (31). R.S.O. 1990, c. O.1, s. 9 (34).

Entitlement to be paid

(35) A member of a committee shall be deemed to be at work during the times described in subsection (34) and the member's employer shall pay the member for those times at the member's regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 9 (35).

Idem

(36) A member of a committee shall be deemed to be at work while the member is fulfilling the requirements for becoming a certified member and the member's employer shall pay the member for the time spent at the member's regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 9 (36); 1998, c. 8, s. 50 (1); 2011, c. 11, s. 7 (3).

Exception

(37) Subsection (36) does not apply with respect to workers who are paid by the Workplace Safety and Insurance Board for the time spent fulfilling the requirements for becoming certified. R.S.O. 1990, c. O.1, s. 9 (37); 1998, c. 8, s. 50 (2).

Additional powers of certain committees

(38) Any committee of a like nature to a committee established under this section in existence in a workplace under the provisions of a collective agreement or other agreement or arrangement between a constructor or an employer and the workers has, in addition to its functions and powers under the provisions of the collective agreement or other agreement or arrangement, the functions and powers conferred upon a committee by this section. R.S.O. 1990, c. O.1, s. 9 (38).

Dispute resolution

(39) Where a dispute arises as to the application of subsection (2), or the compliance or purported compliance therewith by a constructor or an employer, the dispute shall be decided by the Minister after consulting the constructor or the employer and the workers or the trade union or trade unions representing the workers. R.S.O. 1990, c. O.1, s. 9 (39).

Section Amendments with date in force (d/m/y)

1993, c. 27, Sched. - 31/12/1991; 1994, c. 27, s. 120 (1, 2) - 9/12/1994; 1998, c. 8, s. 50 (1, 2) - 29/06/1998

2001, c. 9, Sched. I, s. 3 (3) - 29/06/2001

2011, c. 11, s. 7 (1-3) - 1/04/2012

Worker trades committee

10 (1) If a committee is required at a project, other than a project where fewer than fifty workers are regularly employed or that is expected to last less than three months, the committee shall establish a worker trades committee for the project.

Committee membership

(2) The members of a worker trades committee shall represent workers employed in each of the trades at the workplace.

Selection of members

(3) The members of a worker trades committee shall be selected by the workers employed in the trades the members are to represent or, if a trade union represents the workers, by the trade union.

Function of worker trades committee

(4) It is the function of a worker trades committee to inform the committee at the workplace of the health and safety concerns of the workers employed in the trades at the workplace.

Entitlement to time from work

(5) Subject to subsection (6), a member of a worker trades committee is entitled to such time from work as is necessary to attend meetings of the worker trades committee and the time so spent shall be deemed to be work time for which the member shall be paid by the employer at the member's regular or premium rate as may be proper.

Committee to determine maximum entitlement

(6) The committee for a workplace shall determine the maximum amount of time for which members of a worker trades committee for the workplace are entitled to be paid under subsection (5) for each meeting of the worker trades committee. R.S.O. 1990, c. O.1, s. 10.

Consultation on industrial hygiene testing

11 (1) The constructor or employer at a workplace shall consult a health and safety representative or the committee with respect to proposed testing strategies for investigating industrial hygiene at the workplace.

Information

(2) The constructor or employer shall provide information to a health and safety representative or the committee concerning testing strategies to be used to investigate industrial hygiene at the workplace.

Attendance at testing

(3) A health and safety representative or a designated committee member representing workers at a workplace is entitled to be present at the beginning of testing conducted with respect to industrial hygiene at the workplace if the representative or member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid.

Designation of member

(4) The committee members representing workers shall designate one of them for the purpose of subsection (3). R.S.O. 1990, c. O.1, s. 11.

Summary to be furnished

12 (1) For workplaces to which the insurance plan established under the *Workplace Safety and Insurance Act, 1997* applies, the Workplace Safety and Insurance Board, upon the request of an employer, a worker, committee, health and safety representative or trade union, shall send to the employer, and to the worker, committee, health and safety representative or trade union requesting the information an annual summary of data relating to the employer in respect of the number of work accident fatalities, the number of lost work day cases, the number of lost work days, the number of non-fatal cases that required medical aid without lost work days, the incidence of occupational illnesses, the number of occupational injuries, and such other data as the Board may consider necessary or advisable. R.S.O. 1990, c. O.1, s. 12 (1); 1997, c. 16, s. 2 (4).

Posting of copy of summary

(2) Upon receipt of the annual summary, the employer shall cause a copy thereof to be posted in a conspicuous place or places at the workplace where it is most likely to come to the attention of the workers.

Director to provide information

(3) A Director shall, in accordance with the objects and purposes of this Act, ensure that persons and organizations concerned with the purposes of this Act are provided with information and advice pertaining to its administration and to the protection of the occupational health and occupational safety of workers generally. R.S.O. 1990, c. O.1, s. 12 (2, 3).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (4) - 1/01/1998

13 REPEALED: 1997, c. 16, s. 2 (5).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (5) - 1/01/1998

14 REPEALED: 1997, c. 16, s. 2 (6).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (6) - 1/01/1998

15 REPEALED: 1997, c. 16, s. 2 (7).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (7) - 1/01/1998

16 REPEALED: 1997, c. 16, s. 2 (8).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (8) - 1/01/1998

17 REPEALED: 1997, c. 16, s. 2 (9).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (9) - 1/01/1998

18 REPEALED: 1997, c. 16, s. 2 (10).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (10) - 1/01/1998

19 REPEALED: 1997, c. 16, s. 2 (10).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (10) - 1/01/1998

Testimony in civil proceedings, etc.

20 (1) Except with the consent of the Board, no member of the Board, nor its registrar, nor any of its other officers, nor any of its clerks or servants shall be required to give testimony in any civil proceeding or in any proceeding before the Board or in any proceeding before any other tribunal respecting information obtained in the discharge of their duties or while acting within the scope of their employment under this Act.

Non-disclosure

(2) No information or material furnished to or received by a labour relations officer under this Act shall be disclosed except to the Board or as authorized by the Board. 1998, c. 8, s. 51.

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 51 - 29/06/1998

Advisory committees

21 (1) The Minister may appoint committees, which are not committees as defined in subsection 1 (1), or persons to assist or advise the Minister on any matter arising under this Act or to inquire into and report to the Minister on any matter that the Minister considers advisable. R.S.O. 1990, c. O.1, s. 21 (1).

Remuneration and expenses

(2) Any person appointed under subsection (1) who is not a public servant within the meaning of the *Public Service of Ontario Act, 2006* may be paid such remuneration and expenses as may be from time to time fixed by the Lieutenant Governor in Council. R.S.O. 1990, c. O.1, s. 21 (2); 2006, c. 35, Sched. C, s. 93 (2).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 93 (2) - 20/08/2007

Contribution to defray cost

22 (1) The Workplace Safety and Insurance Board shall require Schedule 1 and Schedule 2 employers under the *Workplace Safety and Insurance Act, 1997* to make payments to defray the cost of administering this Act and the regulations. The Lieutenant Governor in Council may fix the total payment to be made by all employers for that purpose.

Same

(2) The Workplace Safety and Insurance Board shall remit the money collected from employers under this section to the Minister of Finance. 1997, c. 16, s. 2 (11).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (11) - 1/04/1997

Powers under federal legislation

22.1 (1) If a regulation under the *Canada Labour Code* incorporates by reference all or part of this Act or the regulations made under it, the Board and any person having powers under this Act may exercise any powers conferred by the regulation under the *Canada Labour Code*. 2011, c. 1, Sched. 7, s. 2 (1).

Same

(2) If a regulation under section 44 of the *Nuclear Safety and Control Act* (Canada) requires an employer to whom this Act applies to comply with all or part of this Act or the regulations made under it, the Board and any person having powers under this Act may exercise any powers conferred by the regulation under the *Nuclear Safety and Control Act* (Canada). 2011, c. 1, Sched. 7, s. 2 (1).

Section Amendments with date in force (d/m/y)

1998, c. 8, s.52 - 29/06/1998

2011, c. 1, Sched. 7, s. 2 (1) - 30/03/2011

PART II.1
PREVENTION COUNCIL, CHIEF PREVENTION OFFICER AND DESIGNATED ENTITIES

PREVENTION COUNCIL

Prevention Council

22.2 (1) The Minister shall establish a council to be known as the Prevention Council in English and Conseil de la prévention in French. 2011, c. 11, s. 8 (1).

Composition

(2) The Council shall be composed of such members as the Minister may appoint, and shall include representatives from each of the following groups:

1. Trade unions and provincial labour organizations.
2. Employers.
3. Non-unionized workers, the Workplace Safety and Insurance Board and persons with occupational health and safety expertise. 2011, c. 11, s. 8 (1).

Same

(3) In appointing members of the Council, the Minister shall ensure that,

(a) an equal number of members are appointed to represent the groups described in paragraphs 1 and 2 of subsection (2); and

(b) the group described in paragraph 3 of subsection (2) is represented by not more than one-third of the members of the Council. 2011, c. 11, s. 8 (1).

Appointment of members

(4) The members of the Council shall be appointed for such term as may be determined by the Minister. 2011, c. 11, s. 8 (1).

Chair

(5) The members of the Council shall choose a chair from among themselves by the date fixed by the Minister; if they fail to do so, the Minister shall designate a member as chair. 2011, c. 11, s. 8 (1).

Same

(6) Subsection (5) applies on the first appointment of members and thereafter whenever the office of chair is vacant. 2011, c. 11, s. 8 (1).

Functions

(7) The Council shall,

(a) provide advice to the Minister on the appointment of a Chief Prevention Officer;

(b) provide advice to the Chief Prevention Officer,

(i) on the prevention of workplace injuries and occupational diseases,

(ii) for the purposes of the provincial occupational health and safety strategy and the annual report under section 22.3, and

(iii) on any significant proposed changes to the funding and delivery of services for the prevention of workplace injuries and occupational diseases;

(c) provide advice on any other matter specified by the Minister; and

(d) perform such other functions as may be specified by the Minister. 2011, c. 11, s. 8 (1).

Advice

(8) For the purposes of subsection (7), any advice provided by the Council shall be communicated by the chair of the Council. 2011, c. 11, s. 8 (1).

Remuneration and expenses

(9) Any member of the Council who is not a public servant within the meaning of the *Public Service of Ontario Act, 2006* may be paid such remuneration and expenses as may be from time to time fixed by the Lieutenant Governor in Council. 2011, c. 11, s. 8 (1).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (1) - 1/06/2011

CHIEF PREVENTION OFFICER

Chief Prevention Officer

Functions

22.3 (1) The Minister shall appoint a Chief Prevention Officer to,

(a) develop a provincial occupational health and safety strategy;

(b) prepare an annual report on occupational health and safety;

(c) exercise any power or duty delegated to him or her by the Minister under this Act;

(d) provide advice to the Minister on the prevention of workplace injuries and occupational diseases;

(e) provide advice to the Minister on any proposed changes to the funding and delivery of services for the prevention of workplace injuries and occupational diseases;

(f) provide advice to the Minister on the establishment of standards for designated entities under section 22.5;

(g) exercise the powers and perform the duties with respect to training that are set out in sections 7.1 to 7.5;

(h) exercise the powers and perform the duties set out in section 7.6;

(h.1) exercise the powers and perform the duties with respect to accreditation of health and safety management systems and recognition of employers that are set out in sections 7.6.1 to 7.6.5;

(i) exercise the powers and perform the duties set out in section 22.7; and

(j) exercise such other powers and perform such other duties as may be assigned to the Chief Prevention Officer under this Act. 2011, c. 11, s. 8 (1); 2016, c. 37, Sched. 16, s. 4; 2019, c. 9, Sched. 10, s. 3.

Appointment

(2) The Chief Prevention Officer may be appointed for a term not exceeding five years and may be reappointed for successive terms not exceeding five years each. 2011, c. 11, s. 8 (1).

Occupational health and safety strategy

(3) The Chief Prevention Officer shall develop a written provincial occupational health and safety strategy that includes,

(a) a statement of occupational health and safety goals;

(b) key performance indicators for measuring the achievement of the goals; and

(c) any other matter specified by the Minister. 2011, c. 11, s. 8 (1).

Advice of Prevention Council

(4) The Chief Prevention Officer shall consult with the Prevention Council and shall consider its advice in developing the strategy. 2011, c. 11, s. 8 (1).

Strategy provided to Minister

(5) The Chief Prevention Officer shall provide the strategy to the Minister on or before a day specified by the Minister. 2011, c. 11, s. 8 (1).

Minister's approval

(6) The Minister may approve the strategy or refer it back to the Chief Prevention Officer for further consideration. 2011, c. 11, s. 8 (1).

Publication

(7) After approving the strategy, the Minister shall publish it promptly. 2011, c. 11, s. 8 (1).

Annual report

(8) The Chief Prevention Officer shall provide an annual written report to the Minister on occupational health and safety that includes a measurement of the achievement of the goals established in the strategy, and that contains such other information as the Minister may require. 2011, c. 11, s. 8 (1).

Advice of Prevention Council

(9) The Chief Prevention Officer shall consult with the Prevention Council and shall consider its advice in developing the report. 2011, c. 11, s. 8 (1).

Report provided to Minister

(10) The Chief Prevention Officer shall provide the annual report to the Minister on or before a day specified by the Minister. 2011, c. 11, s. 8 (1).

Publication

(11) The Minister shall publish the Chief Prevention Officer's report promptly. 2011, c. 11, s. 8 (1).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (1) - 1/06/2011

2016, c. 37, Sched. 16, s. 4 - 08/12/2016

2019, c. 9, Sched. 10, s. 3 - 06/06/2019

CHANGES TO FUNDING AND DELIVERY OF SERVICES

If Minister proposes change

22.4 (1) If the Minister is considering a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases, the Minister shall determine whether the proposed change would be a significant change. 2011, c. 11, s. 8 (1).

If proposed change significant

(2) If the Minister determines that the proposed change is significant, the Minister shall seek advice from the Chief Prevention Officer with respect to the proposed change. 2011, c. 11, s. 8 (1).

If Chief Prevention Officer advising on change

(3) If the Chief Prevention Officer is considering providing advice to the Minister concerning a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases, the Chief Prevention Officer shall determine whether the proposed change would be a significant change. 2011, c. 11, s. 8 (1).

Prevention Council endorsement

(4) If the Minister asks the Chief Prevention Officer for advice under subsection (2) or if the Chief Prevention Officer determines under subsection (3) that a proposed change would be a significant change, the Chief Prevention Officer shall,

(a) ask the chair of the Prevention Council to state whether the Council endorses the proposed change; and

(b) include that statement in the advice to the Minister. 2011, c. 11, s. 8 (1).

Matters to consider in determining if change is significant

(5) The Minister and the Chief Prevention Officer shall consider such matters as may be prescribed when determining whether a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases would be a significant change. 2011, c. 11, s. 8 (1).

Regulation

(6) On the recommendation of the Minister, the Lieutenant Governor in Council may make regulations prescribing matters to be considered when determining whether a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases would be a significant change. 2011, c. 11, s. 8 (1).

Same

(7) Before recommending to the Lieutenant Governor in Council that a regulation be made under subsection (6), the Minister shall seek the advice of the Chief Prevention Officer and require the Chief Prevention Officer to seek the advice of the Prevention Council with respect to the matters to be prescribed. 2011, c. 11, s. 8 (1).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (1) - 1/06/2011

DESIGNATED ENTITIES

Eligible for grant

22.5 (1) An entity that is designated under this section is eligible for a grant from the Ministry. 2011, c. 11, s. 8 (2).

Designation by Minister

(2) The Minister may designate an entity as a safe workplace association or as a medical clinic or training centre specializing in occupational health and safety matters if the entity meets the standards established by the Minister. 2011, c. 11, s. 8 (2).

Standards

(3) The Minister may establish standards that an entity shall meet before it is eligible to be designated. 2011, c. 11, s. 8 (2).

Same

(4) The standards established under subsection (3) may address any matter the Minister considers appropriate, including governance, objectives, functions and operations. 2011, c. 11, s. 8 (2).

Same

(5) The Minister may establish different standards for associations, clinics or centres serving different industries or groups. 2011, c. 11, s. 8 (2).

Duty to comply

(6) A designated entity shall operate in accordance with the standards established under subsection (3) that apply to it, and in accordance with any other requirements imposed on it under section 22.6. 2011, c. 11, s. 8 (2).

Amendment of standard

(7) The Minister may amend a standard established under subsection (3). 2011, c. 11, s. 8 (2).

Date for compliance with amended standard

(8) If the Minister amends a standard established under subsection (3), the Minister shall establish a date by which designated entities to which the amended standard applies are required to comply with it. 2011, c. 11, s. 8 (2).

Publication of standards

(9) The Minister shall promptly publish,

(a) the standards established under subsection (3); and

(b) standards amended under subsection (7), together with the compliance date described in subsection (8). 2011, c. 11, s. 8 (2).

Transition

(10) When the Minister establishes and publishes standards under subsections (3) and (9) for the first time after the coming into force of subsection 8 (2) of the *Occupational Health and Safety Statute Law Amendment Act, 2011*, the Minister shall establish a date for the purposes of subsections (11) and (12) and shall publish it together with the standards. 2011, c. 11, s. 8 (2).

Same

(11) An entity that is designated as a safe workplace association or as a medical clinic or training centre specializing in occupational health and safety matters under section 6 of the *Workplace Safety and Insurance Act, 1997* on the date section 20 of the *Occupational Health and Safety Statute Law Amendment Act, 2011* comes into force is deemed to be designated for the purposes of this Act until the date established by the Minister under subsection (10). 2011, c. 11, s. 8 (2).

Same

(12) The standards that are in place under section 6 of the *Workplace Safety and Insurance Act, 1997* on the date section 20 of the *Occupational Health and Safety Statute Law Amendment Act, 2011* comes into force continue to apply, with necessary modifications, and are deemed to be standards for the purposes of this section, until the date established by the Minister under subsection (10). 2011, c. 11, s. 8 (2).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (2) - 1/04/2012

Effect of designation

Directions

22.6 (1) The Minister may direct a designated entity to take such actions as the Minister considers appropriate. 2011, c. 11, s. 8 (2).

Government directives

(2) In addition to the directions the Minister may issue under subsection (1), the Minister may direct an entity to comply with such government directives as the Minister specifies. 2011, c. 11, s. 8 (2).

Failure to comply

(3) If an entity has committed any failure described in paragraphs 1 to 3 of subsection 22.7 (3), the Minister may,

(a) reduce or suspend grants to the entity while the non-compliance continues;

(b) assume control of the entity and responsibility for its affairs and operations;

(c) revoke the designation and cease to provide grants to the entity; or

(d) take such other steps as he or she considers appropriate. 2011, c. 11, s. 8 (2).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (2) - 01/04/2012

Compliance and monitoring of designated entities

22.7 (1) The Chief Prevention Officer shall monitor the operation of designated entities and,

(a) may require a designated entity to provide such information, records or accounts as the Chief Prevention Officer specifies; and

(b) may make such inquiries and examinations as he or she considers necessary. 2011, c. 11, s. 8 (2).

Report to Minister

(2) The Chief Prevention Officer shall report to the Minister on the compliance of designated entities with the standards established under section 22.5 and with any directions given by the Minister under section 22.6. 2011, c. 11, s. 8 (2).

Advice to Minister

(3) Where the Chief Prevention Officer determines that any of the following have occurred, the Chief Prevention Officer shall report that determination to the Minister and may advise the Minister with respect to any action the Minister may decide to take under section 22.6:

1. A designated entity has failed to operate in accordance with a standard established under section 22.5 that applies to it.
2. A designated entity has failed to comply with a direction given by the Minister under section 22.6 or a requirement of the Chief Prevention Officer under clause (1) (a).
3. A designated entity has failed to co-operate in an inquiry or examination conducted by the Chief Prevention Officer under clause (1) (b). 2011, c. 11, s. 8 (2).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (2) - 1/04/2012

Appointment of administrator

22.8 (1) For the purposes of assuming control of an entity and responsibility for its affairs and operations under clause 22.6 (3) (b), the Minister may appoint an administrator. 2011, c. 11, s. 8 (2).

