College of Medical Laboratory Technologists of Ontario

Discipline Committee Rules

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Updated; October 2024

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College of Medical Laboratory Technologists of Ontario

DISCIPLINE COMMITTEE RULES

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College of Medical Laboratory Technologists of Ontario

RULE 1 - INTERPRETATION AND APPLICATION

1.01 Definitions

(1) In these Rules, unless the context requires otherwise, words that are not defined have the meaning defined in the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 and the *Statutory Powers Procedure Act*, R.S.O 1990 c. s.22.

(2) In these Rules,

"Business Day"	means any day other than a Holiday.
"Code"	means the Health Professions Procedural Code, which is Schedule 2 to the *Regulated Health Professions Act, 1991*.
"College"	means the College of Medical Laboratory Technologists of Ontario.
"Committee"	means the Discipline Committee of the College. "Committee or Panel Chair" means the chair of the Committee or Discipline Panel.
"Deliver"	means to serve a document on every other party or in the case of a Motion, Motion participant, and to file it with the Hearings Office with proof of service.
"Discipline Panel"	means a panel of Committee members selected by the Committee Chair.
"Electronic or electronically" Or videoconference	means the use of conference telephone call or videoconference or some other form of electronic technology allowing persons to hear and communicate with one another at the same time.
"Hearing"	means the process before a Panel constituted under either section 38 of the *Code* (in the case of allegations of professional misconduct or incompetence) or

sections 72 and 73 of the *Code* (in the case of an application for reinstatement).

"Hearings Office" means the employee or employees of the College who provide administrative assistance to the Discipline Committee.

"Holiday" means

(a) any Saturday or Sunday;

(b) New Year's Day;

(c) Family Day;

(d) Good Friday;

(e) Victoria Day;

(f) Canada Day;

(g) Civic Holiday;

(h) Labour Day;

(i) Thanksgiving Day;

(j) Christmas Day;

(k) Boxing Day;

(l) Where New Year's Day, Canada Day, Christmas Day, or Boxing Day falls on a Saturday or Sunday, the additional day designated by the College as a holiday;

(m) Any special holiday proclaimed by the Governor General or the Lieutenant Governor; and

(n) Any other day designated by the College as a holiday.

"Independent Legal Counsel"	means the lawyer appointed to provide advice to the Committee and/or a Discipline Panel.
"Member"	means a member or former member of the College who has been named in a Notice of Hearing. “Member” may be used interchangeably with “Registrant”.
“Motion”	means a request made to the Discipline Committee to make an order in a proceeding.
“Motion Record”	means a Record filed in support of a Motion.
"Notice of Hearing"	means a document issued by the College under the *Code* which contains one or more allegations of professional misconduct and/or incompetence against a Registrant.
"Pre-hearing Chair"	means the person designated by the Committee Chair to preside over the pre-hearing conference.
"Proceeding"	means any step in the discipline hearing process, and includes a motion, a pre-hearing conference, a hearing to set a Hearing date, and a Hearing.
“Prosecutor”	means the lawyer or lawyers appointed by the College to prosecute allegations before the Discipline Committee.
"Record"	means a copy of all exhibits from a proceeding and all written Reasons for Decision, Decision and Orders, and includes any transcripts of the Hearing.
“Registrant”	means a registrant or former registrant of the College who has been named in a Notice of Hearing. “Registrant” may be used interchangeably with “Member”.
“Representative”	means a person authorized under the *Law*

	Society Act to represent a person in a proceeding.
"Vulnerable Witness"	means a witness who, in the opinion of a Discipline Panel, will have difficulty testifying or will have difficulty testifying in the presence of a party for appropriate reasons related to age, disability, illness, trauma, emotional state or similar cause of vulnerability.
"Written Hearing"	means a hearing under Rule 8 held by a Discipline Panel by means of the exchange of written documents.

1.02 Interpretation of Rules

(1) Where matters are not specifically provided for in these Rules, the *Regulated Health Professions Act, 1991* or the *Statutory Powers Procedure Act*, *1990* the practice will be determined by analogy to them.

(2) Where there is an inconsistency between these Rules and the *Regulated Health Professions Act, 1991* or the *Statutory Powers Procedure Act*, *1990* the provisions of those statutes will govern.

(3) Anything these Rules require or permit a Representative to do can be done by the Registrant, if the Registrant is not represented.

(4) The College may issue practice directions or guidelines to explain or clarify these Rules.

1.03 Application of Rules

(1) These Rules apply to all proceedings before the Discipline Committee of the College including, with all necessary modifications, applications for reinstatement made under sections 72 and 73 of the *Code.*

1.04 Time

(1) A Discipline Panel may extend or shorten any time required by these Rules on such terms as are just, either before or after the expiration of the time.

1.05 Substantial Compliance

(1) If a party substantively complies with a form or notice required by or under these Rules in every important way, the party will be deemed to have met the requirements of a Rule.

(2) No proceeding is invalid only because of a defect or other irregularity in form.

1.06 Waiving a Rule

(1) A Rule may be waived if all parties consent or by order of a Discipline Panel.

(2) A motion to waive a Rule may be made at any time. However, a Discipline Panel may refuse to waive a Rule where a person does not make a request to waive a Rule, by bringing a Motion, promptly.

(3) The Discipline Committee may waive a provision of these Rules on its own initiative if it first gives notice to the parties or Motion participants and provides an opportunity for submissions to be made in the format requested by the Committee.

1.07 Power to Control Process

(1) Despite anything in these Rules, the Discipline Committee may make any order that is necessary to control its process. In making such an order the Discipline Committee must take into consideration the public interest, the interests of witnesses and the Registrant's right to make full answer and defence to the allegations.

RULE 2 - PROCEDURES PRIOR TO HEARING

2.01 Location of Hearings

(1) All Hearings will be held at the offices of the College at 2100-25 Adelaide Street East, Toronto, Ontario, M5C 3A1, unless otherwise directed by the Hearings Office. If the Hearing is to be held anywhere other than the offices of the College, the Hearings Office shall provide notice to the parties by email or in writing as soon as is practical to do so.

2.02 Serving or Delivering Documents

(1) A document is properly served or delivered if it is:

(a) sent in accordance with section 39 of the *Regulated Health Professions Act, 1991*;

(b) served personally and service is proven;

(c) sent by e-mail and in that case is deemed to have been delivered on the same day the e-mail was sent, if receipt of the e-mail is confirmed by the recipient (and every recipient has a duty to confirm receipt of all e-mail messages in proceedings covered by these Rules);

(d) sent by courier and in that case is deemed to have been delivered on the day of the delivery receipt; or

(e) sent as directed by the Committee.

(2) Documents served or delivered after 5:00 p.m. will be deemed to have been received on the next day that is not a Holiday.

2.03 Filing of Documents

(1) A document may be filed with the Hearings Office by:

(a) leaving it with the receptionist at the College;

(b) sending it by courier to the College;

(c) faxing it to the College at (416) 861 0934; or

(d) sending it by email to the College at hearings@cmlto.com.

(2) A document to be filed with the Hearings Office must be clearly marked, “Attention: Hearings Office”.

RULE 3 - PRE-HEARING CONFERENCES

3.01 Scheduling

(1) A pre-hearing conference shall be scheduled if a party requests a pre-

hearing conference. Additional pre-hearing conferences may be scheduled at the request of a party.

(2) When a pre-hearing conference is to be held, the Committee Chair will designate a person to act as the Pre-hearing Chair at the pre-hearing conference. The Pre-hearing Chair must not be a member of the Discipline Panel presiding over the Hearing.

(3) Unless the Pre-hearing Chair agrees otherwise, the College's Prosecutor, a member of the College staff, the Registrant and, if applicable, the Registrant's representative must participate in the pre-hearing conference. The pre-hearing conference may be conducted either electronically or in person.

(4) The Pre-hearing Chair may request that Independent Legal Counsel attend a pre-hearing conference.

3.02 Pre-Hearing Conference Memorandum

(1) Not less than 20 days before the pre-hearing conference, the College will prepare a pre-hearing conference memorandum, which may be in the format set out in Form 3 and will provide a copy to the Registrant and to the Pre-hearing Chair. The pre-hearing conference memorandum must identify the factual and legal issues in dispute, and briefly set out the College's position.

(2) The Registrant may deliver a pre-hearing conference memorandum to the College, with a copy to the Pre-hearing chair, not less than 10 days before the pre-hearing conference.

(3) Pre-hearing conference memoranda shall be filed with the Hearings Office in accordance with Rule 2.03.

3.03 Confidentiality and Use of Pre-hearing Chair's Report

(1) The pre-hearing conference will not be open to the public. Unless both parties consent, all communications at a pre-hearing conference, with the exception of formal orders made by the Pre-hearing Chair, must be kept confidential and constitute without prejudice settlement discussions. This includes any pre-hearing conference memoranda and the Pre-hearing Chair's notes and records.