Term of appointment

(2) The appointment of the administrator remains valid until it is terminated by the Minister. 2011, c. 11, s. 8 (2).

Powers and duties of administrator

(3) The administrator has the exclusive right to exercise the powers and perform the duties of the board of directors and its officers and exercise the powers of its members. 2011, c. 11, s. 8 (2).

Same

(4) In the appointment, the Minister may specify the powers and duties of the administrator and the terms and conditions governing those powers and duties. 2011, c. 11, s. 8 (2).

Additional power of administrator

(5) The board of directors and officers may continue to act to the extent authorized by the Minister, but any such act is valid only if approved, in writing, by the administrator. 2011, c. 11, s. 8 (2).

Report, directions

(6) The administrator shall report to the Minister as required by him or her and shall carry out his or her directions. 2011, c. 11, s. 8 (2).

Meeting of members

(7) Before the termination of an administrator's appointment, the administrator may call a meeting of the members to elect a board of directors in accordance with the *Corporations Act*. 2011, c. 11, s. 8 (2).

Note: On the later of (a) the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor and (b) the day section 24 of the *Not-For-Profit Corporations Act, 2010* comes into force, subsection (7) is amended by striking out "*Corporations Act*" and substituting "*Not-For-Profit Corporations Act, 2010*". See: 2011, c. 11, ss. 8 (3), 29 (4).

Unincorporated entity

(8) This section applies, with necessary modifications, to an entity that is not incorporated. 2011, c. 11, s. 8 (2).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (2) - 1/04/2012; 2011, c. 11, s. 8 (3) - not in force

Delegation of powers and duties

22.9 Despite section 5, the Minister may delegate his or her powers or duties under sections 22.5, 22.6 and 22.8 only to the Chief Prevention Officer. 2011, c. 11, s. 8 (2).

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 8 (2) - 1/04/2012

PART III
DUTIES OF EMPLOYERS AND OTHER PERSONS

Duties of constructor

23 (1) A constructor shall ensure, on a project undertaken by the constructor that,

(a) the measures and procedures prescribed by this Act and the regulations are carried out on the project;

(b) every employer and every worker performing work on the project complies with this Act and the regulations; and

(c) the health and safety of workers on the project is protected.

Notice of project

(2) Where so prescribed, a constructor shall, before commencing any work on a project, give to a Director notice in writing of the project containing such information as may be prescribed. R.S.O. 1990, c. O.1, s. 23.

Duties of licensees

24 (1) A licensee shall ensure that,

(a) the measures and procedures prescribed by this Act and the regulations are carried out with respect to logging in the licensed area;

(b) every employer performing logging in the licensed area for the licensee complies with this Act and the regulations; and

(c) the health and safety of workers employed by employers referred to in clause (b) is protected. R.S.O. 1990, c. O.1, s. 24 (1).

Definition

(2) In this section,

"licensed area" means the lands on which the licensee is authorized to harvest or use forest resources. R.S.O. 1990, c. O.1, s. 24 (2); 1994, c. 25, s. 83 (2).

Section Amendments with date in force (d/m/y)

1994, c. 25, s. 83 (2) - 1/04/1995

Duties of employers

25 (1) An employer shall ensure that,

(a) the equipment, materials and protective devices as prescribed are provided;

(b) the equipment, materials and protective devices provided by the employer are maintained in good condition;

(c) the measures and procedures prescribed are carried out in the workplace;

(d) the equipment, materials and protective devices provided by the employer are used as prescribed; and

(e) a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting any loads that may be applied to it,

(i) as determined by the applicable design requirements established under the version of the Building Code that was in force at the time of its construction,

(ii) in accordance with such other requirements as may be prescribed, or

(iii) in accordance with good engineering practice, if subclauses (i) and (ii) do not apply. R.S.O. 1990, c. O.1, s. 25 (1); 2011, c. 11, s. 9.

Idem

(2) Without limiting the strict duty imposed by subsection (1), an employer shall,

(a) provide information, instruction and supervision to a worker to protect the health or safety of the worker;

(b) in a medical emergency for the purpose of diagnosis or treatment, provide, upon request, information in the possession of the employer, including confidential business information, to a legally qualified medical practitioner and to such other persons as may be prescribed;

(c) when appointing a supervisor, appoint a competent person;

(d) acquaint a worker or a person in authority over a worker with any hazard in the work and in the handling, storage, use, disposal and transport of any article, device, equipment or a biological, chemical or physical agent;

(e) afford assistance and co-operation to a committee and a health and safety representative in the carrying out by the committee and the health and safety representative of any of their functions;

(f) only employ in or about a workplace a person over such age as may be prescribed;

(g) not knowingly permit a person who is under such age as may be prescribed to be in or about a workplace;

(h) take every precaution reasonable in the circumstances for the protection of a worker;

(i) post, in the workplace, a copy of this Act and any explanatory material prepared by the Ministry, both in English and the majority language of the workplace, outlining the rights, responsibilities and duties of workers;

(j) prepare and review at least annually a written occupational health and safety policy and develop and maintain a program to implement that policy;

(k) post at a conspicuous location in the workplace a copy of the occupational health and safety policy;

(l) provide to the committee or to a health and safety representative the results of a report respecting occupational health and safety that is in the employer's possession and, if that report is in writing, a copy of the portions of the report that concern occupational health and safety; and

(m) advise workers of the results of a report referred to in clause (l) and, if the report is in writing, make available to them on request copies of the portions of the report that concern occupational health and safety;

(n) notify a Director if a committee or a health and safety representative, if any, has identified potential structural inadequacies of a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, as a source of danger or hazard to workers. R.S.O. 1990, c. O.1, s. 25 (2); 2017, c. 34, Sched. 30, s. 1 (1).

Idem

(3) For the purposes of clause (2) (c), an employer may appoint himself or herself as a supervisor where the employer is a competent person. R.S.O. 1990, c. O.1, s. 25 (3).

Same

(3.1) Any explanatory material referred to under clause (2) (i) may be published as part of the poster required under section 2 of the *Employment Standards Act, 2000*. 2009, c. 23, s. 2.

Idem

(4) Clause (2) (j) does not apply with respect to a workplace at which five or fewer workers are regularly employed. R.S.O. 1990, c. O.1, s. 25 (4); 2011, c. 1, Sched. 7, s. 2 (2).

Same

(5) Clause (2) (n) does not apply to an employer that owns the workplace. 2017, c. 34, Sched. 30, s. 1 (2).

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 2 - 15/06/2010

2011, c. 1, Sched. 7, s. 2 (2) - 30/03/2011; 2011, c. 11, s. 9 - 1/06/2011

2017, c. 34, Sched. 30, s. 1 (1, 2) - 14/12/2017

Footwear

25.1 (1) An employer shall not require a worker to wear footwear with an elevated heel unless it is required for the worker to perform his or her work safely. 2017, c. 22, Sched. 3, s. 1.

Exception

(2) Subsection (1) does not apply with respect to an employer of a worker who works as a performer in the entertainment and advertising industry. 2017, c. 22, Sched. 3, s. 1.

Definitions

(3) In subsection (2),

"entertainment and advertising industry" means the industry of producing,

(a) live or broadcast performances, or

(b) visual, audio or audio-visual recordings of performances, in any medium or format; ("industrie du spectacle et de la publicité")

"performance" means a performance of any kind, including theatre, dance, ice skating, comedy, musical productions, variety, circus, concerts, opera, modelling and voice-overs, and "performer" has a corresponding meaning. ("représentation", "artiste", "interprète") 2017, c. 22, Sched. 3, s. 1.

Section Amendments with date in force (d/m/y)

2017, c. 22, Sched. 3, s. 1 - 27/11/2017

Additional duties of employers

26 (1) In addition to the duties imposed by section 25, an employer shall,

(a) establish an occupational health service for workers as prescribed;

(b) where an occupational health service is established as prescribed, maintain the same according to the standards prescribed;

(c) keep and maintain accurate records of the handling, storage, use and disposal of biological, chemical or physical agents as prescribed;

(d) accurately keep and maintain and make available to the worker affected such records of the exposure of a worker to biological, chemical or physical agents as may be prescribed;

(e) notify a Director of the use or introduction into a workplace of such biological, chemical or physical agents as may be prescribed;

(f) monitor at such time or times or at such interval or intervals the levels of biological, chemical or physical agents in a workplace and keep and post accurate records thereof as prescribed;

(g) comply with a standard limiting the exposure of a worker to biological, chemical or physical agents as prescribed;

(h) establish a medical surveillance program for the benefit of workers as prescribed;

(i) provide for safety-related medical examinations and tests for workers as prescribed;

(j) where so prescribed, only permit a worker to work or be in a workplace who has undergone such medical examinations, tests or x-rays as prescribed and who is found to be physically fit to do the work in the workplace;

(k) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for the protection of a worker; and

(l) carry out such training programs for workers, supervisors and committee members as may be prescribed.

Idem

(2) For the purposes of clause (1) (a), a group of employers, with the approval of a Director, may act as an employer. R.S.O. 1990, c. O.1, s. 26 (1, 2).

Idem

(3) If a worker participates in a prescribed medical surveillance program or undergoes prescribed medical examinations or tests, his or her employer shall pay,

(a) the worker's costs for medical examinations or tests required by the medical surveillance program or required by regulation;

(b) the worker's reasonable travel costs respecting the examinations or tests; and

(c) the time the worker spends to undergo the examinations or tests, including travel time, which shall be deemed to be work time for which the worker shall be paid at his or her regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 26 (3); 1994, c. 27, s. 120 (3).

Section Amendments with date in force (d/m/y)

1994, c. 27, s. 120 (3) - 9/12/1994

Duties of supervisor

27 (1) A supervisor shall ensure that a worker,

(a) works in the manner and with the protective devices, measures and procedures required by this Act and the regulations; and

(b) uses or wears the equipment, protective devices or clothing that the worker's employer requires to be used or worn.

Additional duties of supervisor

(2) Without limiting the duty imposed by subsection (1), a supervisor shall,

(a) advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;

(b) where so prescribed, provide a worker with written instructions as to the measures and procedures to be taken for protection of the worker; and

(c) take every precaution reasonable in the circumstances for the protection of a worker. R.S.O. 1990, c. O.1, s. 27.

Duties of workers

28 (1) A worker shall,

(a) work in compliance with the provisions of this Act and the regulations;

(b) use or wear the equipment, protective devices or clothing that the worker's employer requires to be used or worn;

(c) report to his or her employer or supervisor the absence of or defect in any equipment or protective device of which the worker is aware and which may endanger himself, herself or another worker; and

(d) report to his or her employer or supervisor any contravention of this Act or the regulations or the existence of any hazard of which he or she knows.

Idem

(2) No worker shall,

(a) remove or make ineffective any protective device required by the regulations or by his or her employer, without providing an adequate temporary protective device and when the need for removing or making ineffective the protective device has ceased, the protective device shall be replaced immediately;

(b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself, herself or any other worker; or

(c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct.

Consent to medical surveillance

(3) A worker is not required to participate in a prescribed medical surveillance program unless the worker consents to do so. R.S.O. 1990, c. O.1, s. 28.

Duties of owners

29 (1) The owner of a workplace that is not a project shall,

(a) ensure that,

(i) such facilities as are prescribed are provided,

(ii) any facilities prescribed to be provided are maintained as prescribed,

(iii) the workplace complies with the regulations, and

(iv) no workplace is constructed, developed, reconstructed, altered or added to except in compliance with this Act and the regulations; and

(b) where so prescribed, furnish to a Director any drawings, plans or specifications of any workplace as prescribed.

Mine plans

(2) The owner of a mine shall cause drawings, plans or specifications to be maintained and kept up to date not more than six months last past on such scale and showing such matters or things as may be prescribed.

Plans of workplaces

(3) Where so prescribed, an owner or employer shall,

(a) not begin any construction, development, reconstruction, alteration, addition or installation to or in a workplace until the drawings, layout and specifications thereof and any alterations thereto have been filed with the Ministry for review by an engineer of the Ministry for compliance with this Act and the regulations; and

(b) keep a copy of the drawings as reviewed in a convenient location at or near the workplace and such drawings shall be produced by the owner or employer upon the request of an inspector for his or her examination and inspection.

Additional information

(4) An engineer of the Ministry may require the drawings, layout and specifications to be supplemented by the owner or employer with additional information.

Fees

(5) Fees as prescribed for the filing and review of drawings, layout or specifications shall become due and payable by the owner or employer upon filing. R.S.O. 1990, c. O.1, s. 29.

Duty of project owners

30 (1) Before beginning a project, the owner shall determine whether any designated substances are present at the project site and shall prepare a list of all designated substances that are present at the site.

Tenders

(2) If any work on a project is tendered, the person issuing the tenders shall include, as part of the tendering information, a copy of the list referred to in subsection (1).

Idem

(3) An owner shall ensure that a prospective constructor of a project on the owner's property has received a copy of the list referred to in subsection (1) before entering into a binding contract with the constructor.

Duty of constructors

(4) The constructor for a project shall ensure that each prospective contractor and subcontractor for the project has received a copy of the list referred to in subsection (1) before the prospective contractor or subcontractor enters into a binding contract for the supply of work on the project.

Liability

(5) An owner who fails to comply with this section is liable to the constructor and every contractor and subcontractor who suffers any loss or damages as the result of the subsequent discovery on the project of a designated substance that the owner ought reasonably to have known of but that was not on the list prepared under subsection (1).

Idem

(6) A constructor who fails to comply with this section is liable to every contractor and subcontractor who suffers any loss or damages as the result of the subsequent discovery on the project of a designated substance that was on the list prepared under subsection (1). R.S.O. 1990, c. O.1, s. 30.

Duties of suppliers

31 (1) Every person who supplies any machine, device, tool or equipment under any rental, leasing or similar arrangement for use in or about a workplace shall ensure,

(a) that the machine, device, tool or equipment is in good condition;

(b) that the machine, device, tool or equipment complies with this Act and the regulations; and

(c) if it is the person's responsibility under the rental, leasing or similar arrangement to do so, that the machine, device, tool or equipment is maintained in good condition.

Architects and engineers

(2) An architect as defined in the *Architects Act*, and a professional engineer as defined in the *Professional Engineers Act*, contravenes this Act if, as a result of his or her advice that is given or his or her certification required under this Act that is made negligently or incompetently, a worker is endangered. R.S.O. 1990, c. O.1, s. 31.

Duties of directors and officers of a corporation

32 Every director and every officer of a corporation shall take all reasonable care to ensure that the corporation complies with,

(a) this Act and the regulations;

(b) orders and requirements of inspectors and Directors; and

(c) orders of the Minister. R.S.O. 1990, c. O.1, s. 32.

PART III.0.1
VIOLENCE AND HARASSMENT

Policies, violence and harassment

32.0.1 (1) An employer shall,

(a) prepare a policy with respect to workplace violence;

(b) prepare a policy with respect to workplace harassment; and

(c) review the policies as often as is necessary, but at least annually. 2009, c. 23, s. 3.

Written form, posting

(2) The policies shall be in written form and shall be posted at a conspicuous place in the workplace. 2009, c. 23, s. 3.

Exception

(3) Subsection (2) does not apply if the number of workers regularly employed at the workplace is five or fewer, unless an inspector orders otherwise. 2009, c. 23, s. 3; 2011, c. 1, Sched. 7, s. 2 (3).

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

2011, c. 1, Sched. 7, s. 2 (3) - 30/03/2011

Program, violence

32.0.2 (1) An employer shall develop and maintain a program to implement the policy with respect to workplace violence required under clause 32.0.1 (1) (a). 2009, c. 23, s. 3.

Contents

(2) Without limiting the generality of subsection (1), the program shall,

(a) include measures and procedures to control the risks identified in the assessment required under subsection 32.0.3 (1) as likely to expose a worker to physical injury;

(b) include measures and procedures for summoning immediate assistance when workplace violence occurs or is likely to occur;

(c) include measures and procedures for workers to report incidents of workplace violence to the employer or supervisor;

(d) set out how the employer will investigate and deal with incidents or complaints of workplace violence; and

(e) include any prescribed elements. 2009, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

Assessment of risks of violence

32.0.3 (1) An employer shall assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work. 2009, c. 23, s. 3.

Considerations

(2) The assessment shall take into account,

(a) circumstances that would be common to similar workplaces;

(b) circumstances specific to the workplace; and

(c) any other prescribed elements. 2009, c. 23, s. 3.

Results

(3) An employer shall,

(a) advise the committee or a health and safety representative, if any, of the results of the assessment, and provide a copy if the assessment is in writing; and

(b) if there is no committee or health and safety representative, advise the workers of the results of the assessment and, if the assessment is in writing, provide copies on request or advise the workers how to obtain copies. 2009, c. 23, s. 3.

Reassessment

(4) An employer shall reassess the risks of workplace violence as often as is necessary to ensure that the related policy under clause 32.0.1 (1) (a) and the related program under subsection 32.0.2 (1) continue to protect workers from workplace violence. 2009, c. 23, s. 3.

Same

(5) Subsection (3) also applies with respect to the results of the reassessment. 2009, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

Domestic violence

32.0.4 If an employer becomes aware, or ought reasonably to be aware, that domestic violence that would likely expose a worker to physical injury may occur in the workplace, the employer shall take every precaution reasonable in the circumstances for the protection of the worker. 2009, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

Duties re violence

32.0.5 (1) For greater certainty, the employer duties set out in section 25, the supervisor duties set out in section 27, and the worker duties set out in section 28 apply, as appropriate, with respect to workplace violence. 2009, c. 23, s. 3.

Information

(2) An employer shall provide a worker with,

(a) information and instruction that is appropriate for the worker on the contents of the policy and program with respect to workplace violence; and

(b) any other prescribed information or instruction. 2009, c. 23, s. 3.

Provision of information

(3) An employer's duty to provide information to a worker under clause 25 (2) (a) and a supervisor's duty to advise a worker under clause 27 (2) (a) include the duty to provide information, including personal information, related to a risk of workplace violence from a person with a history of violent behaviour if,

(a) the worker can be expected to encounter that person in the course of his or her work; and

(b) the risk of workplace violence is likely to expose the worker to physical injury. 2009, c. 23, s. 3.

Limit on disclosure

(4) No employer or supervisor shall disclose more personal information in the circumstances described in subsection (3) than is reasonably necessary to protect the worker from physical injury. 2009, c. 23, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

Program, harassment

32.0.6 (1) An employer shall, in consultation with the committee or a health and safety representative, if any, develop and maintain a written program to implement the policy with respect to workplace harassment required under clause 32.0.1 (1) (b). 2016, c. 2, Sched. 4, s. 2 (1).

Contents

(2) Without limiting the generality of subsection (1), the program shall,

(a) include measures and procedures for workers to report incidents of workplace harassment to the employer or supervisor;

(b) include measures and procedures for workers to report incidents of workplace harassment to a person other than the employer or supervisor, if the employer or supervisor is the alleged harasser;

(c) set out how incidents or complaints of workplace harassment will be investigated and dealt with;

(d) set out how information obtained about an incident or complaint of workplace harassment, including identifying information about any individuals involved, will not be disclosed unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or is otherwise required by law;

(e) set out how a worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, will be informed of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation; and

(f) include any prescribed elements. 2009, c. 23, s. 3; 2016, c. 2, Sched. 4, s. 2 (2).

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

2016, c. 2, Sched. 4, s. 2 (1, 2) - 08/09/2016

Duties re harassment

32.0.7 (1) To protect a worker from workplace harassment, an employer shall ensure that,

(a) an investigation is conducted into incidents and complaints of workplace harassment that is appropriate in the circumstances;

(b) the worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, are informed in writing of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation;

(c) the program developed under section 32.0.6 is reviewed as often as necessary, but at least annually, to ensure that it adequately implements the policy with respect to workplace harassment required under clause 32.0.1 (1) (b); and

(d) such other duties as may be prescribed are carried out. 2016, c. 2, Sched. 4, s. 3.

Results of investigation not a report

(2) The results of an investigation under clause (1) (a), and any report created in the course of or for the purposes of the investigation, are not a report respecting occupational health and safety for the purposes of subsection 25 (2). 2016, c. 2, Sched. 4, s. 3.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 3 - 15/06/2010

2016, c. 2, Sched. 4, s. 3 - 08/09/2016

Information and instruction, harassment

32.0.8 An employer shall provide a worker with,

(a) information and instruction that is appropriate for the worker on the contents of the policy and program with respect to workplace harassment; and

(b) any other prescribed information. 2016, c. 2, Sched. 4, s. 3.

Section Amendments with date in force (d/m/y)

2016, c. 2, Sched. 4, s. 3 - 08/09/2016

PART III.1
CODES OF PRACTICE

Definition

32.1 In this Part,

"legal requirement" means a requirement imposed by a provision of this Act or by a regulation made under this Act. 2011, c. 11, s. 10.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (4) - 29/06/2001

2011, c. 11, s. 10 - 1/06/2011

Approval of code of practice

32.2 (1) The Minister may approve a code of practice and the approved code of practice may be followed to comply with a legal requirement specified in the approval. 2011, c. 11, s. 11.

Same

(1.1) An approval made under subsection (1) may be subject to such terms and conditions as the Minister considers appropriate and may be general or particular in its application. 2011, c. 11, s. 11.

Withdrawal of approval

(2) The Minister may withdraw an approval under subsection (1). 2001, c. 9, Sched. I, s. 3 (4).

Legislation Act, 2006, Part III

(3) Part III (Regulations) of the *Legislation Act, 2006* does not apply with respect to an approval under this section or the withdrawal of such an approval. 2001, c. 9, Sched. I, s. 3 (4); 2006, c. 21, Sched. F, s. 136 (1).

Delegation

(4) The Minister may delegate the Minister's power under this section to the Deputy Minister. 2001, c. 9, Sched. I, s. 3 (4).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (4) - 29/06/2001

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

2011, c. 11, s. 11 - 1/06/2011

Publication of approval, etc.

32.3 (1) An approval or a withdrawal of an approval under section 32.2 shall be published in *The Ontario Gazette*. 2001, c. 9, Sched. I, s. 3 (4).

Effect of publication

(2) Publication of an approval or withdrawal of approval in *The Ontario Gazette*,

(a) is, in the absence of evidence to the contrary, proof of the approval or withdrawal of approval; and

(b) shall be deemed to be notice of the approval or withdrawal of approval to everyone affected by it. 2001, c. 9, Sched. I, s. 3 (4).

Judicial notice

(3) Judicial notice shall be taken of an approval or withdrawal of approval published in *The Ontario Gazette*. 2001, c. 9, Sched. I, s. 3 (4).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (4) - 29/06/2001

Effect of approved code of practice

32.4 The following apply if a code of practice is approved under section 32.2:

1. Subject to any terms or conditions set out in the approval, compliance with the approved code of practice is deemed to be compliance with the legal requirement.

2. A failure to comply with the approved code of practice is not, in itself, a breach of the legal requirement. 2011, c. 11, s. 12.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I ,s. 3 (4) - 29/06/2001

2011, c. 11, s. 12 - 1/06/2011

PART IV
TOXIC SUBSTANCES

Orders of Director

33 (1) Where a biological, chemical or physical agent or combination of such agents is used or intended to be used in the workplace and its presence in the workplace or the manner of its use is in the opinion of a Director likely to endanger the health of a worker, the Director shall by notice in writing to the employer order that the use, intended use, presence or manner of use be,

(a) prohibited;

(b) limited or restricted in such manner as the Director specifies; or

(c) subject to such conditions regarding administrative control, work practices, engineering control and time limits for compliance as the Director specifies. R.S.O. 1990, c. O.1, s. 33 (1).

Contents of order

(2) Where a Director makes an order to an employer under subsection (1), the order shall,

(a) identify the biological, chemical or physical agent, or combination of such agents, and the manner of use that is the subject-matter of the order; and

(b) state the opinion of the Director as to the likelihood of the danger to the health of a worker, and the Director's reasons in respect thereof, including the matters or causes which give rise to his or her opinion. R.S.O. 1990, c. O.1, s. 33 (2).

Posting of order

(3) The employer shall provide a copy of an order made under subsection (1) to the committee, health and safety representative and trade union, if any, and shall cause a copy of the order to be posted in a conspicuous place in the workplace where it is most likely to come to the attention of the workers who may be affected by the use, presence or intended use of the biological, chemical or physical agent or combination of agents. R.S.O. 1990, c. O.1, s. 33 (3).

Appeal to Minister

(4) Where the employer, a worker or a trade union considers that he, she or it is aggrieved by an order made under subsection (1), the employer, worker or trade union may by notice in writing given within fourteen days of the making of the order appeal to the Minister. R.S.O. 1990, c. O.1, s. 33 (4).

Delegation

(5) The Minister may, having regard to the circumstances, direct that an appeal under subsection (4) be determined on his or her behalf by a person appointed by the Minister for that purpose. R.S.O. 1990, c. O.1, s. 33 (5).

Procedure

(6) The Minister or, where a person has been appointed under subsection (5), the person so appointed, may give such directions and issue such orders as he or she considers proper or necessary concerning the procedures to be adopted or followed and shall have all the powers of a chair of a board of arbitration under subsection 48 (12) of the *Labour Relations Act, 1995*. R.S.O. 1990, c. O.1, s. 33 (6); 2001, c. 9, Sched. I, s. 3 (5).

Substitution of findings

(7) On an appeal, the Minister or, where a person has been appointed under subsection (5), the person so appointed, may substitute his or her findings for those of the Director and may rescind or affirm the order appealed from or make a new order in substitution therefor and such order shall stand in the place of and have the like effect under this Act and the regulations as the order of the Director, and such order shall be final and not subject to appeal under this section. R.S.O. 1990, c. O.1, s. 33 (7).

Matters to be considered

(8) In making a decision or order under subsection (1) or (7), a Director, the Minister or, where a person has been appointed under subsection (5), the person so appointed shall consider as relevant factors,

(a) the relation of the agent, combination of agents or by-product to a biological or chemical agent that is known to be a danger to health;

(b) the quantities of the agent, combination of agents or by-product used or intended to be used or present;

(c) the extent of exposure;

(d) the availability of other processes, agents or equipment for use or intended use;

(e) data regarding the effect of the process or agent on health; and

(f) any criteria or guide with respect to the exposure of a worker to a biological, chemical or physical agent or combination of such agents that are adopted by a regulation. R.S.O. 1990, c. O.1, s. 33 (8).

Suspension of order by Minister, etc., pending disposition of appeal

(9) On an appeal under subsection (4), the Minister or, where a person has been appointed under subsection (5), the person so appointed may suspend the operation of the order appealed from pending the disposition of the appeal. R.S.O. 1990, c. O.1, s. 33 (9).

Remuneration of appointee

(10) A person appointed under subsection (5) shall be paid such remuneration and expenses as the Minister, with the approval of the Lieutenant Governor in Council, determines. R.S.O. 1990, c. O.1, s. 33 (10).

Application

(11) This section does not apply to designated substances. R.S.O. 1990, c. O.1, s. 33 (11).

No hearing required prior to issuing order

(12) A Director is not required to hold or afford to an employer or any other person an opportunity for a hearing before making an order under subsection (1). R.S.O. 1990, c. O.1, s. 33 (12).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (5) - 29/06/2001

34 REPEALED: 2019, c. 14, Sched. 13, s. 2.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (6) - See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* - 31/12/2011

2019, c. 14, Sched. 13, s. 2 - 10/12/2019

Designation of substances

35 Prior to a substance being designated under paragraph 23 of subsection 70 (2), the Minister,

(a) shall publish in *The Ontario Gazette* a notice stating that the substance may be designated and calling for briefs or submissions in relation to the designation; and

(b) shall publish in *The Ontario Gazette* a notice setting forth the proposed regulation relating to the designation of the substance at least sixty days before the regulation is filed with the Registrar of Regulations. R.S.O. 1990, c. O.1, s. 35.

36 REPEALED: 2001, c. 9, Sched. I, s. 3 (7).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (7) - 29/06/2001

Hazardous material identification and data sheets

37 (1) An employer,

(a) shall ensure that all hazardous materials present in the workplace are identified in the prescribed manner;

(b) shall obtain or prepare, as may be prescribed, a current safety data sheet for all hazardous materials present in the workplace; and

(c) shall ensure that the identification required by clause (a) and safety data sheets required by clause (b) are available in English and such other languages as may be prescribed. R.S.O. 1990, c. O.1, s. 37 (1); 2015, c. 27, Sched. 4, s. 2 (1, 2).

Prohibition

(2) No person shall remove or deface the identification described in clause (1) (a) for a hazardous material. R.S.O. 1990, c. O.1, s. 37 (2).

Hazardous material not to be used

(3) An employer shall ensure that a hazardous material is not used, handled or stored at a workplace unless the prescribed requirements concerning identification, safety data sheets and worker instruction and training are met. R.S.O. 1990, c. O.1, s. 37 (3); 2015, c. 27, Sched. 4, s. 2 (2).

Notice to Director

(4) An employer shall advise a Director in writing if the employer, after making reasonable efforts, is unable to obtain a label or safety data sheet required by subsection (1). R.S.O. 1990, c. O.1, s. 37 (4); 2015, c. 27, Sched. 4, s. 2 (3).

(5) REPEALED: 2015, c. 27, Sched. 4, s. 2 (4).

Section Amendments with date in force (d/m/y)

2011, c. 1, Sched. 7, s. 2 (4, 5, 12-14) - no effect - see 2015, c. 27, Sched. 4, s. 11 - 03/12/2015

2015, c. 27, Sched. 4, s. 2 - 01/07/2016

Making safety data sheets available

38 (1) A copy of every current safety data sheet required by this Part in respect of hazardous materials in a workplace shall be,

(a) made available by the employer in the workplace in such a manner as to allow examination by the workers;

(b) furnished by the employer to the committee or health and safety representative, if any, for the workplace or to a worker selected by the workers to represent them, if there is no committee or health and safety representative;

(c) furnished by the employer on request or if so prescribed to the medical officer of health of the health unit in which the workplace is located;

(d) furnished by the employer on request or if so prescribed to the fire department which serves the location in which the workplace is located; and

(e) filed by the employer with a Director on request or if so prescribed. 2001, c. 9, Sched. I, s. 3 (8); 2015, c. 27, Sched. 4, s. 3 (1).

Additional requirement

(1.1) In addition to complying with subsection (1), the employer shall make a copy of a safety data sheet readily available to those workers who may be exposed to the hazardous material to which it relates. 2015, c. 27, Sched. 4, s. 3 (2).

Public access

(2) The medical officer of health, at the request of any person, shall request an employer to furnish a copy of a current safety data sheet. 2001, c. 9, Sched. I, s. 3 (9); 2015, c. 27, Sched. 4, s. 3 (3).

Same

(3) At the request of any person, the medical officer of health shall make available to the person for inspection a copy of any safety data sheet requested by the person and in the possession of the medical officer of health. 2001, c. 9, Sched. I, s. 3 (9); 2015, c. 27, Sched. 4, s. 3 (4).

Idem

(4) A medical officer of health shall not disclose the name of any person who makes a request under subsection (2) or (3). R.S.O. 1990, c. O.1, s. 38 (4).

Electronic format

(5) For greater certainty, a copy of a safety data sheet in an electronic format is a copy for the purposes of this section. 2015, c. 27, Sched. 4, s. 3 (5).

Requirement to consult

(6) An employer shall consult with the committee and the health and safety representative, if any, on making safety data sheets available in the workplace or furnishing them as required by clauses (1) (a) and (b) and subsection (1.1). 2015, c. 27, Sched. 4, s. 3 (5).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (8, 9) - 29/06/2001

2011, c. 1, Sched. 7, s. 2 (6, 12-14) - no effect - see 2015, c. 27, Sched. 4, s. 11- 03/12/2015

2015, c. 27, Sched. 4, s. 3 - 01/07/2016

Assessment for hazardous materials

39 (1) Where so prescribed, an employer shall assess all biological and chemical agents produced in the workplace for use therein to determine if they are hazardous materials.

Assessments to be made available

(2) The assessment required by subsection (1) shall be in writing and a copy of it shall be,

(a) made available by the employer in the workplace in such a manner as to allow examination by the workers;

(b) furnished by the employer to the committee or health and safety representative, if any, for the workplace or to a worker selected by the workers to represent them, if there is no committee or health and safety representative. R.S.O. 1990, c. O.1, s. 39.

Confidential business information

40 (1) An employer may file a claim for an exemption from disclosing,

(a) information required under this Part in a label or safety data sheet; or

(b) the name of a toxicological study used by the employer to prepare a safety data sheet,

on the grounds that it is confidential business information. R.S.O. 1990, c. O.1, s. 40 (1); 2001, c. 9, Sched. I, s. 3 (10); 2015, c. 27, Sched. 4, s. 4 (1, 2).

Idem

(2) An application under subsection (1) shall be made only in respect of such types of confidential business information as may be prescribed. R.S.O. 1990, c. O.1, s. 40 (2).

Determination of claim

(3) A claim for an exemption made under subsection (1) shall be determined in accordance with the process set out in the *Hazardous Materials Information Review Act* (Canada). 2015, c. 27, Sched. 4, s. 4 (3).

Appeal

(4) The employer or any worker of the employer or any trade union representing the workers of the employer may, in accordance with the appeal process set out in the *Hazardous Materials Information Review Act* (Canada), appeal a determination made under subsection (3) and the appeal shall be determined in accordance with that process. 2015, c. 27, Sched. 4, s. 4 (3).

(5) REPEALED: 2015, c. 27, Sched. 4, s. 4 (3).

Effect of claim

(6) Information that an employer considers to be confidential business information is exempt from disclosure from the time a claim is filed under subsection (1) until the claim is finally determined and for three years thereafter, if the claim is found to be valid. R.S.O. 1990, c. O.1, s. 40 (6).

Effect of determination

(7) A determination made under this section applies for the purposes of this Part. 2015, c. 27, Sched. 4, s. 4 (4).

(8) REPEALED: 2015, c. 27, Sched. 4, s. 4 (4).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (10) - 29/06/2001

2011, c. 1, Sched. 7, s. 2 (12, 14) - no effect - see 2015, c. 27, Sched. 4, s. 11 - 03/12/2015

2015, c. 27, Sched. 4, s. 4 - 01/07/2016

Information privileged

40.1 (1) Subject to subsection (2), all information obtained by an employee in the Ministry from a person acting under the authority of the *Hazardous Materials Information Review Act* (Canada) is privileged and no employee in the Ministry shall knowingly, without consent in writing of the Chief Screening Officer appointed under that Act,

(a) communicate or allow to be communicated to any person any information obtained; or

(b) allow any person to inspect or to have access to any part of a book, record, writing or other document containing any information obtained. 2015, c. 27, Sched. 4, s. 5 (1).

Exception

(2) An employee in the Ministry may communicate or allow to be communicated information described in subsection (1) or allow inspection of or access to any part of a book, record, writing or other document containing any such information to or by,

(a) another employee in the Ministry for the purpose of administering or enforcing this Act; or

(b) a physician or a medical professional prescribed under the *Hazardous Materials Information Review Act* (Canada) who requests that information for the purpose of making a medical diagnosis of, or rendering medical treatment to, a person in an emergency. 1992, c. 14, s. 2 (1); 2006, c. 35, Sched. C, s. 93 (4).

Conditions

(3) No person who obtains any information under subsection (2) shall knowingly disclose that information to any other person or knowingly allow any other person to have access to that information except as may be necessary for the purposes mentioned in that subsection. 1992, c. 14, s. 2 (1).

Non-disclosure prevails

(4) Despite subsection 63 (1), the requirements in this section that information received from a person acting under the authority of the *Hazardous Materials Information Review Act* (Canada) not be disclosed prevail over any other law. 2015, c. 27, Sched. 4, s. 5 (2).

Section Amendments with date in force (d/m/y)

1992, c. 14, s. 2 (1) - 25/06/1992

2006, c. 35, Sched. C, s. 93 (3, 4) - 20/08/2007

2015, c. 27, Sched. 4, s. 5 - 01/07/2016

Hazardous physical agents

41 (1) A person who distributes or supplies, directly or indirectly, or manufactures, produces or designs a thing for use in a workplace that causes, emits or produces a hazardous physical agent when the thing is in use or operation shall ensure that such information as may be prescribed is readily available respecting the hazardous physical agent and the proper use or operation of the thing.

Duty of employer

(2) Where an employer has a thing described in subsection (1) in the workplace, the employer shall ensure that the information referred to in that subsection has been obtained and is,

(a) made available in the workplace for workers who use or operate the thing or who are likely to be exposed to the hazardous physical agent; and

(b) furnished by the employer to the committee or health and safety representative, if any, for the workplace or a worker selected by the workers to represent them, if there is no committee or health and safety representative.

Notices

(3) An employer to whom subsection (2) applies shall post prominent notices identifying and warning of the hazardous physical agent in the part of the workplace in which the thing is used or operated or is to be used or operated.

Idem

(4) Notices required by subsection (3) shall contain such information as may be prescribed and shall be in English and such other language or languages as may be prescribed. R.S.O. 1990, c. O.1, s. 41.

Instruction and training

42 (1) In addition to providing information and instruction to a worker as required by clause 25 (2) (a), an employer shall ensure that a worker exposed or likely to be exposed to a hazardous material or to a hazardous physical agent receives, and that the worker participates in, such instruction and training as may be prescribed.

Consultation

(2) The instruction and training to be given under subsection (1) shall be developed and implemented by the employer in consultation with the committee or health and safety representative, if any, for the workplace.

Review

(3) An employer shall review, in consultation with the committee or health and safety representative, if any, for the workplace, the training and instruction provided to a worker and the worker's familiarity therewith at least annually.

Idem

(4) The review described in subsection (3) shall be held more frequently than annually, if,

(a) the employer, on the advice of the committee or health and safety representative, if any, for the workplace, determines that such reviews are necessary; or

(b) there is a change in circumstances that may affect the health or safety of a worker. R.S.O. 1990, c. O.1, s. 42.

PART V
RIGHT TO REFUSE OR TO STOP WORK WHERE HEALTH OR SAFETY IN DANGER

Refusal to work

Non-application to certain workers

43 (1) This section does not apply to a worker described in subsection (2),

(a) when a circumstance described in clause (3) (a), (b), (b.1) or (c) is inherent in the worker's work or is a normal condition of the worker's employment; or

(b) when the worker's refusal to work would directly endanger the life, health or safety of another person. R.S.O. 1990, c. O.1, s. 43 (1); 2009, c. 23, s. 4 (1).

Idem

(2) The worker referred to in subsection (1) is,

(a) a person employed in, or a member of, a police force to which the *Police Services Act* applies;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause 43 (2) (a) of the Act is amended by striking out "a police force to which the *Police Services Act* applies" at the end and substituting "a police service to which the *Community Safety and Policing Act, 2019* applies". (See: 2019, c. 1, Sched. 4, s. 39 (1))

(b) a firefighter as defined in subsection 1 (1) of the *Fire Protection and Prevention Act, 1997*;

(c) a person employed in the operation of,

(i) a correctional institution or facility,

(ii) a place of secure custody designated under section 24.1 of the *Young Offenders Act* (Canada), whether in accordance with section 88 of the *Youth Criminal Justice Act* (Canada) or otherwise,

(iii) a place of temporary detention under the *Youth Criminal Justice Act* (Canada), or

(iv) a similar institution, facility or place;

(d) a person employed in the operation of,

(i) a hospital, sanatorium, long-term care home, psychiatric institution, mental health centre or rehabilitation facility,

(ii) a residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental disability,

(iii) an ambulance service or a first aid clinic or station,

(iv) a laboratory operated by the Crown or licensed under the *Laboratory and Specimen Collection Centre Licensing Act*, or

(v) a laundry, food service, power plant or technical service or facility used in conjunction with an institution, facility or service described in subclause (i) to (iv). R.S.O. 1990, c. O.1, s. 43 (2); 1997, c. 4, s. 84; 2001, c. 13, s. 22; 2006, c. 19, Sched. D, s. 14; 2007, c. 8, s. 221.