3.04 Procedure at Pre-Hearing Conference

(1) The parties to a pre-hearing conference shall be prepared to discuss all of the topics set out in the Pre-hearing Conference Memorandum, including the following:

(a) the strengths and weaknesses of each party's case;

(b) whether any facts can be agreed to;

(c) whether any or all of the issues can be settled or narrowed;

(d) the content and timing of any additional disclosure;

(e) the scheduling of any Motions to be heard before the hearing;

(f) the appropriate Order in the event that findings of professional misconduct and/or incompetence are made;

(g) the delivery and form of documents, written arguments and books of authorities that will be used at the hearing and whether the Discipline Committee will review them before the hearing;

(h) the estimated length and scheduling of the Hearing; and

(i) any other matter that may assist in the just and expeditious disposition of the proceeding.

(2) The Pre-hearing Chair may give directions or make any order(s) that they consider necessary or advisable with respect to the conduct of the proceeding.

(3) Any orders, directions, undertakings and agreements made at a Pre-hearing conference shall be recorded in a report prepared by or under the direction of the Pre-hearing Chair and a copy of the report shall be distributed to the parties.

(4) If a party disagrees with the accuracy of the Pre-hearing Chair's report, the party shall, within 7 days after receiving the report, deliver to the Hearings Office and the other party, written notice of the specific area of disagreement. The party receiving written notice shall, within 5 days, deliver any responding comments to the other party and to the Hearings Office, after which time the Pre-hearing Chair may revise the report at their discretion.

RULE 4 - ADJOURNMENTS

4.01 Timing

(1) Where both parties have received formal notification of the date for a step in a Proceeding, requests for adjournment of such shall be made at the earliest opportunity after the party or the Representative making the request becomes aware that an adjournment is required.

4.02 Consent to be Obtained

(1) A party seeking an adjournment shall attempt to obtain the consent of the other party before bringing a request before the Discipline Committee. If consent is obtained, then the Hearings Office shall be informed of the adjournment and of any new dates agreed to by the parties and there shall be no requirement for consideration of the adjournment request by a member of the Discipline Committee.

4.03 Where Consent Not Obtained

(1) Where consent of the other party is not obtained, requests for adjournment of a Hearing, Motion or pre-hearing conference, should be made in writing in advance of the previously scheduled date, after consulting the other party, using the Adjournment Request Form 4 included in these Rules or obtained through the Hearings office.

4.04 Method of Hearing

(1) Requests for adjournment of a Hearing or pre-hearing conference made in advance of the previously scheduled date shall be heard and decided by the Chair or a member of the Discipline Committee appointed by the Chair and may be considered in writing or electronically.

(2) If the Hearing has already commenced, any request for an adjournment shall be brought to the Discipline Panel presiding over the Hearing. The Discipline Panel may:

(a) dispose summarily of a request for adjournment that is on consent or unopposed; or

(b) direct that the request proceed by way of a formal Motion before the Hearing panel.

4.05 Factors to Be Considered

(1) In deciding whether or not to grant an adjournment (and if so, on what terms), the following factors will be considered:

(a) balancing the right of the parties to a fair hearing against the desirability of an expeditious hearing;

(b) whether there is prejudice to a person;

(c) how long the requesting party had to prepare for the Hearing;

(d) whether the request for an adjournment was made promptly;

(e) the efforts made to avoid the adjournment;

(f) the number of prior requests for an adjournment;

(g) whether the public is at risk if an adjournment is granted;

(h) the proposed length of the adjournment;

(i) the costs of an adjournment;

(j) the public interest; and

(k) any other factor deemed relevant to determine whether the adjournment request should be granted.

4.06 Conditions May Be Imposed

(1) The Chair or a Discipline Panel may grant an adjournment on such terms and conditions as they consider just.

RULE 5 - MOTIONS

5.01 Initiating Motions

(1) A person may initiate a Motion by filing with the Hearings Office and delivering to the other party and any other Motion participants a Motion Record, which shall include the Notice of Motion in accordance with the Notice of Motion Form 1, and all affidavits and any materials to be relied upon, unless the nature of the Motion or the circumstances

make a Motion Record impractical.

(2) All issues shall be raised in a Motion as soon as possible, unless the nature of the Motion requires that it be heard during the Hearing itself.

5.02 How Motions to Be Heard

(1) A Motion in a proceeding may be heard and determined by way of oral argument, in writing or electronically as determined by the person or persons presiding over the Motion.