Refusal to work

(3) A worker may refuse to work or do particular work where he or she has reason to believe that,

(a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;

(b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself;

(b.1) workplace violence is likely to endanger himself or herself; or

(c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker. R.S.O. 1990, c. O.1, s. 43 (3); 2009, c. 23, s. 4 (2).

Report of refusal to work

(4) Upon refusing to work or do particular work, the worker shall promptly report the circumstances of the refusal to the worker's employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

(a) a committee member who represents workers, if any;

(b) a health and safety representative, if any; or

(c) a worker who because of knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them,

who shall be made available and who shall attend without delay. R.S.O. 1990, c. O.1, s. 43 (4).

Worker to remain in safe place and available for investigation

(5) Until the investigation is completed, the worker shall remain,

(a) in a safe place that is as near as reasonably possible to his or her work station; and

(b) available to the employer or supervisor for the purposes of the investigation. 2009, c. 23, s. 4 (3).

Refusal to work following investigation

(6) Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable grounds to believe that,

(a) the equipment, machine, device or thing that was the cause of the refusal to work or do particular work continues to be likely to endanger himself, herself or another worker;

(b) the physical condition of the workplace or the part thereof in which he or she works continues to be likely to endanger himself or herself;

(b.1) workplace violence continues to be likely to endanger himself or herself; or

(c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention continues to be likely to endanger himself, herself or another worker,

the worker may refuse to work or do the particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof. R.S.O. 1990, c. O.1, s. 43 (6); 2009, c. 23, s. 4 (4).

Investigation by inspector

(7) An inspector shall investigate the refusal to work in consultation with the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause (4) (a), (b) or (c). 2001, c. 9, Sched. I, s. 3 (11).

Decision of inspector

(8) The inspector shall, following the investigation referred to in subsection (7), decide whether a circumstance described in clause (6) (a), (b), (b.1) or (c) is likely to endanger the worker or another person. 2009, c. 23, s. 4 (5).

Idem

(9) The inspector shall give his or her decision, in writing, as soon as is practicable, to the employer, the worker, and, if there is such, the person mentioned in clause (4) (a), (b) or (c). R.S.O. 1990, c. O.1, s. 43 (9).

Worker to remain in safe place and available for investigation

(10) Pending the investigation and decision of the inspector, the worker shall remain, during the worker's normal working hours, in a safe place that is as near as reasonably possible to his or her work station and available to the inspector for the purposes of the investigation. 2009, c. 23, s. 4 (6).

Exception

(10.1) Subsection (10) does not apply if the employer, subject to the provisions of a collective agreement, if any,

(a) assigns the worker reasonable alternative work during the worker's normal working hours; or

(b) subject to section 50, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker. 2009, c. 23, s. 4 (6).

Duty to advise other workers

(11) Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or thing or to work in the workplace or in the part of the workplace being investigated unless, in the presence of a person described in subsection (12), the worker has been advised of the other worker's refusal and of his or her reasons for the refusal. R.S.O. 1990, c. O.1, s. 43 (11).

Idem

(12) The person referred to in subsection (11) must be,

(a) a committee member who represents workers and, if possible, who is a certified member;

(b) a health and safety representative; or

(c) a worker who because of his or her knowledge, experience and training is selected by the trade union that represents the worker or, if there is no trade union, by the workers to represent them. R.S.O. 1990, c. O.1, s. 43 (12).

Entitlement to be paid

(13) A person shall be deemed to be at work and the person's employer shall pay him or her at the regular or premium rate, as may be proper,

(a) for the time spent by the person carrying out the duties under subsections (4) and (7) of a person mentioned in clause (4) (a), (b) or (c); and

(b) for time spent by the person carrying out the duties under subsection (11) of a person described in subsection (12). R.S.O. 1990, c. O.1, s. 43 (13).

Section Amendments with date in force (d/m/y)

1997, c. 4, s. 84 - 29/10/1997

2001, c. 9, Sched. I, s. 3 (11) - 29/06/2001; 2001, c. 13, s. 22 - 30/11/2001

2006, c. 19, Sched. D, s. 14 - 22/06/2006

2007, c. 8, s. 221 - 1/07/2010

2009, c. 23, s. 4 - 15/06/2010

2018, c. 3, Sched. 5, s. 41 (1) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019

2019, c. 1, Sched. 4, s. 39 (1) - not in force

Definition and non-application

Definition

44 (1) In sections 45 to 48,

"dangerous circumstances" means a situation in which,

(a) a provision of this Act or the regulations is being contravened,

(b) the contravention poses a danger or a hazard to a worker, and

(c) the danger or hazard is such that any delay in controlling it may seriously endanger a worker.

Non-application

(2) Sections 45 to 49 do not apply to,

(a) a workplace at which workers described in clause 43 (2) (a), (b) or (c) are employed; or

(b) a workplace at which workers described in clause 43 (2) (d) are employed if a work stoppage would directly endanger the life, health or safety of another person. R.S.O. 1990, c. O.1, s. 44.

Bilateral work stoppage

45 (1) A certified member who has reason to believe that dangerous circumstances exist at a workplace may request that a supervisor investigate the matter and the supervisor shall promptly do so in the presence of the certified member.

Investigation by second certified member

(2) The certified member may request that a second certified member representing the other workplace party investigate the matter if the first certified member has reason to believe that dangerous circumstances continue after the supervisor's investigation and remedial actions, if any.

Idem

(3) The second certified member shall promptly investigate the matter in the presence of the first certified member.

Direction following investigation

(4) If both certified members find that the dangerous circumstances exist, the certified members may direct the constructor or employer to stop the work or to stop the use of any part of a workplace or of any equipment, machine, device, article or thing.

Constructor's or employer's duties

(5) The constructor or employer shall immediately comply with the direction and shall ensure that compliance is effected in a way that does not endanger a person.

Investigation by inspector

(6) If the certified members do not agree whether dangerous circumstances exist, either certified member may request that an inspector investigate the matter and the inspector shall do so and provide the certified members with a written decision.

Cancellation of direction

(7) After taking steps to remedy the dangerous circumstances, the constructor or employer may request the certified members or an inspector to cancel the direction.

Idem

(8) The certified members who issued a direction may jointly cancel it or an inspector may cancel it.

Delegation by certified member

(9) In such circumstances as may be prescribed, a certified member who represents the constructor or employer shall designate a person to act under this section in his or her stead when the certified member is not available at the workplace. R.S.O. 1990, c. O.1, s. 45.

Declaration against constructor, etc.

46 (1) A certified member at a workplace or an inspector who has reason to believe that the procedure for stopping work set out in section 45 will not be sufficient to protect a constructor's or employer's workers at the workplace from serious risk to their health or safety may apply to the Board for a declaration or recommendation described in subsection (5), or both. R.S.O. 1990, c. O.1, s. 46 (1); 1998, c. 8, s. 53 (1).

(2) REPEALED: 1998, c. 8, s. 53 (2).

Minister a party

(3) The Minister is entitled to be a party to a proceeding before the Board. R.S.O. 1990, c. O.1, s. 46 (3); 1998, c. 8, s. 53 (3).

Board procedure, etc.

(4) Subsections 61 (2) to (3.13) and subsection 61 (8) apply, with necessary modifications, with respect to applications under this section. 1998, c. 8, s. 53 (4).

Declaration and recommendation

(5) If the Board finds that the procedure for stopping work set out in section 45 will not be sufficient to protect the constructor's or employer's workers at the workplace from serious risk to their health or safety, the Board,

(a) may issue a declaration that the constructor or employer is subject to the procedure for stopping work set out in section 47 for the period specified; and

(b) may recommend to the Minister that an inspector be assigned to oversee the health and safety practices of the constructor or employer at the workplace on a full-time or part-time basis for a specified period. R.S.O. 1990, c. O.1, s. 46 (5); 1998, c. 8, s. 53 (5).

Criteria

(6) In making a finding under subsection (5), the Board shall determine, using the prescribed criteria, whether the constructor or employer has demonstrated a failure to protect the health and safety of workers and shall consider such other matters as may be prescribed. R.S.O. 1990, c. O.1, s. 46 (6); 1998, c. 8, s. 53 (6).

Decision final

(7) The decision of the Board on an application is final. R.S.O. 1990, c. O.1, s. 46 (7); 1998, c. 8, s. 53 (7).

Costs of inspector

(8) The employer shall reimburse the Province of Ontario for the wages, benefits and expenses of an inspector assigned to the employer as recommended by the Board. 1998, c. 8, s. 53 (8).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 53 - 29/06/1998

Unilateral work stoppage

47 (1) This section applies, and section 45 does not apply, to a constructor or an employer,

(a) against whom the Board has issued a declaration under section 46; or

(b) who advises the committee at a workplace in writing that the constructor or employer adopts the procedures set out in this section respecting work stoppages. R.S.O. 1990, c. O.1, s. 47 (1); 1998, c. 8, s. 54.

Direction re work stoppage

(2) A certified member may direct the constructor or employer to stop specified work or to stop the use of any part of a workplace or of any equipment, machine, device, article or thing if the certified member finds that dangerous circumstances exist.

Constructor's or employer's duties

(3) The constructor or employer shall immediately comply with the direction and shall ensure that compliance is effected in a way that does not endanger a person.

Investigation by constructor, etc.

(4) After complying with the direction, the constructor or employer shall promptly investigate the matter in the presence of the certified member.

Investigation by inspector

(5) If the certified member and the constructor or employer do not agree whether dangerous circumstances exist, the constructor or employer or the certified member may request that an inspector investigate the matter and the inspector shall do so and provide them with a written decision.

Cancellation of direction

(6) After taking steps to remedy the dangerous circumstances, the constructor or employer may request the certified member or an inspector to cancel the direction.

Idem

(7) The certified member who made the direction or an inspector may cancel it. R.S.O. 1990, c. O.1, s. 47 (2-7).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 54 - 29/06/1998

Entitlement to investigate

48 (1) A certified member who receives a complaint that dangerous circumstances exist is entitled to investigate the complaint.

Entitlement to be paid

(2) The time spent by a certified member in exercising powers and carrying out duties under this section and sections 45 and 47 shall be deemed to be work time for which the member's employer shall pay the member at the regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 48.

Complaint re direction to stop work

49 (1) A constructor, an employer, a worker at the workplace or a representative of a trade union that represents workers at the workplace may file a complaint with the Board if he, she or it has reasonable grounds to believe that a certified member at the workplace recklessly or in bad faith exercised or failed to exercise a power under section 45 or 47. R.S.O. 1990, c. O.1, s. 49 (1); 1998, c. 8, s. 55 (1).

Limitation

(2) A complaint must be filed not later than 30 days after the event to which the complaint relates. R.S.O. 1990, c. O.1, s. 49 (2); 1998, c. 8, s. 55 (2).

Minister a party

(3) The Minister is entitled to be a party to a proceeding before the Board. R.S.O. 1990, c. O.1, s. 49 (3); 1998, c. 8, s. 55 (3).

Board procedure, etc.

(3.1) Subsections 61 (2) to (3.13) and subsection 61 (8) apply, with necessary modifications, with respect to complaints under this section. 1998, c. 8, s. 55 (4).

Determination of complaint

(4) The Board shall make a decision respecting the complaint and may make such order as it considers appropriate in the circumstances including an order decertifying a certified member. 1998, c. 8, s. 55 (5).

Decision final

(5) The decision of the Board is final. R.S.O. 1990, c. O.1, s. 49 (5); 1998, c. 8, s. 55 (6).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 55 - 29/06/1998

PART VI
REPRISALS BY EMPLOYER PROHIBITED

No discipline, dismissal, etc., by employer

50 (1) No employer or person acting on behalf of an employer shall,

(a) dismiss or threaten to dismiss a worker;

(b) discipline or suspend or threaten to discipline or suspend a worker;

(c) impose any penalty upon a worker; or

(d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the *Coroners Act*. R.S.O. 1990, c. O.1, s. 50 (1).

Arbitration

(2) Where a worker complains that an employer or person acting on behalf of an employer has contravened subsection (1), the worker may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement,

if any, or file a complaint with the Board in which case any rules governing the practice and procedure of the Board apply with all necessary modifications to the complaint. 1998, c. 8, s. 56 (1).

Referral by inspector

(2.1) Where the circumstances warrant, an inspector may refer a matter to the Board if the following conditions are met:

1. The worker has not had the matter dealt with by final and binding settlement by arbitration under a collective agreement or filed a complaint with the Board under subsection (2).
2. The worker consents to the referral. 2011, c. 11, s. 13 (1).

Same

(2.2) Any rules governing the practice and procedure of the Board apply with all necessary modifications to a referral made under subsection (2.1). 2011, c. 11, s. 13 (1).

Referral not an order

(2.3) A referral made under subsection (2.1) is not an order or decision for the purposes of section 61. 2011, c. 11, s. 13 (1).

Inquiry by Board

(3) The Board may inquire into any complaint filed under subsection (2) or referral made under subsection (2.1) and section 96 of the *Labour Relations Act, 1995*, except subsection (5), applies with all necessary modifications as if such section, except subsection (5), is enacted in and forms part of this Act. 1998, c. 8, s. 56 (1); 2011, c. 11, s. 13 (2).

Same

(4) On an inquiry by the Board into a complaint filed under subsection (2) or a referral made under subsection (2.1), sections 110, 111, 114 and 116 of the *Labour Relations Act, 1995* apply with all necessary modifications. 1998, c. 8, s. 56 (1); 2011, c. 11, s. 13 (3).

Rules to expedite proceedings

(4.1) The chair of the Board may make rules under subsection 110 (18) of the *Labour Relations Act, 1995* to expedite proceedings relating to a complaint filed under subsection (2) or a referral made under subsection (2.1). 2011, c. 11, s. 13 (4).

Same

(4.2) Subsections 110 (20), (21) and (22) of the *Labour Relations Act, 1995* apply, with necessary modifications, to rules made under subsection (4.1). 2011, c. 11, s. 13 (4); 2018, c. 14, Sched. 2, s. 21.

Onus of proof

(5) On an inquiry by the Board into a complaint filed under subsection (2) or a referral made under subsection (2.1), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection (1) lies upon the employer or the person acting on behalf of the employer. R.S.O. 1990, c. O.1, s. 50 (5); 1998, c. 8, s. 56 (2); 2011, c. 11, s. 13 (5).

Jurisdiction when complaint by public servant

(6) The Board shall exercise jurisdiction under this section when a complaint filed under subsection (2) or a referral made under subsection (2.1) is in respect of a worker who is a public servant within the meaning of the *Public Service of Ontario Act, 2006*. 2011, c. 11, s. 13 (6).

Board may substitute penalty

(7) Where on an inquiry by the Board into a complaint filed under subsection (2) or a referral made under subsection (2.1), the Board determines that a worker has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances. 1995, c. 1, s. 84 (1); 1998, c. 8, s. 56 (4); 2011, c. 11, s. 13 (7).

Note: A complaint under subsection 50 (2) in which a final decision has not been issued on November 10, 1995 shall be decided as if subsection 50 (7), as re-enacted by the Statutes of Ontario, 1995, chapter 1, subsection 84 (1), were in force at all material times. See: 1995, c. 1, s. 84 (2).

Exception

(8) Despite subsections (2) and (2.1), a person who is subject to a rule or code of discipline under the *Police Services Act* shall have his or her complaint in relation to an alleged contravention of subsection (1) dealt with under that Act. R.S.O. 1990, c. O.1, s. 50 (8); 2011, c. 11, s. 13 (8).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 50 (8) of the Act is repealed and the following substituted: (See: 2019, c. 1, Sched. 4, s. 39 (2))

Exception

(8) Despite subsections (2) and (2.1), a police officer under the *Community Safety and Policing Act, 2019* shall have his or her complaint in relation to an alleged contravention of subsection (1) dealt with under section 191 of that Act, with necessary modifications. 2019, c. 1, Sched. 4, s. 39 (2).

Section Amendments with date in force (d/m/y)

1995, c. 1, s. 84 (1-2) - 10/11/1995

1998, c. 8, s. 56 (1-4) - 29/06/1998

2006, c. 35, Sched. C, s. 93 (5) - 20/08/2007

2011, c. 11, s. 13 - 01/04/2012

2018, c. 3, Sched. 5, s. 41 (2) - no effect - see 2019, c. 1, Sched. 3, s. 5 - 26/03/2019; 2018, c. 14, Sched. 2, s. 21 - 21/11/2018

2019, c. 1, Sched. 4, s. 39 (2) - not in force

Offices of the Worker and Employer Advisers

Office of the Worker Adviser

50.1 (1) In addition to the functions set out in section 176 of the *Workplace Safety and Insurance Act, 1997*, the Office of the Worker Adviser has the functions prescribed for the purposes of this Part, with respect to workers who are not members of a trade union. 2011, c. 11, s. 14.

Office of the Employer Adviser

(2) In addition to the functions set out in section 176 of the *Workplace Safety and Insurance Act, 1997*, the Office of the Employer Adviser has the functions prescribed for the purposes of this Part, with respect to employers that have fewer than 100 employees or such other number as may be prescribed. 2011, c. 11, s. 14.

Costs

(3) In determining the amount of the costs that may be incurred by each office under subsection 176 (3) of the *Workplace Safety and Insurance Act, 1997*, the Minister shall take into account any functions prescribed for the purposes of this Part. 2011, c. 11, s. 14.

Section Amendments with date in force (d/m/y)

2011, c. 11, s. 14 - 1/04/2012

PART VII
NOTICES

Notice of death or injury

51 (1) Where a person is killed or critically injured from any cause at a workplace, the constructor, if any, and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe. R.S.O. 1990, c. O.1, s. 51 (1); 2011, c. 1, Sched. 7, s. 2 (7).

Preservation of wreckage

(2) Where a person is killed or is critically injured at a workplace, no person shall, except for the purpose of,

(a) saving life or relieving human suffering;

(b) maintaining an essential public utility service or a public transportation system; or

(c) preventing unnecessary damage to equipment or other property,

interfere with, disturb, destroy, alter or carry away any wreckage, article or thing at the scene of or connected with the occurrence until permission so to do has been given by an inspector. R.S.O. 1990, c. O.1, s. 51 (2).

Section Amendments with date in force (d/m/y)

2011, c. 1, Sched. 7, s. 2 (7) - 30/03/2011

Notice of accident, explosion, fire or violence causing injury

52 (1) If a person is disabled from performing his or her usual work or requires medical attention because of an accident, explosion, fire or incident of workplace violence at a workplace, but no person dies or is critically injured because of that occurrence, the employer shall, within four days of the occurrence, give written notice of the occurrence containing the prescribed information and particulars to the following:

1. The committee, the health and safety representative and the trade union, if any.
2. The Director, if an inspector requires notification of the Director. 2001, c. 9, Sched. I, s. 3 (12); 2009, c. 23, s. 5.

Notice of occupational illness

(2) If an employer is advised by or on behalf of a worker that the worker has an occupational illness or that a claim in respect of an occupational illness has been filed with the Workplace Safety and Insurance Board by or on behalf of the worker, the employer shall give notice in writing, within four days of being so advised, to a Director, to the committee or a health and safety representative and to the trade union, if any, containing such information and particulars as are prescribed. R.S.O. 1990, c. O.1, s. 52 (2); 1997, c. 16, s. 2 (12).

Idem

(3) Subsection (2) applies with all necessary modifications if an employer is advised by or on behalf of a former worker that the worker has or had an occupational illness or that a claim in respect of an occupational illness has been filed with the Workplace Safety and Insurance Board by or on behalf of the worker. R.S.O. 1990, c. O.1, s. 52 (3); 1997, c. 16, s. 2 (13).

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (12, 13) - 1/01/1998

2001, c. 9, Sched. I, s. 3 (12) - 29/06/2001

2009, c. 23, s. 5 - 15/06/2010

Accident, etc., at project site or mine

53 (1) If an accident, premature or unexpected explosion, fire, flood or inrush of water, failure of any equipment, machine, device, article or thing, cave-in, subsidence, rockburst, or other prescribed incident occurs at a project site, mine, mining plant or other prescribed location, the person determined under subsection (2) shall, within two days after the occurrence, give notice in writing with the prescribed information and particulars,

(a) to the committee, health and safety representative and trade union, if any; and

(b) to a Director, unless a report under section 51 or a notice under section 52 has already been given to a Director. 2011, c. 1, Sched. 7, s. 2 (8); 2017, c. 34, Sched. 30, s. 2 (1).