5.03 Timing, Delivery and Filing of Materials

(1) The person initiating a Motion shall file with the Hearings Office and deliver to the responding party/Motion participants the Motion Record, at least 15 days before the date the Motion is to be heard.

(2) The responding party/Motion participants shall file with the Hearings Office and deliver to the initiating party their materials in the form of a responding Motion Record, at least 10 days before the date the Motion is to be heard.

(3) Where a party/Motion participant intends to rely on a factum, written submissions and/or a book of authorities, those documents shall be filed with the Hearings Office and delivered, in the case of the person initiating the Motion, at least 7 days before, and in the case of a responding party/Motion participant, at least 3 Business Days, before the date the Motion is to be heard.

(4) Motion participants may file a document with the Hearings Office in accordance with Rule 2.03.

5.04 Assigning a Motion Panel

(1) The Chair or the Chair's delegate shall assign one or more members of the Discipline Committee to hear a Motion.

(2) A Motion participant who believes that the Hearing should not be heard by the member(s) of the Discipline Committee who sat on the Motion panel shall request a direction from the Motion panel in the Notice of Motion.

5.05 Scheduling

(1) Where a Motion is to be heard in person, the Hearings Office will contact the participants to schedule a date for the Motion after the person initiating the Motion has filed their Motion Record with the Hearings Office.

(2) Where a Motion is to be held in writing or electronically, the member(s) of the Discipline Committee assigned to decide the Motion shall do so after all the materials referred to in this rule have been filed.

5.06 Evidence

(1) Evidence on a Motion shall be given by affidavit unless the Chair or member of the Discipline Committee orders that it be given in some other form, or unless otherwise provided by law.

(2) All affidavits used on a Motion shall:

(a) be confined to the statement of facts within the personal knowledge of the affiant (the person signing the affidavit), except that the affidavit may contain statements of the affiant's information and belief, if the source of the information and the fact of the belief are specified in the affidavit; and

(b) be signed by the affiant and sworn or affirmed before a person authorized to administer oaths or affirmations, which person shall also mark all exhibits as such to the affidavit.

(3) A Motion participant may cross-examine the affiant of an affidavit filed by another Motion participant only if the parties consent or with the permission of the Chair or member of the Discipline Committee, if they believe the interests of the case require it.

(4) Sub-rule (3) does not prevent an affiant from being cross-examined on an affidavit during the Hearing.

5.07 Orders

(1) Immediately after a Motion has been decided, the person initiating the Motion shall, and any other Motion participant may:

(a) prepare a draft order;

(b) seek written approval from the responding party and any other Motion participants as to the draft order's form and content; and

(c) deliver the draft order, together with any written approval(s), to the Hearings Office.

5.08 Limitations on Submissions

(1) No Motion participant shall take more than one hour, including a reply, to make oral submissions on a Motion without the prior permission of the Chair or member of the Discipline Committee.

5.09 Communications

(1) Any communications to the Hearings Office regarding a Motion shall be in writing and copied to all Motion participants.

RULE 6 - NOTICE OF CONSTITUTIONAL QUESTION

6.01 Timing for Notice

(1) A party who intends to raise a constitutional issue or question at a Hearing or on a Motion must formally give notice of such to the Attorney General of Canada and the Attorney General of Ontario. Notice must be given not less than 15 days before the issue or question is to be argued before a Discipline Panel.

6.02 Submissions by Attorney General

(1) The Attorney General of Canada and the Attorney General of Ontario may give evidence and make submissions to the Discipline Panel regarding the constitutional issue or question.

RULE 7 - EXCHANGE AND USE OF DISCLOSURE

7.01 Exchange of Documents

(1) Each party to a proceeding shall deliver to every other party, in advance of the Hearing, a list of, and if not previously produced, copies of, all documents and things that the party intends to produce or enter as evidence at the Hearing.

(2) Each party to a proceeding shall deliver to every other party, in advance of the Hearing, a list containing the identity of any witnesses the party intends to call.

(3) The College must produce the information set out in (1) and (2) above as soon as is reasonably practicable after the Notice of Hearing is served but in any case, not less than 15 days before the commencement of the Hearing.

(4) Subject to Rule 7.01(5), any other party must produce the information set out in and (2) above as soon as is reasonably practicable after disclosure by the College under this Rule, but in any case, not less than 10 days before the commencement of the Hearing.

(5) In the event that the College produces any information set out in (1) and (2) above less than 15 days before the commencement of the Hearing, any other party who wishes to produce information set out in (1) and (2) above in response to same must produce the information as soon as is reasonably practicable after disclosure by the College under this Rule, but in any case not less than 5 days after disclosure by the College and prior to the commencement of the Hearing.