Person required to notify

(2) The person required to give notice under subsection (1) is,

(a) if the incident takes place at a project site, the constructor of the project;

(b) if the incident occurs at a mine or a mining plant, the employer of a worker who works in the mine or plant; or

(c) if the incident occurs at a prescribed location, the person prescribed for that location. 2017, c. 34, Sched. 30, s. 2 (2).

Section Amendments with date in force (d/m/y)

2011, c. 1, Sched. 7, s. 2 (8) - 30/03/2011

2017, c. 34, Sched. 30, s. 2 (1, 2) - 14/12/2017

Additional notices

53.1 In addition to the notice requirements set out in sections 51, 52 and 53, the regulations may specify additional notice requirements that must be met in the circumstances described in those sections, including specifying who is required to provide the notice, the timeframe in which it shall be provided and the information and particulars it must contain. 2017, c. 34, Sched. 30, s. 3.

Section Amendments with date in force (d/m/y)

2017, c. 34, Sched. 30, s. 3 - 14/12/2017

PART VIII
ENFORCEMENT

Powers of inspector

54 (1) An inspector may, for the purposes of carrying out his or her duties and powers under this Act and the regulations,

(a) subject to subsection (2), enter in or upon any workplace at any time without warrant or notice;

(b) take up or use any machine, device, article, thing, material or biological, chemical or physical agent or part thereof;

(c) require the production of any drawings, specifications, licence, document, record or report, and inspect, examine and copy the same;

(d) upon giving a receipt therefor, remove any drawings, specifications, licence, document, record or report inspected or examined for the purpose of making copies thereof or extracts therefrom, and upon making copies thereof or extracts therefrom, shall promptly return the same to the person who produced or furnished them;

(e) conduct or take tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a workplace and for such purposes, take and carry away such samples as may be necessary;

(f) require in writing an employer to cause any tests described in clause (e) to be conducted or taken, at the expense of the employer, by a person possessing such special expert or professional knowledge or qualifications as are specified by the inspector and to provide, at the expense of the employer, a report or assessment by that person;

(g) in any inspection, examination, inquiry or test, be accompanied and assisted by or take with him or her any person or persons having special, expert or professional knowledge of any matter, take photographs, and take with him or her and use any equipment or materials required for such purpose;

(h) make inquiries of any person who is or was in a workplace either separate and apart from another person or in the presence of any other person that are or may be relevant to an inspection, examination, inquiry or test;

(i) require that a workplace or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, investigation or test;

(j) require that any equipment, machine, device, article, thing or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination, inquiry or test;

(k) require in writing an employer to have equipment, machinery or devices tested, at the expense of the employer, by a professional engineer and to provide, at the expense of the employer, a report bearing the seal and signature of the professional engineer stating that the equipment, machine or device is not likely to endanger a worker;

(l) require in writing that any equipment, machinery or device not be used pending testing described in clause (k);

(m) require in writing an owner, constructor or employer to provide, at the expense of the owner, constructor or employer, a report bearing the seal and signature of a professional engineer stating,

(i) the load limits of a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent,

(ii) that a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting or withstanding the loads being applied to it or likely to be applied to it, or

(iii) that a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting any loads that may be applied to it,

(A) as determined by the applicable design requirements established under the version of the Building Code that was in force at the time of its construction,

(B) in accordance with such other requirements as may be prescribed, or

(C) in accordance with good engineering practice, if sub-subclauses (A) and (B) do not apply;

(n) require in writing an owner of a mine or part thereof to provide, at the owner's expense, a report in writing bearing the seal and signature of a professional engineer stating that the ground stability of, the mining methods and the support or rock reinforcement used in the mine or part thereof is such that a worker is not likely to be endangered;

(o) require in writing, within such time as is specified, a person who is an employer, manufacturer, producer, importer, distributor or supplier to produce records or information, or to provide, at the expense of the person, a report or evaluation made or to be made by a person or organization having special, expert or professional knowledge or

qualifications as are specified by the inspector of any process or biological, chemical or physical agents or combination of such agents present, used or intended for use in a workplace and the manner of use, including,

(i) the ingredients thereof and their common or generic name or names,

(ii) the composition and the properties thereof,

(iii) the toxicological effect thereof,

(iv) the effect of exposure thereto whether by contact, inhalation or ingestion,

(v) the protective measures used or to be used in respect thereof,

(vi) the emergency measures used or to be used to deal with exposure in respect thereof, and

(vii) the effect of the use, transport and disposal thereof; and

(p) require the production of any materials concerning the content, frequency and manner of instruction of any training program and inspect, examine and copy the materials and attend any such program. R.S.O. 1990, c. O.1, s. 54 (1); 2011, c. 11, s. 15.

Entry to dwellings

(2) An inspector may only enter a dwelling or that part of a dwelling actually being used as a workplace with the consent of the occupier or under the authority of a warrant issued under this Act or the *Provincial Offences Act*. 2001, c. 26, s. 1.

Representative to accompany inspector

(3) Where an inspector makes an inspection of a workplace under the powers conferred upon him or her under subsection (1), the constructor, employer or group of employers shall afford a committee member representing workers or a health and safety representative, if any, or a worker selected by a trade union or trade unions, if any, because of knowledge, experience and training, to represent it or them and, where there is no trade union, a worker selected by the workers because of knowledge, training and experience to represent them, the opportunity to accompany the inspector during his or her physical inspection of a workplace, or any part or parts thereof. R.S.O. 1990, c. O.1, s. 54 (3).

Consultation with workers

(4) Where there is no committee member representing workers, no health and safety representative or worker selected under subsection (3), the inspector shall endeavour to consult during his or her physical inspection with a reasonable number of the workers concerning matters of health and safety at their work. R.S.O. 1990, c. O.1, s. 54 (4).

Entitlement to time from work

(5) The time spent by a committee member representing workers, a health and safety representative or a worker selected in accordance with subsection (3) in accompanying an inspector during his or her physical inspection, shall be deemed to be work time for which he or she shall be paid by his or her employer at his or her regular or premium rate as may be proper. R.S.O. 1990, c. O.1, s. 54 (5).

Section Amendments with date in force (d/m/y)

2001, c. 26, s. 1 - 12/12/2001

2011, c. 11, s. 15 - 1/06/2011

Order for inspections

55 Subject to subsections 8 (6) and 9 (26), an inspector may in writing direct a health and safety representative or a member designated under subsection 9 (23) to inspect the physical condition of all or part of a workplace at specified intervals. R.S.O. 1990, c. O.1, s. 55; 2009, c. 33, Sched. 20, s. 3 (2).

Section Amendments with date in force (d/m/y)

2009, c. 33, Sched. 20, s. 3 (2) - 15/12/2009

Order for written policies

55.1 In the case of a workplace at which the number of workers regularly employed is five or fewer, an inspector may in writing order that the policies with respect to workplace violence and workplace harassment required under section 32.0.1 be in written form and posted at a conspicuous place in the workplace. 2009, c. 23, s. 6; 2011, c. 1, Sched. 7, s. 2 (9).

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 6 - 15/06/2010

2011, c. 1, Sched. 7, s. 2 (9) - 30/03/2011

Order for written assessment, etc.

55.2 An inspector may in writing order that the following be in written form:

1. The assessment of the risks of workplace violence required under subsection 32.0.3 (1).
2. A reassessment required under subsection 32.0.3 (4). 2009, c. 23, s. 6.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 6 - 15/06/2010

Order for workplace harassment investigation

55.3 (1) An inspector may in writing order an employer to cause an investigation described in clause 32.0.7 (1) (a) to be conducted, at the expense of the employer, by an impartial person possessing such knowledge, experience or qualifications as are specified by the inspector and to obtain, at the expense of the employer, a written report by that person. 2016, c. 2, Sched. 4, s. 4.

Report

(2) A report described in subsection (1) is not a report respecting occupational health and safety for the purposes of subsection 25 (2). 2016, c. 2, Sched. 4, s. 4.

Section Amendments with date in force (d/m/y)

2016, c. 2, Sched. 4, s. 4 - 08/09/2016

Warrants – investigative techniques, etc.

56 (1) On application without notice, a justice of the peace or a provincial judge may issue a warrant authorizing an inspector, subject to this section, to use any investigative technique or procedure or to do any thing described in the warrant if the justice of the peace or provincial judge, as the case may be, is satisfied by information under oath that there are reasonable grounds to believe that an offence against this Act or the regulations has been or is being committed and that information and other evidence concerning the offence will be obtained through the use of the technique or procedure or the doing of the thing. 2001, c. 26, s. 2.

Expert help

(1.1) The warrant may authorize persons who have special, expert or professional knowledge to accompany and assist the inspector in the execution of the warrant. 2001, c. 26, s. 2.

Terms and conditions of warrant

(1.2) The warrant shall authorize the inspector to enter and search the place for which the warrant was issued and, without limiting the powers of the justice of the peace or the provincial judge under subsection (1), the warrant may, in respect of the alleged offence, authorize the inspector to,

(a) seize or examine and copy any drawings, specifications, licence, document, record or report;

(b) seize or examine any equipment, machine, device, article, thing, material or biological, chemical or physical agent;

(c) require a person to produce any item described in clause (a) or (b);

(d) conduct or take tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent, and take and carry away samples from the testing;

(e) take measurements of and record by any means the physical circumstances of the workplace; and

(f) make inquiries of any person either separate and apart from another person or in the presence of any other person. 2001, c. 26, s. 2.

Duration

(1.3) The warrant is valid for 30 days or for such shorter period as may be specified in it. 2001, c. 26, s. 2.

Other terms and conditions

(1.4) The warrant may contain terms and conditions in addition to those provided for in subsections (1) to (1.3) as the justice of the peace or provincial judge, as the case may be, considers advisable in the circumstances. 2001, c. 26, s. 2.

Further warrants

(1.5) A justice of the peace or provincial judge may issue further warrants under subsection (1). 2001, c. 26, s. 2.

Powers, duties not restricted

(1.6) Nothing in this section restricts any power or duty of an inspector under this Act or the regulations. 2001, c. 26, s. 2.

Possession

(2) The inspector may remove any thing seized under a warrant from the place from which it was seized or may detain it in that place. 2001, c. 26, s. 2.

Notice and receipt

(3) The inspector shall inform the person from whom the thing is seized as to the reason for the seizure and shall give the person a receipt for it. R.S.O. 1990, c. O.1, s. 56 (3).

Report to justice

(4) The inspector shall bring a thing seized under the authority of this section before a provincial judge or justice of the peace or, if that is not reasonably possible, shall report the seizure to a provincial judge or justice of the peace. R.S.O. 1990, c. O.1, s. 56 (4).

Procedure

(5) Sections 159 and 160 of the *Provincial Offences Act* apply with necessary modifications in respect of a thing seized under the authority of this section. R.S.O. 1990, c. O.1, s. 56 (5).

Section Amendments with date in force (d/m/y)

2001, c. 26, s. 2 - 12/12/2001

Power of inspector to seize

56.1 (1) An inspector who executes a warrant issued under section 56 may seize or examine and copy any drawings, specifications, licence, document, record or report or seize or examine any equipment, machine, device, article, thing, material or biological, chemical or physical agent, in addition to those mentioned in the warrant, that he or she believes on reasonable grounds will afford evidence in respect of an offence under this Act or the regulations. 2001, c. 26, s. 3.

Searches in exigent circumstances

(2) Although a warrant issued under section 56 would otherwise be required, an inspector may exercise any of the powers described in subsection 56 (1) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would be impracticable to obtain the warrant. 2001, c. 26, s. 3.

Report to justice, etc.

(3) Subsections 56 (3), (4) and (5) apply with necessary modifications to a thing seized under this section. 2001, c. 26, s. 3.

Section Amendments with date in force (d/m/y)

2001, c. 26, s. 3 - 12/12/2001

Orders by inspectors where non-compliance

57 (1) Where an inspector finds that a provision of this Act or the regulations is being contravened, the inspector may order, orally or in writing, the owner, constructor, licensee, employer, or person whom he or she believes to be in charge of a workplace or the person whom the inspector believes to be the contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies. R.S.O. 1990, c. O.1, s. 57 (1).

Idem

(2) Where an inspector makes an oral order under subsection (1), the inspector shall confirm the order in writing before leaving the workplace. R.S.O. 1990, c. O.1, s. 57 (2).

Contents of order

(3) An order made under subsection (1) shall indicate generally the nature of the contravention and where appropriate the location of the contravention. R.S.O. 1990, c. O.1, s. 57 (3).

Compliance plan

(4) An order made under subsection (1) may require a constructor, a licensee or an employer to submit to the Ministry a compliance plan prepared in the manner and including such items as required by the order. R.S.O. 1990, c. O.1, s. 57 (4).

Idem

(5) The compliance plan shall specify what the constructor, licensee or employer plans to do to comply with the order and when the constructor, licensee or employer intends to achieve compliance. R.S.O. 1990, c. O.1, s. 57 (5).

Orders by inspector where worker endangered

(6) Where an inspector makes an order under subsection (1) and finds that the contravention of this Act or the regulations is a danger or hazard to the health or safety of a worker, the inspector may,

(a) order that any place, equipment, machine, device, article or thing or any process or material shall not be used until the order is complied with;

(b) order that the work at the workplace as indicated in the order shall stop until the order to stop work is withdrawn or cancelled by an inspector after an inspection;

(c) order that the workplace where the contravention exists be cleared of workers and isolated by barricades, fencing or any other means suitable to prevent access thereto by a worker until the danger or hazard to the health or safety of a worker is removed. R.S.O. 1990, c. O.1, s. 57 (6).

Resumption of work pending inspection

(7) Despite clause (6) (b), a constructor, a licensee or an employer who gives notice to an inspector of compliance with an order made under subsection (6) may resume work pending an inspection and decision by an inspector respecting compliance with the order if, before the resumption of work, a committee member representing workers or a health and safety representative, as the case may be, advises an inspector that in his or her opinion the order has been complied with. R.S.O. 1990, c. O.1, s. 57 (7).

Additional orders

(8) In addition to the orders that may be made under subsection (6), where an inspector makes an order under subsection (1) for a contravention of section 37 or 41 or a Director has been advised of an employer's inability to obtain a current safety data sheet, the inspector may order that the hazardous material shall not be used or that the thing that causes, emits or produces the hazardous physical agent not be used or operated until the order is withdrawn or cancelled. R.S.O. 1990, c. O.1, s. 57 (8); 2015, c. 27, Sched. 4, s. 6.

Posting of notice

(9) Where an inspector makes an order under this section, he or she may affix to the workplace, or to any equipment, machine, device, article or thing, a copy thereof or a notice of the order, in a form obtained from the Ministry, and no person, except an inspector, shall remove such copy or notice unless authorized to do so by an inspector. R.S.O. 1990, c. O.1, s. 57 (9); 2011, c. 1, Sched. 7, s. 2 (10).

Same

(10) Where an inspector makes an order in writing or issues a report of his or her inspection to an owner, constructor, licensee, employer or person in charge of the workplace,

(a) the owner, constructor, licensee, employer or person in charge of the workplace shall forthwith cause a copy or copies of it to be posted in a conspicuous place or places at the workplace where it is most likely to come to the attention of the workers and shall furnish a copy of the order or report to the health and safety representative and the committee, if any; and

(b) if the order or report resulted from a complaint of a contravention of this Act or the regulations and the person who made the complaint requests a copy of it, the inspector shall cause a copy of it to be furnished to that person. 2001, c. 9, Sched. I, s. 3 (13).

No hearing required prior to making order

(11) An inspector is not required to hold or afford to an owner, constructor, licensee, employer or any other person an opportunity for a hearing before making an order. R.S.O. 1990, c. O.1, s. 57 (11).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (13) - 29/06/2001

2011, c. 1, Sched. 7, s. 2 (10) - 30/03/2011; 2011, c. 1, Sched. 7, s. 2 (12, 13) - no effect - see 2015, c. 27, Sched. 4, s. 11 - 03/12/2015

2015, c. 27, Sched. 4, s. 6 - 01/07/2016

Entry into barricaded area

58 Where an order is made under clause 57 (6) (c), no owner, constructor, employer or supervisor shall require or permit a worker to enter the workplace except for the purpose of doing work that is necessary or required to remove the danger or hazard and only where the worker is protected from the danger or hazard. R.S.O. 1990, c. O.1, s. 58.

Notice of compliance

59 (1) Within three days after a constructor or employer who has received an order under section 57 believes that compliance with the order has been achieved, the constructor or employer shall submit to the Ministry a notice of compliance.

Idem

(2) The notice shall be signed by the constructor or employer and shall be accompanied by,

(a) a statement of agreement or disagreement with the contents of the notice, signed by a member of the committee representing workers or by a health and safety representative, as the case may be; or

(b) a statement that the member or representative has declined to sign the statement referred to in clause (a).

Idem

(3) The constructor or employer shall post the notice and the order issued under section 57 for a period of fourteen days following its submission to the Ministry in a place or places in the workplace where it is most likely to come to the attention of workers.

Compliance achieved

(4) Despite the submission of a notice of compliance, a constructor or employer achieves compliance with an order under section 57 when an inspector determines that compliance has been achieved. R.S.O. 1990, c. O.1, s. 59.

Injunction proceedings

60 In addition to any other remedy or penalty therefor, where an order made under subsection 57 (6) is contravened, such contravention may be restrained upon an application made without notice to a judge of the Superior Court of Justice made at the instance of a Director. R.S.O. 1990, c. O.1, s. 60; 2001, c. 9, Sched. I, s. 3 (14).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (14) - 29/06/2001

Appeals from order of an inspector

61 (1) Any employer, constructor, licensee, owner, worker or trade union which considers himself, herself or itself aggrieved by any order made by an inspector under this Act or the regulations may appeal to the Board within 30 days after the making of the order. 1998, c. 8, s. 57 (1).

Parties

(2) The following are parties to the appeal:

1. The appellant.
2. In the case of an appeal by an employer, the employer's workers and each trade union representing any of the workers.
3. In the case of an appeal by a worker or trade union representing a worker, the worker's employer.
4. A Director.
5. Such other persons as the Board may specify. 1998, c. 8, s. 57 (2); 2011, c. 1, Sched. 7, s. 2 (11).

Inquiry by labour relations officer

(3) The Board may authorize a labour relations officer to inquire into an appeal. 1998, c. 8, s. 57 (2).

Same

(3.1) The labour relations officer shall forthwith inquire into the appeal and endeavour to effect a settlement of the matters raised in the appeal. 1998, c. 8, s. 57 (2).

Report to Board

(3.2) The labour relations officer shall report the results of his or her inquiry and endeavours to the Board. 1998, c. 8, s. 57 (2).

Hearings

(3.3) Subject to the rules made under subsection (3.8), the Board shall hold a hearing to consider the appeal unless the Board makes an order under subsection (3.4). 1998, c. 8, s. 57 (2).

Orders after consultation

(3.4) The Board may make any interim or final order it considers appropriate after consulting with the parties. 1998, c. 8, s. 57 (2).

Same

(3.5) The *Statutory Powers Procedure Act* does not apply with respect to a consultation the Board makes under subsection (3.4). 1998, c. 8, s. 57 (2).

Practice and procedure

(3.6) The Board shall determine its own practice and procedure but shall give full opportunity to the parties to present their evidence and to make their submissions. 1998, c. 8, s. 57 (2).

Rules of practice

(3.7) The chair may make rules governing the Board's practice and procedure and the exercise of its powers and prescribing such forms as the chair considers advisable. 1998, c. 8, s. 57 (2).

Expedited appeals

(3.8) The chair of the Board may make rules to expedite appeals and such rules,

(a) may provide that the Board is not required to hold a hearing; and

(b) may limit the extent to which the Board is required to give full opportunity to the parties to present their evidence and to make their submissions. 1998, c. 8, s. 57 (2).

Effective date of rules

(3.9) Rules made under subsection (3.8) come into force on such dates as the Lieutenant Governor in Council may by order determine. 1998, c. 8, s. 57 (2).

Conflict with *Statutory Powers Procedure Act*

(3.10) Rules made under this section apply despite anything in the *Statutory Powers Procedure Act*. 1998, c. 8, s. 57 (2).

Rules not regulations

(3.11) Rules made under this section are not regulations within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. 1998, c. 8, s. 57 (2); 2006, c. 21, Sched. F, s. 136 (1).

Quorum

(3.12) The chair or a vice-chair of the Board constitutes a quorum for the purposes of this section and is sufficient for the exercise of the jurisdiction and powers of the Board under this section. 1998, c. 8, s. 57 (2).

Entering premises

(3.13) For the purposes of an appeal under this section, the Board may enter any premises where work is being or has been done by workers or in which the employer carries on business, whether or not the premises are those of the employer, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any matter and post therein any notice that the Board considers necessary to bring to the attention of persons having an interest in the appeal. 1998, c. 8, s. 57 (2).

Powers of the Board

(4) On an appeal under this section, the Board may substitute its findings for those of the inspector who made the order appealed from and may rescind or affirm the order or make a new order in substitution therefor, and for such purpose has all the powers of an inspector and the order of the Board shall stand in the place of and have the like effect under this Act and the regulations as the order of the inspector. 1998, c. 8, s. 57 (2).

Order, extended meaning

(5) In this section, an order of an inspector under this Act or the regulations includes any order or decision made or given or the imposition of any terms or conditions therein by an inspector under the authority of this Act or the regulations or the refusal to make an order or decision by an inspector. R.S.O. 1990, c. O.1, s. 61 (5).

Decision of adjudicator final

(6) A decision of the Board under this section is final. R.S.O. 1990, c. O.1, s. 61 (6); 1998, c. 8, s. 57 (3).

Suspension of order by adjudicator pending disposition of appeal

(7) On an appeal under subsection (1), the Board may suspend the operation of the order appealed from pending the disposition of the appeal. R.S.O. 1990, c. O.1, s. 61 (7); 1998, c. 8, s. 57 (4).

Reconsideration

(8) The Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it under this section and may vary or revoke any such decision, order, direction, declaration or ruling. 1998, c. 8, s. 57 (5).

Section Amendments with date in force (d/m/y)

1998, c. 8, s. 57 - 29/06/1998

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

2011, c. 1, Sched. 7, s. 2 (11) - 30/03/2011

Obstruction of inspector

62 (1) No person shall hinder, obstruct, molest or interfere with or attempt to hinder, obstruct, molest or interfere with an inspector in the exercise of a power or the performance of a duty under this Act or the regulations or in the execution of a warrant issued under this Act or the *Provincial Offences Act* with respect to a matter under this Act or the regulations. 2001, c. 26, s. 4.

Assistance

(2) Every person shall furnish all necessary means in the person's power to facilitate any entry, search, inspection, investigation, examination, testing or inquiry by an inspector,

(a) in the exercise of his or her powers or the performance of his or her duties under this Act or the regulations; or

(b) in the execution of a warrant issued under this Act or the *Provincial Offences Act* with respect to a matter under this Act or the regulations. 2001, c. 26, s. 4.

False information, etc.

(3) No person shall knowingly furnish an inspector with false information or neglect or refuse to furnish information required by an inspector,

(a) in the exercise of his or her powers or the performance of his or her duties under this Act or the regulations; or

(b) in the execution of a warrant issued under this Act or the *Provincial Offences Act* with respect to a matter under this Act or the regulations. 2001, c. 26, s. 4.

Monitoring devices

(4) No person shall interfere with any monitoring equipment or device in a workplace. R.S.O. 1990, c. O.1, s. 62 (4).

Obstruction of committee, etc.

(5) No person shall knowingly,

(a) hinder or interfere with a committee, a committee member or a health and safety representative in the exercise of a power or performance of a duty under this Act;

(b) furnish a committee, a committee member or a health and safety representative with false information in the exercise of a power or performance of a duty under this Act; or

(c) hinder or interfere with a worker selected by a trade union or trade unions or a worker selected by the workers to represent them in the exercise of a power or performance of a duty under this Act. R.S.O. 1990, c. O.1, s. 62 (5).

Section Amendments with date in force (d/m/y)

2001, c. 26, s. 4 - 12/12/2001

Information confidential

63 (1) Except for the purposes of this Act and the regulations or as required by law,

(a) an inspector, a person accompanying an inspector or a person who, at the request of an inspector, makes an examination, test or inquiry, shall not publish, disclose or communicate to any person any information, material, statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations;

(b) REPEALED: 1992, c. 14, s. 2 (2).

(c) no person shall publish, disclose or communicate to any person any secret manufacturing process or trade secret acquired, furnished, obtained, made or received under the provisions of this Act or the regulations;

(d) REPEALED: 1992, c. 14, s. 2 (3).

(e) no person to whom information is communicated under this Act and the regulations shall divulge the name of the informant to any person; and

(f) no person shall disclose any information obtained in any medical examination, test or x-ray of a worker made or taken under this Act except in a form calculated to prevent the information from being identified with a particular person or case. R.S.O. 1990, c. O.1, s. 63 (1); 1992, c. 14, s. 2 (2, 3).

Employer access to health records

(2) No employer shall seek to gain access, except by an order of the court or other tribunal or in order to comply with another statute, to a health record concerning a worker without the worker's written consent. R.S.O. 1990, c. O.1, s. 63 (2).

Compellability, civil suit

(3) An inspector or a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of an inspector, is not a compellable witness in a civil suit or any proceeding, except an inquest under the *Coroners Act*, respecting any information, material, statement or test acquired, furnished, obtained, made or received under this Act or the regulations. R.S.O. 1990, c. O.1, s. 63 (3).

Compellability of witnesses

(3.1) Persons employed in the Office of the Worker Adviser or the Office of the Employer Adviser are not compellable witnesses in a civil suit or any proceeding respecting any information or material furnished to or obtained, made or received by them under this Act while acting within the scope of their employment. 2011, c. 11, s. 16.

Exception

(3.2) If the Office of the Worker Adviser or the Office of the Employer Adviser is a party to a proceeding, a person employed in the relevant Office may be determined to be a compellable witness. 2011, c. 11, s. 16.

Production of documents

(3.3) Persons employed in the Office of the Worker Adviser or the Office of the Employer Adviser are not required to produce, in a proceeding in which the relevant Office is not a party, any information or material furnished to or obtained, made or received by them under this Act while acting within the scope of their employment. 2011, c. 11, s. 16.

Power of Director to disclose

(4) A Director may communicate or allow to be communicated or disclosed information, material, statements or the result of a test acquired, furnished, obtained, made or received under this Act or the regulations. R.S.O. 1990, c. O.1, s. 63 (4).

Medical emergencies

(5) Subsection (1) does not apply so as to prevent any person from providing any information in the possession of the person, including confidential business information, in a medical emergency for the purpose of diagnosis or treatment. R.S.O. 1990, c. O.1, s. 63 (5).

Conflict

(6) This section prevails despite anything to the contrary in the *Personal Health Information Protection Act, 2004*. 2004, c. 3, Sched. A, s. 93.

Section Amendments with date in force (d/m/y)

1992, c. 14, s. 2 (2, 3) - 25/06/1992

2004, c. 3, Sched. A, s. 93 - 1/11/2004

2011, c. 11, s. 16 - 1/04/2012

Copies of reports

64 A Director may, upon receipt of a request in writing from the owner of a workplace who has entered into an agreement to sell the same and upon payment of the fee or fees prescribed, furnish to the owner or a person designated by the owner copies of reports or orders of an inspector made under this Act in respect of the workplace as to its compliance with subsection 29 (1). R.S.O. 1990, c. O.1, s. 64.

Immunity

65 (1) No action or other proceeding for damages, prohibition or mandamus shall be instituted respecting any act done in good faith in the execution or intended execution of a person's duties under this Act or in the exercise or intended exercise of a person's powers under this Act or for any alleged neglect or default in the execution or performance in good faith of the person's duties or powers if the person is,

(a) an employee in the Ministry or a person who acts as an advisor for the Ministry;

(b) an employee in the Office of the Worker Adviser or the Office of the Employer Adviser;

(c) the Board or a labour relations officer;

(d) a health and safety representative or a committee member; or

(e) a worker selected by a trade union or trade unions or by workers to represent them. R.S.O. 1990, c. O.1, s. 65 (1); 1995, c. 5, s. 32; 1997, c. 16, s. 2 (14, 15); 1998, c. 8, s. 58; 2006, c. 35, Sched. C, s. 93 (6); 2011, c. 11, s. 17 (1).

Liability of Crown

(2) Subsection (1) does not, by reason of subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*, relieve the Crown of liability in respect of a tort committed by a Director, the Chief Prevention Officer, an inspector or an engineer of the Ministry to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted. R.S.O. 1990, c. O.1, s. 65 (2); 2011, c. 11, s. 17 (2); 2019, c. 7, Sched. 17, s. 127.

Section Amendments with date in force (d/m/y)

1995, c. 5, s. 32 - 23/08/1995; 1997, c. 16, s. 2 (14, 15) - 1/01/1998; 1998, c. 8, s. 58 - 29/06/1998

2006, c. 35, Sched. C, s. 93 (6) - 20/08/2007

2011, c. 11, s. 17 - 01/04/2012

2019, c. 7, Sched. 17, s. 127 - 01/07/2019

PART IX
OFFENCES AND PENALTIES

Penalties

66 (1) Every person who contravenes or fails to comply with,

(a) a provision of this Act or the regulations;

(b) an order or requirement of an inspector or a Director; or

(c) an order of the Minister,

is guilty of an offence and on conviction is liable to a fine of not more than $100,000 or to imprisonment for a term of not more than twelve months, or to both. R.S.O. 1990, c. O.1, s. 66 (1); 2017, c. 34, Sched. 30, s. 4 (1).

Idem

(2) If a corporation is convicted of an offence under subsection (1), the maximum fine that may be imposed upon the corporation is $1,500,000 and not as provided therein. R.S.O. 1990, c. O.1, s. 66 (2); 2017, c. 34, Sched. 30, s. 4 (2).

Defence

(3) On a prosecution for a failure to comply with,

(a) subsection 23 (1);

(b) clause 25 (1) (b), (c) or (d); or

(c) subsection 27 (1),

it shall be a defence for the accused to prove that every precaution reasonable in the circumstances was taken. R.S.O. 1990, c. O.1, s. 66 (3).

Accused liable for acts or neglect of managers, agents, etc.

(4) In a prosecution of an offence under any provision of this Act, any act or neglect on the part of any manager, agent, representative, officer, director or supervisor of the accused, whether a corporation or not, shall be the act or neglect of the accused. R.S.O. 1990, c. O.1, s. 66 (4).

Section Amendments with date in force (d/m/y)

2017, c. 34, Sched. 30, s. 4 (1, 2) - 14/12/2017

Certified copies of documents, etc., as evidence

67 (1) In any proceeding or prosecution under this Act,

(a) a copy of an order or decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister or an inspector;

(b) a document purporting to be a copy of a notice, drawing, record or other document, or any extract therefrom given or made under this Act or the regulations and purporting to be certified by an inspector;

(c) a document purporting to certify the result of a test or an analysis of a sample of air and setting forth the concentration or amount of a biological, chemical or physical agent in a workplace or part thereof and purporting to be certified by an inspector; or

(d) a document purporting to certify the result of a test or an analysis of any equipment, machine, device, article, thing or substance and purporting to be certified by an inspector,

is evidence of the order, decision, writing or document, and the facts appearing in the order, decision, writing or document without proof of the signature or official character of the person appearing to have signed the order or the certificate and without further proof.

Service of orders and decisions

(2) In any proceeding or prosecution under this Act, a copy of an order or decision purporting to have been made under this Act or the regulations and purporting to have been signed by the Minister, a Director or an inspector may be served,

(a) personally in the case of an individual or in case of a partnership upon a partner, and in the case of a corporation, upon the president, vice-president, secretary, treasurer or a director, or upon the manager or person in charge of the workplace; or

(b) by registered letter addressed to a person or corporation mentioned in clause (a) at the last known place of business of the person or corporation,

and the same shall be deemed to be good and sufficient service thereof. R.S.O. 1990, c. O.1, s. 67.

Place of trial

68 (1) An information in respect of an offence under this Act may, at the election of the informant, be heard, tried and determined by the Ontario Court of Justice sitting in the county or district in which the accused is resident or carries on business although the subject-matter of the information did not arise in that county or district. R.S.O. 1990, c. O.1, s. 68 (1); 2001, c. 9, Sched. I, s. 3 (15).

Provincial judge required

(2) The Attorney General or an agent for the Attorney General may by notice to the clerk of the court having jurisdiction in respect of an offence under this Act require that a provincial judge preside over the proceeding. R.S.O. 1990, c. O.1, s. 68 (2).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. I, s. 3 (15) - 29/06/2001

Publication re convictions

68.1 (1) If a person, including an individual, is convicted of an offence under this Act, a Director may publish or otherwise make available to the general public the name of the person, a description of the offence, the date of the conviction and the person's sentence. 2006, c. 19, Sched. M, s. 5.

Internet publication

(2) Authority to publish under subsection (1) includes authority to publish on the Internet. 2006, c. 19, Sched. M, s. 5.

Disclosure

(3) Any disclosure made under subsection (1) shall be deemed to be in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*. 2006, c. 19, Sched. M, s. 5; 2006, c. 34, Sched. C, s. 25.

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. M, s. 5 - 22/06/2006; 2006 - , c. 34, Sched. C, s. 25 - 1/04/2007

Limitation on prosecutions

69 No prosecution under this Act or the regulations shall be instituted more than one year after the later of,

(a) the occurrence of the last act or default upon which the prosecution is based; or

(b) the day upon which an inspector becomes aware of the alleged offence. 2017, c. 34, Sched. 30, s. 5.

Section Amendments with date in force (d/m/y)

2017, c. 34, Sched. 30, s. 5 - 14/12/2017

PART X
REGULATIONS

Regulations

70 (1) The Lieutenant Governor in Council may make such regulations as are advisable for the health or safety of persons in or about a workplace. R.S.O. 1990, c. O.1, s. 70 (1).

Idem

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

1. defining any word or expression used in this Act or the regulations that is not defined in this Act;
2. designating or defining any industry, workplace, employer or class of workplaces or employers for the purposes of this Act, a part of this Act, or the regulations or any provision thereof;
3. exempting any workplace, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof from the application of a regulation or any provision thereof;
4. limiting or restricting the application of a regulation or any provision thereof to any workplace, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof;
5. exempting an employer from the requirements of clause 37 (1) (a) or (b) with respect to a hazardous material;
6. respecting any matter or thing that is required or permitted to be regulated or prescribed under this Act;
7. respecting any matter or thing, where a provision of this Act requires that the matter or thing be done, used or carried out or provided as prescribed;
8. respecting any matter or thing, where it is a condition precedent that a regulation be made prescribing the matter or thing before this Act or a provision of this Act has any effect;
9. providing for and prescribing fees and the payment or refund of fees;
10. prescribing classes of workplaces for which and circumstances under which a committee shall consist of more than four persons and in each case prescribing the number of persons;
11. prescribing employers or workplaces or classes thereof for the purposes of clause 9 (1) (b);
12. exempting any workplace, industry, activity, business, work, trade, occupation, profession, constructor or employer or any class thereof from the application of subsection 9 (2);
13. respecting the conditions for eligibility, qualifications, selection and term of committee members, including certified members, and the operation of the committee;

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by adding the following paragraphs:

13.1 exempting any class of workplaces from the requirement set out in subsection 8 (5.1);

13.2 requiring that the training of health and safety representatives under subsection 8 (5.1) meet such requirements as may be prescribed;

See: 2011, c. 11, ss. 18 (1), 29 (2).

14. exempting any class of workplaces from the requirement set out in subsection 9 (12);

15. prescribing elements that any policy required under this Act must contain;

16. regulating or prohibiting the installation or use of any machine, device or thing or any class thereof;

17. requiring that any equipment, machine, device, article or thing used bear the seal of approval of an organization designated by the regulations to test and approve the equipment, machine, device, article or thing and designating organizations for such purposes;

18. prescribing classes of employers who shall establish and maintain a medical surveillance program in which workers may volunteer to participate;

19. governing medical surveillance programs;

20. respecting the reporting by physicians and others of workers affected by any biological, chemical or physical agents or combination thereof;

21. regulating or prohibiting atmospheric conditions to which any worker may be exposed in a workplace;

22. prescribing methods, standards or procedures for determining the amount, concentration or level of any atmospheric condition or any biological, chemical or physical agent or combination thereof in a workplace;

23. prescribing any biological, chemical or physical agent or combination thereof as a designated substance;

24. prohibiting, regulating, restricting, limiting or controlling the handling of, exposure to, or the use and disposal of any designated substance;

25. adopting by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code or standard and requiring compliance with any code or standard that is so adopted;

26. adopting by reference any criteria or guide in relation to the exposure of a worker to any biological, chemical or physical agent or combination thereof;

27. enabling a Director by notice in writing to designate that any part of a project shall be an individual project for the purposes of this Act and the regulations and prescribing to whom notice shall be given;

28. permitting the Minister to approve laboratories for the purpose of carrying out and performing sampling, analyses, tests and examinations, and requiring that sampling, analyses, examinations and tests be carried out and performed by a laboratory approved by the Minister;

29. requiring and providing for the registration of employers of workers;

30. providing for the establishment, equipment, operation and maintenance of mine rescue stations, as the Minister may direct, and providing for the payment of the cost thereof and the recovery of such cost from the mining industry;

31. prescribing training programs that employers shall provide;

31.1 requiring that training programs provided by employers meet such requirements as may be prescribed;

32. increasing the number of certified members required on a committee;

33. prescribing restrictions, prohibitions or conditions with respect to workers or workplaces relating to the risks of workplace violence;

34. prescribing forms and notices and providing for their use;

35. prescribing building standards for industrial establishments;

36. prescribing by name or description any biological or chemical agent as a hazardous material and any physical agent as a hazardous physical agent;

37. prohibiting an employer from altering a label on a hazardous material in prescribed circumstances;

38. REPEALED: 2015, c. 27, Sched. 4, s. 7 (1).

39. requiring an employer to disclose to such persons as may be prescribed the source of toxicological data used by the employer to prepare a safety data sheet;

40. prescribing the format and contents of a safety data sheet;
41. prescribing by class of employer the intervals at which a health and safety representative or a committee member designated under subsection 9 (23) shall inspect all or part of a workplace;
42. establishing criteria for determining, for the purpose of section 51, whether a person is critically injured;
43. prescribing first aid requirements to be met and first aid services to be provided by employers and constructors;
44. prescribing, for the purpose of clause 26 (1) (i), medical examinations and tests that a worker is required to undergo to ensure that the worker's health will not affect his or her ability to perform his or her job in a manner that might endanger others;
45. prescribing classes of workplace with respect to which section 45 does not apply;
46. prescribing the qualifications of persons whom a certified member may designate under subsection 45 (9);
47. prescribing, for the purpose of subsection 46 (6), criteria for determining whether a constructor or employer has demonstrated a failure to protect the health and safety of workers;
48. prescribing matters to be considered by the Board in deciding upon an application under section 46;
49. prescribing classes of workplace with respect to which section 47 does not apply;
50. requiring an employer to designate a person in a workplace to act as a workplace co-ordinator with respect to workplace violence and workplace harassment, and prescribing the functions and duties of the co-ordinator;
51. in the case of a worker described in subsection 43 (2), specifying situations in which a circumstance described in clause 43 (3) (a), (b), (b.1) or (c) shall be considered, for the purposes of clause 43 (1) (a), to be inherent in the worker's work or a normal condition of employment;
52. varying or supplementing subsections 43 (4) to (13) with respect to the following workers, in circumstances when section 43 applies to them:
    i. workers to whom section 43 applies by reason of a regulation made for the purposes of subsection 3 (3), and
    ii. workers described in subsection 43 (2);
53. providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of section 22.5;
54. prescribing the functions of the Office of the Worker Adviser for the purposes of Part VI;
55. prescribing the functions of the Office of the Employer Adviser for the purposes of Part VI;
56. prescribing a number of employees for the purposes of subsection 50.1 (2). R.S.O. 1990, c. O.1, s. 70 (2); 1997, c. 16, s. 2 (16); 1998, c. 8, s. 59; 2001, c. 9, Sched. I, s. 3 (16); 2009, c. 23, s. 7; 2011, c. 11, s. 18 (2-4); 2015, c. 27, Sched. 4, s. 7.

Rolling incorporation by reference

(3) The power to adopt by reference and require compliance with a code or standard in paragraph 25 of subsection (2) and to adopt by reference any criteria or guide in relation to the exposure of a worker to any biological, chemical or physical agent or combination thereof in paragraph 26 of subsection (2) includes the power to adopt a code, standard, criteria or guide as it may be amended from time to time. 2020, c. 18, Sched. 13, s. 1.

Section Amendments with date in force (d/m/y)

1997, c. 16, s. 2 (16) - 1/01/1998; 1998, c. 8, s. 59 - 29/06/1998

2001, c. 9, Sched. I, s. 3 (16) - 29/06/2001

2009, c. 23, s. 7 - 15/06/2010

2011, c. 1, Sched. 7, s. 2 (12, 14) - no effect - see 2015, c. 27, Sched. 4, s. 11 - 03/12/2015; 2011, c. 11, s. 18 (1) - not in force; 2011, c. 11, s. 18 (2) - 01/06/2011; 2011, c. 11, s. 18 (3, 4)- 01/04/2012

2015, c. 27, Sched. 4, s. 7 - 01/07/2016

2020, c. 18, Sched. 13, s. 1 - 21/07/2020

Regulations, taxi industry

71 (1) The Lieutenant Governor in Council may make regulations governing the application of the duties and rights set out in Part III.0.1 to the taxi industry. 2009, c. 23, s. 8.

Same

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

(a) specifying that all or any of the duties set out in Part III.0.1 apply for the purposes of the regulations, with such modifications as may be necessary in the circumstances;

(b) specifying who shall be considered an employer for the purposes of the regulations and requiring that person to carry out the specified duties;

(c) specifying who shall be considered a worker for the purposes of the regulations;

(d) specifying what shall be considered a workplace for the purposes of the regulations. 2009, c. 23, s. 8.

Section Amendments with date in force (d/m/y)

2009, c. 23, s. 8 - 15/06/2010

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Internet publication

(2) Authority to publish under subsection (1) includes authority to publish on the Internet. 2006, c. 19, Sched. M, s. 5.

Disclosure

(3) Any disclosure made under subsection (1) shall be deemed to be in compliance with clause 42 (1) (e) of the *Freedom of Information and Protection of Privacy Act*. 2006, c. 19, Sched. M, s. 5; 2006, c. 34, Sched. C, s. 25.

Section Amendments with date in force (d/m/y) [+]

Limitation on prosecutions

69 No prosecution under this Act or the regulations shall be instituted more than one year after the later of,

(a) the occurrence of the last act or default upon which the prosecution is based; or

(b) the day upon which an inspector becomes aware of the alleged offence. 2017, c. 34, Sched. 30, s. 5.

Section Amendments with date in force (d/m/y) [+]

PART X
REGULATIONS

Regulations

70 (1) The Lieutenant Governor in Council may make such regulations as are advisable for the health or safety of persons in or about a workplace. R.S.O. 1990, c. O.1, s. 70 (1).

Idem

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

1. defining any word or expression used in this Act or the regulations that is not defined in this Act;
2. designating or defining any industry, workplace, employer or class of workplaces or employers for the purposes of this Act, a part of this Act, or the regulations or any provision thereof;
3. exempting any workplace, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof from the application of a regulation or any provision thereof;
4. limiting or restricting the application of a regulation or any provision thereof to any workplace, industry, activity, business, work, trade, occupation, profession, constructor, employer or any class thereof;
5. exempting an employer from the requirements of clause 37 (1) (a) or (b) with respect to a hazardous material;
6. respecting any matter or thing that is required or permitted to be regulated or prescribed under this Act;
7. respecting any matter or thing, where a provision of this Act requires that the matter or thing be done, used or carried out or provided as prescribed;
8. respecting any matter or thing, where it is a condition precedent that a regulation be made prescribing the matter or thing before this Act or a provision of this Act has any effect;
9. providing for and prescribing fees and the payment or refund of fees;
10. prescribing classes of workplaces for which and circumstances under which a committee shall consist of more than four persons and in each case prescribing the number of persons;
11. prescribing employers or workplaces or classes thereof for the purposes of clause 9 (1) (b);
12. exempting any workplace, industry, activity, business, work, trade, occupation, profession, constructor or employer or any class thereof from the application of subsection 9 (2);
13. respecting the conditions for eligibility, qualifications, selection and term of committee members, including certified members, and the operation of the committee;

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by adding the following paragraphs:

13.1 exempting any class of workplaces from the requirement set out in subsection 8 (5.1);

13.2 requiring that the training of health and safety representatives under subsection 8 (5.1) meet such requirements as may be prescribed;

See: 2011, c. 11, ss. 18 (1), 29 (2).

14. exempting any class of workplaces from the requirement set out in subsection 9 (12);

15. prescribing elements that any policy required under this Act must contain;

16. regulating or prohibiting the installation or use of any machine, device or thing or any class thereof;

17. requiring that any equipment, machine, device, article or thing used bear the seal of approval of an organization designated by the regulations to test and approve the equipment, machine, device, article or thing and designating organizations for such purposes;

18. prescribing classes of employers who shall establish and maintain a medical surveillance program in which workers may volunteer to participate;

19. governing medical surveillance programs;

20. respecting the reporting by physicians and others of workers affected by any biological, chemical or physical agents or combination thereof;

21. regulating or prohibiting atmospheric conditions to which any worker may be exposed in a workplace;

22. prescribing methods, standards or procedures for determining the amount, concentration or level of any atmospheric condition or any biological, chemical or physical agent or combination thereof in a workplace;

23. prescribing any biological, chemical or physical agent or combination thereof as a designated substance;

24. prohibiting, regulating, restricting, limiting or controlling the handling of, exposure to, or the use and disposal of any designated substance;

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26. adopting by reference any criteria or guide in relation to the exposure of a worker to any biological, chemical or physical agent or combination thereof;

27. enabling a Director by notice in writing to designate that any part of a project shall be an individual project for the purposes of this Act and the regulations and prescribing to whom notice shall be given;

28. permitting the Minister to approve laboratories for the purpose of carrying out and performing sampling, analyses, tests and examinations, and requiring that sampling, analyses, examinations and tests be carried out and performed by a laboratory approved by the Minister;

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30. providing for the establishment, equipment, operation and maintenance of mine rescue stations, as the Minister may direct, and providing for the payment of the cost thereof and the recovery of such cost from the mining industry;

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31.1 requiring that training programs provided by employers meet such requirements as may be prescribed;

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33. prescribing restrictions, prohibitions or conditions with respect to workers or workplaces relating to the risks of workplace violence;

34. prescribing forms and notices and providing for their use;

35. prescribing building standards for industrial establishments;
36. prescribing by name or description any biological or chemical agent as a hazardous material and any physical agent as a hazardous physical agent;
37. prohibiting an employer from altering a label on a hazardous material in prescribed circumstances;
38. REPEALED: 2015, c. 27, Sched. 4, s. 7 (1).
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50. requiring an employer to designate a person in a workplace to act as a workplace co-ordinator with respect to workplace violence and workplace harassment, and prescribing the functions and duties of the co-ordinator;
51. in the case of a worker described in subsection 43 (2), specifying situations in which a circumstance described in clause 43 (3) (a), (b), (b.1) or (c) shall be considered, for the purposes of clause 43 (1) (a), to be inherent in the worker's work or a normal condition of employment;
52. varying or supplementing subsections 43 (4) to (13) with respect to the following workers, in circumstances when section 43 applies to them:
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    ii. workers described in subsection 43 (2);

53. providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of section 22.5;
54. prescribing the functions of the Office of the Worker Adviser for the purposes of Part VI;
55. prescribing the functions of the Office of the Employer Adviser for the purposes of Part VI;
56. prescribing a number of employees for the purposes of subsection 50.1 (2). R.S.O. 1990, c. O.1, s. 70 (2); 1997, c. 16, s. 2 (16); 1998, c. 8, s. 59; 2001, c. 9, Sched. I, s. 3 (16); 2009, c. 23, s. 7; 2011, c. 11, s. 18 (2-4); 2015, c. 27, Sched. 4, s. 7.

Section Amendments with date in force (d/m/y) [+]

Regulations, taxi industry

71 (1) The Lieutenant Governor in Council may make regulations governing the application of the duties and rights set out in Part III.0.1 to the taxi industry. 2009, c. 23, s. 8.

Same

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

(a) specifying that all or any of the duties set out in Part III.0.1 apply for the purposes of the regulations, with such modifications as may be necessary in the circumstances;

(b) specifying who shall be considered an employer for the purposes of the regulations and requiring that person to carry out the specified duties;

(c) specifying who shall be considered a worker for the purposes of the regulations;

(d) specifying what shall be considered a workplace for the purposes of the regulations. 2009, c. 23, s. 8.

Section Amendments with date in force (d/m/y) [+]

Français

Français

Occupational Health and Safety Act

R.R.O. 1990, REGULATION 860
WORKPLACE HAZARDOUS MATERIALS INFORMATION SYSTEM (WHMIS)

Consolidation Period: From January 21, 2019 to the e-Laws currency date.

Last amendment: 3/19.

Legislative History: 356/91, 36/93, 168/16, 342/18, 458/18, 3/19.

This is the English version of a bilingual regulation.

CONTENTS

DEFINITIONS

1. (1) In this Regulation,

"bulk shipment" means a shipment of a hazardous product that is contained without intermediate containment or intermediate packaging in,

(a) a vessel with a water capacity equal to or greater than 450 litres,

(b) a freight container, road vehicle, railway vehicle or portable tank,

(c) the hold of a ship, or

(d) a pipeline; ("expédition en vrac")

"CAS registry number" means the identification number assigned to a chemical by the Chemical Abstracts Service, a division of the American Chemical Society; ("numéro d'enregistrement CAS")

"container" includes a bag, barrel, bottle, box, can, cylinder, drum, storage tank or similar package or receptacle; ("contenant")

"fugitive emission" means a gas, liquid, solid, vapour, fume, mist, fog or dust that meets the following conditions:

1. The gas, liquid, solid, vapour, fume, mist, fog or dust escaped from process equipment, from emission control equipment or from a product.
2. Workers may be readily exposed to the gas, liquid, solid, vapour, fume, mist, fog or dust; ("émission fugitive")

"hazard information" means information on the proper and safe use, storage and handling of a hazardous product and includes information relating to the product's health and physical hazards; ("renseignements sur les dangers")

"hazardous product" means any product, mixture, material or substance that is classified in accordance with the *Hazardous Products Regulations* (Canada) in a category or subcategory of a hazard class listed in Schedule 2 to the *Hazardous Products Act* (Canada); ("produit dangereux")

"*Hazardous Products Regulations* (Canada)" means the *Hazardous Products Regulations*, SOR/2015-17, made under the *Hazardous Products Act* (Canada); ("*Règlement sur les produits dangereux* (Canada)")

"hazardous waste" means a hazardous product that is acquired or generated for recycling or recovery or is intended for disposal; ("résidu dangereux")

"label" means a group of written, printed or graphic information elements that relate to a hazardous product, which is designed to be affixed to, printed on or attached to the hazardous product or the container in which the hazardous product is packaged; ("étiquette")

"laboratory sample" means a sample of a hazardous product that is packaged in a container that contains less than 10 kg of hazardous product and that is intended solely to be tested in a laboratory but does not include a sample that is to be used,

(a) by the laboratory for testing other products, mixtures, materials or substances, or

(b) for educational or demonstration purposes; ("échantillon pour laboratoire")

"manufactured article" means an article that is formed to a specific shape or design during manufacture, the intended use of which when in that form is dependent in whole or in part on its shape or design, and that, when being installed, if the intended use of the article requires it to be installed, and under normal conditions of use, will not release or otherwise cause an individual to be exposed to a hazardous product; ("article manufacturé")

"medical professional" means a person who, under the laws of the province in which the person is practising,

(a) is a legally-qualified medical practitioner, or

(b) is registered as a registered nurse; ("membre d'une profession médicale")

"product identifier" means, in respect of a hazardous product, the brand name, chemical name, common name, generic name or trade name; ("identificateur du produit")

"research and development" means systematic investigation or search carried out in a field of science or technology by means of experiment or analysis, other than investigation or search in respect of market research, sales promotion, quality control or routine testing of hazardous products, and includes,

(a) applied research, namely, work undertaken for the advancement of scientific knowledge with a specific practical application in view, and

(b) development, namely, use of the results of applied research for the purpose of creating new, or improving existing, processes or hazardous products; ("recherche et développement")

"safety data sheet" means,

(a) a supplier safety data sheet, or

(b) a safety data sheet prepared by an employer under subsection 18 (1) or (1.1) of this Regulation; ("fiche de données de sécurité")

"significant new data" means new data regarding the hazard presented by a hazardous product that change its classification, in accordance with the *Hazardous Products Regulations* (Canada), in a category or subcategory of a hazard class listed in Schedule 2 to the *Hazardous Products Act* (Canada), or results in its classification in another hazard class, or change the ways to protect against the hazard presented by the hazardous product; ("nouvelles données importantes")

"supplier label" means, in respect of a hazardous product, a label provided by a supplier that contains the information required by the *Hazardous Products Regulations* (Canada) for that hazardous product; ("étiquette du fournisseur")

"supplier safety data sheet" means, in respect of a hazardous product, a safety data sheet provided by a supplier that complies with the requirements of the *Hazardous Products Regulations* (Canada) for a safety data sheet; ("fiche de données de sécurité du fournisseur")

"workplace label" means, in respect of a hazardous product, a label that discloses,

(a) a product identifier identical to that found on the safety data sheet for the hazardous product,

(b) information for the safe handling of the hazardous product, and

(c) that a safety data sheet, if supplied or produced, is available. ("étiquette du lieu de travail") R.R.O. 1990, Reg. 860, s. 1 (1); O. Reg. 168/16, s. 2 (1-3), 3; O. Reg. 458/18, s. 1.

(2) In this Regulation, "produces" in relation to the production of a hazardous product does not include the production of a fugitive emission or of intermediate products undergoing reaction within a reaction vessel or process vessel. R.R.O. 1990, Reg. 860, s. 1 (2); O. Reg. 168/16, s. 2 (1).

DESIGNATION OF HAZARDOUS MATERIALS

2. Every hazardous product is designated as a hazardous material. R.R.O. 1990, Reg. 860, s. 2; O. Reg. 168/16, s. 2 (1).

ASSESSMENT OF BIOLOGICAL AND CHEMICAL AGENTS

3. (1) An employer shall assess all biological and chemical agents produced in the workplace for use therein to determine if they are hazardous materials. R.R.O. 1990, Reg. 860, s. 3 (1).

(2) No employer is required to assess under subsection (1),

(a) wood or a product made of wood;

(b) tobacco or a tobacco product within the meaning of section 2 of the *Tobacco Act* (Canada); or

(c) a manufactured article. R.R.O. 1990, Reg. 860, s. 3 (2); O. Reg. 168/16, s. 4 (1, 2).

(3) An assessment under subsection (1) shall be performed in accordance with Parts 7 and 8 of the *Hazardous Products Regulations* (Canada). R.R.O. 1990, Reg. 860, s. 3 (3); O. Reg. 168/16, s. 2 (2), 4 (3).

APPLICATION

4. (1) Sections 5 to 25 apply to employers and workers in respect of hazardous products used, stored and handled at a workplace. R.R.O. 1990, Reg. 860, s. 4 (1); O. Reg. 168/16, s. 2 (2).

(2) Section 8 (supplier labels), section 14 (laboratory samples) and sections 17 and 18 (safety data sheets) do not apply with respect to,

(a) an explosive within the meaning of section 2 of the *Explosives Act* (Canada);

(b) a cosmetic, device, drug or food within the meaning of section 2 of the *Food and Drugs Act* (Canada);

(c) a pest control product within the meaning of subsection 2 (1) of the *Pest Control Products Act* (Canada);

(d) a nuclear substance that is radioactive and that is within the meaning of a nuclear substance under section 2 of the *Nuclear Safety and Control Act* (Canada); or

(e) a consumer product within the meaning of section 2 of the *Canada Consumer Product Safety Act* (Canada). O. Reg. 168/16, s. 5 (1).

(3) Sections 5 to 25 do not apply with respect to a hazardous product that,

(a) is wood or a product made of wood;

(b) is tobacco or a tobacco product within the meaning of section 2 of the *Tobacco Act* (Canada);

(c) is a manufactured article; or

(d) is being transported or handled in accordance with the requirements of the *Dangerous Goods Transportation Act* (Ontario) or the *Transportation of Dangerous Goods Act, 1992* (Canada). R.R.O. 1990, Reg. 860, s. 4 (3); O. Reg. 168/16, s. 2 (1), 5 (2-4).

(4) Sections 5 to 25 do not apply with respect to hazardous waste except to the extent that an employer shall ensure the safe storage and handling of hazardous waste through a combination of identification and worker education. R.R.O. 1990, Reg. 860, s. 4 (4); O. Reg. 168/16, s. 5 (5).

EXEMPTIONS FROM CLAUSES 37 (1) (A) AND (B) OF THE ACT

5. (1) An employer may store a hazardous product received from a supplier without having a label on it, without obtaining a safety data sheet for it and without conducting a program of worker education about it while the employer is actively seeking a supplier label and a supplier safety data sheet for it. R.R.O. 1990, Reg. 860, s. 5 (1); O. Reg. 168/16, s. 2 (1, 3).

(2) An employer may store an employer-produced hazardous product without applying a label to it or using other identification for it, without a safety data sheet for it and without conducting a program of worker education about it while the employer is actively seeking the information about it that is required to prepare a workplace label and a safety data sheet. R.R.O. 1990, Reg. 860, s. 5 (2); O. Reg. 168/16, s. 2 (1, 3).

WORKER EDUCATION

6. (1) An employer shall ensure that a worker who works with or who may be exposed in the course of his or her work to a hazardous product received from a supplier is informed about all hazard information the employer receives from the supplier concerning the hazardous product and all further hazard information of which the employer is or ought to be aware concerning its use, storage and handling. R.R.O. 1990, Reg. 860, s. 6 (1); O. Reg. 168/16, s. 2 (1), 6.

(2) An employer who produces a hazardous product in a workplace shall ensure that every worker who works with or who may be exposed in the course of his or her work to the hazardous product is informed about all hazard information of which the employer is or ought to be aware concerning the hazardous product and its use, storage and handling. R.R.O. 1990, Reg. 860, s. 6 (2); O. Reg. 168/16, s. 2 (1), 6.

7. (1) An employer shall ensure that every worker who works with or who may be exposed in the course of his or her work to a hazardous product is instructed in,

(a) the contents required on labels and the purpose and significance of the information contained on the labels;

(b) the contents required on a safety data sheet and the purpose and significance of the information contained on a safety data sheet;

(c) procedures for the safe use, storage, handling and disposal of a hazardous product;

(d) procedures for the safe use, storage, handling and disposal of a hazardous product when it is contained or transferred in,

(i) a pipe,

(ii) a piping system including valves,

(iii) a process vessel,

(iv) a reaction vessel, or

(v) a tank car, a tank truck, an ore car, a conveyor belt or a similar conveyance;

(e) procedures to be followed when fugitive emissions are present; and

(f) procedures to be followed in case of an emergency involving a hazardous product. R.R.O. 1990, Reg. 860, s. 7 (1); O. Reg. 168/16, s. 2 (1, 3), 7; O. Reg. 458/18, s. 2.

(2) An employer shall ensure that the program of worker education required by subsection (1) is developed and implemented for the employer's workplace and is related to any other training, instruction and prevention programs at the workplace. R.R.O. 1990, Reg. 860, s. 7 (2).

(3) An employer shall ensure, so far as is reasonably practicable, that the program of worker instruction required by subsection (1) results in the workers being able to use the information to protect their health and safety. R.R.O. 1990, Reg. 860, s. 7 (3).

LABELS

SUPPLIER LABELS

8. (1) An employer shall ensure that every hazardous product not in a container, and every container of a hazardous product, received at a workplace from a supplier is labelled with a supplier label. R.R.O. 1990, Reg. 860, s. 8 (1); O. Reg. 168/16, s. 2 (1).

(2) No employer shall alter a supplier label on a container in which a hazardous product is received from a supplier while any of the hazardous product remains in the container. R.R.O. 1990, Reg. 860, s. 8 (2); O. Reg. 168/16, s. 2 (1).

(3) If a label applied to a hazardous product or a container of a hazardous product becomes illegible or is removed, an employer shall replace the label with either a supplier label or a workplace label. R.R.O. 1990, Reg. 860, s. 8 (3); O. Reg. 168/16, s. 2 (1).

(4) Despite subsections (2) and (3), a supplier label may be removed from a container with a capacity of 3 mL or less if the label interferes with the normal use of the hazardous product. O. Reg. 168/16, s. 8.

(5) If an employer receives significant new data from a supplier about a hazardous product, the employer shall, as soon as practicable, attach to every relevant supplier label required under this section, new information that reflects the significant new data. O. Reg. 168/16, s. 8.

(6) An employer who imports and receives, under the *Hazardous Products Regulations* (Canada), a hazardous product for use in the employer's own workplace, without a supplier label or with a supplier label that does not meet all the labelling requirements of the *Hazardous Products Regulations* (Canada), shall affix to the product a label that meets the *Hazardous Products Regulations* (Canada) labelling requirements for that hazardous product. O. Reg. 168/16, s. 8.

(7) An employer who receives at a workplace an unpackaged hazardous product without a supplier label or a hazardous product transported as a bulk shipment without a supplier label, shall affix to the product a label that meets the *Hazardous Products Regulations* (Canada) labelling requirements for that hazardous product. O. Reg. 168/16, s. 8.

(8) Despite subsection (1), an employer shall replace a WHMIS 1988 supplier label on a hazardous product, or container of a hazardous product, by affixing to the product or container a workplace label or a label that meets the *Hazardous Products Regulations* (Canada) labelling requirements for that hazardous product if,

(a) the hazardous product or container was received at a workplace from a supplier on or before August 31, 2018;

(b) the employer is unable to obtain a supplier label; and

(c) the WHMIS 1988 supplier label would have complied with whichever of the following is applicable:

(i) the provisions of this Regulation relating to supplier labels for that hazardous product as they read immediately before July 1, 2016,

(ii) section 13 of this Regulation, as it read immediately before July 1, 2016,

(iii) section 14 of this Regulation, as it read immediately before July 1, 2016. O. Reg. 458/18, s. 3; O. Reg. 3/19, s. 1 (1).

(9) Despite subsection (8), an employer may replace a WHMIS 1988 supplier label provided by a supplier under section 14 of this Regulation, as it read immediately before July 1, 2016, with a label that includes the information required by section 14 of this Regulation, as it currently reads, if the conditions set out in section 14 are met. O. Reg. 458/18, s. 3.

(10) In this section,

"WHMIS 1988 supplier label" means,

(a) a supplier label as defined by this Regulation, as it read immediately before July 1, 2016,

(b) a label provided by a supplier under section 13 of this Regulation, as it read immediately before July 1, 2016, or

(c) a label provided by a supplier under section 14 of this Regulation, as it read immediately before July 1, 2016. O. Reg. 3/19, s. 1 (2).

(11) REVOKED: O. Reg. 3/19, s. 1 (2).

WORKPLACE LABELS FOR EMPLOYER-PRODUCED PRODUCTS

9. (1) An employer who produces a hazardous product in a workplace shall ensure that the hazardous product or the container of the hazardous product has a workplace label. R.R.O. 1990, Reg. 860, s. 9 (1); O. Reg. 168/16, s. 2 (1).

(2) Subsection (1) does not apply when the hazardous product is in a container that is intended to contain it for sale or disposition and the container is, or is about to be, appropriately labelled. R.R.O. 1990, Reg. 860, s. 9 (2); O. Reg. 168/16, s. 2 (1).

(3) An employer shall update a workplace label referred to in subsection (1) as soon as practicable after significant new data about the product becomes available to the employer. O. Reg. 168/16, s. 9.

WORKPLACE LABELS FOR DECANTED PRODUCTS

10. (1) If a hazardous product that an employer receives in a container from a supplier is transferred to another container, the employer shall ensure that the other container has a workplace label. R.R.O. 1990, Reg. 860, s. 10 (1); O. Reg. 168/16, s. 2 (1).

(2) No supplier label, workplace label or label affixed under subsection 8 (8) is required on a portable container that is filled directly from a container of a hazardous product with a supplier label, workplace label or label affixed under subsection 8 (8),

(a) if,

(i) the hazardous product is under the control of and is used exclusively by the worker who filled the portable container,

(ii) the hazardous product is used only during the shift in which the portable container was filled, and

(iii) the contents of the portable container are clearly identified; or

(b) if all of the hazardous product in the portable container is required for immediate use. R.R.O. 1990, Reg. 860, s. 10 (2); O. Reg. 168/16, s. 2 (1); O. Reg. 458/18, s. 4; O. Reg. 3/19, s. 2.

IDENTIFICATION OF A HAZARDOUS PRODUCT IN PIPING SYSTEMS AND VESSELS

11. An employer shall ensure the safe use, storage and handling of a hazardous product in a workplace through worker education and the use of colour coding, labels, placards or another mode of identification when the hazardous product is contained or transferred in,

(a) a pipe;

(b) a piping system including valves;

(c) a process vessel;

(d) a reaction vessel; or

(e) a tank car, a tank truck, an ore car, a conveyor belt or a similar conveyance. R.R.O. 1990, Reg. 860, s. 11; O. Reg. 168/16, s. 2 (1).

PLACARD IDENTIFIERS

12. No label is required on a hazardous product,

(a) if the hazardous product,

(i) is not in a container,

(ii) is in a container or in a form intended for export, or

(iii) is in a container that is intended to contain it for sale or distribution and the container is not about to be appropriately labelled as referred to in subsection 9 (2) but is to be appropriately labelled within the normal course of the employer's business and without undue delay; and

(b) if the employer posts a placard that discloses the information required on a workplace label for the hazardous product and is of such size and in such a location that the information is conspicuous and clearly legible to workers. R.R.O. 1990, Reg. 860, s. 12; O. Reg. 168/16, s. 2 (1).

Transition, workplace labels

13. (1) An employer shall replace a WHMIS 1988 workplace label on a hazardous product, or container of a hazardous product, by affixing to the product or container a workplace label if,

(a) the WHMIS 1988 workplace label was affixed to the product or container on or before November 30, 2018;

(b) the WHMIS 1988 workplace label would have complied with the provisions of this Regulation relating to workplace labels for that hazardous product as they read immediately before July 1, 2016; and

(c) this Regulation requires that a workplace label be affixed to the product or container. O. Reg. 458/18, s. 5.

(2) In this section,

"WHMIS 1988 workplace label" means a workplace label as defined by this Regulation, as it read immediately before July 1, 2016. O. Reg. 3/19, s. 3.

(3) REVOKED: O. Reg. 3/19, s. 3.

LABORATORY SAMPLES

14. (1) No supplier label is required on a laboratory sample of a hazardous product if,

(a) the laboratory sample is exempt from labelling requirements under subsection 5 (5) or (6) of the *Hazardous Products Regulations* (Canada); and

(b) the supplier provides a label that is affixed to a container of the hazardous product and that discloses the information described in subsection (2). O. Reg. 168/16, s. 10.

(2) A label referred to in clause (1) (b) shall disclose the following information about the hazardous product:

1. The chemical name or generic chemical name, if known to the supplier, of every material or substance in the hazardous product where,

   i. individually, the material or substance is classified in accordance with the *Hazardous Products Regulations* (Canada) in a category or subcategory of a hazard class listed in Schedule 2 to the *Hazardous Products Act* (Canada) and is present above the relevant concentration limit, and

   ii. in a mixture, the material or substance is present at a concentration that results in the mixture being classified in a category or subcategory of a hazard class.

2. The statement "Hazardous Laboratory Sample, for hazard information or in an emergency call/Échantillon pour laboratoire de produit dangereux. Pour obtenir des renseignements sur les dangers ou en cas d'urgence, composez *insert the number described in paragraph 3*".

3. An emergency telephone number for the purposes of obtaining the information that must be provided on the safety data sheet for the hazardous product. O. Reg. 168/16, s. 10.

15. (1) If an employer complies with subsection (2), no workplace label is required for a laboratory sample that,

(a) is produced in the workplace or is in a container other than the container in which it was received from a supplier; and

(b) is clearly identified through a combination of identification visible to workers at the workplace and worker education. O. Reg. 168/16, s. 10.

(2) For the purpose of subsection (1), the employer shall ensure that the identification and worker education for the laboratory sample enable the workers to readily identify and obtain either the information required on a safety data sheet, if one has been prepared, or the information described in subsection 14 (2) on a label. O. Reg. 168/16, s. 10.

16. (1) If an employer complies with subsection (2), no workplace label is required for a hazardous product that,

(a) is produced in a laboratory;

(b) is intended by the employer solely for evaluation, analysis or testing for research and development;

(c) is not removed from the laboratory; and

(d) is clearly identified through a combination of identification visible to workers at the workplace and worker education. R.R.O. 1990, Reg. 860, s. 16 (1); O. Reg. 168/16, s. 2 (1).

(2) For the purposes of subsection (1), the employer shall ensure that the identification and worker education for the hazardous product enables workers to readily identify and obtain either the information required on a safety data sheet, if one has been prepared, or such other information as is necessary to ensure the safe use, storage and handling of the hazardous product. R.R.O. 1990, Reg. 860, s. 16 (2); O. Reg. 168/16, s. 2 (1, 3).

SAFETY DATA SHEETS

SUPPLIER SAFETY DATA SHEETS

17. (1) An employer who receives a hazardous product from a supplier for use, storage or handling at a workplace shall obtain a supplier safety data sheet for the hazardous product from the supplier unless the supplier is exempted under the *Hazardous Products Regulations* (Canada) from providing a safety data sheet for the hazardous product. O. Reg. 168/16, s. 11.

(2) An employer shall update a supplier safety data sheet obtained under subsection (1) as soon as practicable after significant new data about the product is provided by the supplier or otherwise becomes available to the employer. O. Reg. 168/16, s. 11.

(3) An employer may provide a safety data sheet in a different format from that of the supplier safety data sheet for the hazardous product or containing additional hazard information if,

(a) the safety data sheet provided by the employer, subject to subsection 40 (6) of the Act, contains no less content than the supplier safety data sheet; and

(b) the supplier safety data sheet is available at the workplace and the employer-provided safety data sheet indicates that fact. O. Reg. 168/16, s. 11.

EMPLOYER SAFETY DATA SHEETS

18. (1) An employer who produces a hazardous product at a workplace shall prepare a safety data sheet for the product that complies with the requirements of the *Hazardous Products Regulations* (Canada) for a safety data sheet. O. Reg. 168/16, s. 12.

(1.1) An employer who affixes a label under subsection 8 (8) or (9) or section 13, and who is unable to obtain a supplier safety data sheet for the hazardous product, shall prepare a safety data sheet for the product that complies with the requirements of the *Hazardous Products Regulations* (Canada) for a safety data sheet. O. Reg. 458/18, s. 6.

(2) No safety data sheet is required for a hazardous product that is a laboratory sample produced by the employer at the workplace. O. Reg. 168/16, s. 12.

(3) An employer shall update a safety data sheet referred to in subsection (1) as soon as practicable but not later than 90 days after significant new data about the hazardous product becomes available to the employer. O. Reg. 168/16, s. 12.

CONFIDENTIAL BUSINESS INFORMATION

19. (1) A claim under subsection 40 (1) of the Act for exemption from disclosure shall be made only in respect of,

(a) in the case of a material or substance that is a hazardous product,

  (i) the chemical name of the material or substance,

  (ii) the CAS registry number or any other unique identifier of the material or substance, and

  (iii) the chemical name of any impurity, stabilizing solvent or stabilizing additive that is present in the material or substance, that is classified in accordance with the *Hazardous Products Regulations* (Canada) in a category or subcategory of a hazard class listed in Schedule 2 to the *Hazardous Products Act* (Canada) and that contributes to the classification of the material or substance in the hazard class under that Act;

(b) in the case of an ingredient that is in a mixture that is a hazardous product,

  (i) the chemical name of the ingredient,

  (ii) the CAS registry number or any other unique identifier of the ingredient, and

  (iii) the concentration or concentration range of the ingredient;

(c) in the case of a material, substance or mixture that is a hazardous product, the name of any toxicological study that identifies the material or substance or any ingredient in the mixture;

(d) the product identifier of a hazardous product, being its chemical name, common name, generic name, trade name or brand name;

(e) information about a hazardous product, other than the product identifier, that constitutes a means of identification; and

(f) information that could be used to identify a supplier of a hazardous product. O. Reg. 168/16, s. 12.

(2) If an employer excludes from a label or safety data sheet information in respect of which an exemption is claimed, the label or safety data sheet must contain all information otherwise required by this Regulation. O. Reg. 168/16, s. 12.

20. (1) An employer who files a claim under subsection 40 (1) of the Act for exemption from disclosure in respect of a hazardous product shall state on the safety data sheet and, if applicable, on the label for the hazardous product or container in which the hazardous product is packaged, the date that the claim for exemption was filed and the registry number assigned to the claim under the *Hazardous Materials Information Review Act* (Canada). O. Reg. 168/16, s. 12.

(2) The information described in subsection (1) shall remain on the safety data sheet or label until,

(a) 30 days after the final disposition of the proceedings in relation to the claim for exemption; or

(b) if an order is issued under the *Hazardous Materials Information Review Act* (Canada) in respect of the claim, the end of the period specified in the order. O. Reg. 168/16, s. 12.

21. If an employer files a claim under subsection 40 (1) of the Act for an exemption from disclosure in respect of a hazardous product that is produced in the employer's workplace and the employer excludes from the safety data sheet information in respect of which the exemption is claimed, the following rules apply with respect to the safety data sheet:

1. If the claim is being made in respect of information set out in clause 19 (1) (a) or subclauses 19 (1) (b) (i) or (ii) of this Regulation, the safety data sheet shall include:
    i. in the case of a hazardous product that is a material or substance, the generic chemical name of the material or substance, or
    ii. in the case of a hazardous product that is a mixture, the generic chemical name of each material or substance in the mixture that,
        A. individually, is classified in accordance with the *Hazardous Products Regulations* (Canada) in a category or subcategory of a hazard class listed in Schedule 2 to the *Hazardous Products Act* (Canada), and is present above the relevant concentration limit, or
        B. is present at a concentration that results in the mixture being classified in a category or subcategory of a hazard class.
2. If the claim is being made in relation to information set out in clause 19 (1) (d) of this Regulation, the safety data sheet shall include the code name or code number of the hazardous product. O. Reg. 168/16, s. 12.

22. REVOKED: O. Reg. 168/16, s. 12.

23. (1) An employer whose claim or a portion of whose claim under subsection 40 (1) of the Act for exemption from disclosure is determined to be valid shall disclose on the safety data sheet and, if applicable, on the label for the hazardous product or container in which the hazardous product is packaged,

(a) a statement that an exemption has been granted;

(b) the date of the decision granting the exemption; and

(c) the registry number assigned to the claim under the *Hazardous Materials Information Review Act* (Canada). O. Reg. 168/16, s. 13.

(2) An employer shall disclose the information required under subsection (1) beginning not more than thirty days after the final disposition of the claim and ending on the last day of the exemption period. R.R.O. 1990, Reg. 860, s. 23 (2).

DISCLOSURE OF INFORMATION IN MEDICAL EMERGENCIES

24. For the purposes of clause 25 (2) (b) of the Act, an employer is required to provide information, including confidential business information, to a medical professional. R.R.O. 1990, Reg. 860, s. 24.

DISCLOSURE OF SOURCE OF TOXICOLOGICAL DATA

25. Subject to subsection 40 (6) of the Act, an employer who produces a hazardous product in a workplace shall disclose as quickly as possible under the circumstances the source of any toxicological data used by the employer to prepare a safety data sheet when the employer is requested to do so by,

(a) an inspector;

(b) a worker at the workplace;

(c) a member of the committee, if any;

(d) the health and safety representative, if any; or

(e) in the absence of a committee or health and safety representative, a representative of the workers at the workplace. R.R.O. 1990, Reg. 860, s. 25; O. Reg. 168/16, s. 2 (1, 3), 14.

25.1 REVOKED: O. Reg. 458/18, s. 7.

CITATION

26. This Regulation may be cited as the *Workplace Hazardous Materials Information System (WHMIS) Regulation*. R.R.O. 1990, Reg. 860, s. 26.

Français

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GUIDE FOR EMPLOYERS AND WORKERS

WHMIS 2015

The adoption of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) in WHMIS harmonized Canada's chemical hazard communication system with those of other countries. This is a guide to WHMIS 2015 components.

EMPLOYEE EDUCATION AND TRAINING

Employers must continue to educate and train employees about hazardous products in their workplace after harmonization. Revised training programs, developed in consultation with the Joint Health and Safety Committee, will include:

- New hazard pictograms[1];
- New hazard classes[2];
- New labels and their required elements, such as signal words and precautionary statements[3];
- The meaning of all signal words and hazard statements found on labels and SDSs in the workplace;
- The new SDS format and how to locate information needed to work safely with a product; and
- Worksite-specific training on measures to work safely with hazardous products.

After the transition period, SDSs and labels for products originating within and outside Canada will share common elements, simplifying education and training.

WSCC Workers' Safety & Compensation Commission
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wscc.nt.ca 1.800.661.0792
wscc.nu.ca 1.877.404.4407
WSCCNTNU

GUIDE FOR EMPLOYERS AND WORKERS

WHMIS 2015




EMPLOYER DUTIES

- Educate and train employees on the hazards and safe use of products.
- Ensure proper labelling of hazardous products.
- Prepare workplace labels and SDSs, as necessary.
- Provide employees with access to up-to-date SDSs.

WORKER DUTIES

- Comply with the *Safety Act* and *Occupational Health and Safety Regulations*.
- Cooperate in receiving instruction, education, and training on WHMIS labels and Safety Data Sheets.
- Ensure their own health and safety and that of others in or near the place of employment by:
  - Checking for a label;
  - Reading, understanding and following instructions on the label and SDS;
  - Following the safety procedures when working with hazardous product; and
  - Labelling a new container when a hazardous product is transferred or decanted.

SUPPLIER LABELS

New requirements for supplier labels include signal words and hazard statements, and standardized precautionary statements. Information for most label elements is standardized. Most hazard classes and categories will have a prescribed (standardized) pictogram, signal word, hazard statement and precautionary statements. The pictogram, signal word and hazard statement must be grouped together. There is no longer a requirement for a hatched border. Supplier labels will continue to be required in both English and French.[3]

WORKPLACE LABELS

Requirements for workplace labels continue to include the product name (matching the SDS product name), safe-handling precautions and a reference to the SDS.[3]

SAFETY DATA SHEETS

SDSs follow a standardized format. There are new information requirements.[4] SDSs will no longer include an expiry date. Suppliers must update SDSs when significant new information becomes available. Employees must continue to have access to SDSs. Employers must ensure that updated SDSs are obtained and readily available for all hazardous products used, handled or stored in the workplace.

CONFIDENTIAL BUSINESS INFORMATION – TRADE SECRETS

Trade secret rules continue to apply.

Adapted with permission from WorkSafeNB. Adapted from the WHMIS after GHS Fact Sheets developed by CCOHS in collaboration with Health Canada.

[1] *See the Pictograms factsheet (wscc.nt.ca / wscc.nu.ca).*
[2] *See the Hazard Classes factsheet (ccohs.ca).*
[3] *See the Supplier and Workplace Labels factsheet (wscc.nt.ca / wscc.nu.ca).*
[4] *See the Safety Data Sheets factsheet (ccohs.ca).*