(6) A party who does not disclose a document or thing in compliance with this Rule may not refer to the document or thing or introduce it in evidence at the Hearing without leave of the Discipline Panel, which may be granted on any conditions that the Discipline Panel considers just.

7.02 No Waiver of Privilege

(1) Despite anything in these Rules, a party or participant in the proceedings is not required to disclose or produce any document or evidence that is privileged or otherwise protected from disclosure by law.

7.03 Order for Disclosure

(1) At any stage in a proceeding, a Discipline Panel may:

(a) order that a party provide to another party and to the Discipline Panel any particulars that the Discipline Panel considers necessary for a full and satisfactory understanding of the subject of the proceeding; or

(b) make any other disclosure order required by these Rules, within the time limits and on any conditions that the Discipline Panel may specify.

7.04 Motions for Production of Documents from a Third Party

(1) A motion by a party relating to the production of documents in the possession of a third party cannot be brought before the commencement of the Hearing. The Notice of Motion relating to the production of documents must be provided to the person possessing the documents and to any other person having a significant interest, including a privacy interest, in the documents.

(2) In considering such a motion, the Discipline Panel must take into account:

(a) the relevance of the document to a significant issue in the Hearing;

(b) whether it would be unfair to require the party bringing the motion to proceed to the Hearing without the document;

(c) any claim that the document is privileged; and

(d) whether any person has a significant interest in the document, including a privacy interest.

(3) Where, in relation to a Hearing involving allegations of a Registrant's misconduct of a sexual nature, the Registrant seeks an order of the panel of the Discipline Committee for the production and disclosure of a record that contains information in respect of which a person who is not a party to the Hearing has a reasonable expectation of privacy, any one or more of the following assertions made by the Registrant 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:

(a) that the record exists;

(b) that the record relates to medical or psychiatric treatment, therapy or counselling that the complainant or a witness has received or is receiving;

(c) that the record relates to the incident that is the subject-matter of the proceedings;

(d) that the record may disclose a prior inconsistent statement of the complainant or a witness;

(e) that the record may relate to the credibility of the complainant or a witness;

(f) 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;

(g) that the record may reveal allegations of sexual abuse of the complainant or a witness by a person other than the member;

(h) that the record relates to the sexual activity of the complainant or a witness with any person, including the Registrant;

(i) that the record relates to the presence or absence of a recent complaint;

(j) that the record relates to the sexual reputation of the complainant or a witness; or

(k) 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 Registrant.

(4) A panel of the Discipline Committee or the Discipline Committee Chair or their delegate may, on motion by a party, order that a person who has possession or control of the record produce the record or part of the record to the Discipline Panel or Discipline Committee Chair if the panel is satisfied that the party 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.

(5) Where after reviewing a record produced pursuant to this Rule, the Discipline Panel or the Discipline Committee Chair or their delegate is satisfied that the record or any portion thereof is likely relevant to an issue in the hearing or to the competence of a witness to testify in the hearing and that the production of the record is necessary in the

interest of justice, such record or portion thereof shall be produced to the parties.

(6) In determining whether to grant an order for the production of records in accordance with this Rule, the Discipline 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.

(7) Despite anything in these Rules, the Discipline Panel shall, upon the application of any person who has a privacy interest in the records referred to in this Rule, grant the person standing on the Motion for production of the records.

RULE 8 – HOW HEARINGS AND PROCEEDINGS ARE TO BE HEARD

8.01 Hearing or Proceeding to Proceed Electronically unless Oral or Written Hearing is Ordered

(1) A Discipline Hearing shall proceed electronically, unless otherwise ordered by the Committee Chair or Discipline Panel.

(a) A Discipline Panel may allow all or part of a proceeding to be heard in writing or orally if the Committee Chair or Discipline Panel, after hearing submissions from the parties, makes an order that the proceeding should be heard in this way.

8.02 Electronic Hearings

(1) This sub-rule applies to any proceeding or part of a proceeding that is held electronically including motions, pre-hearing conferences and hearings.

(2) At least 48 hours before an electronic proceeding is scheduled to commence, the Hearings Office shall instruct participants on how to participate in the electronic proceedings and the participants shall comply with those instructions.

(3) Unless otherwise provided for in the Rules, every person participating in the proceeding shall deliver, at least 3 business days before the proceeding, every document upon which the person intends to rely, in sequentially numbered pages.

(4) Every person participating in the proceeding shall provide to the Hearings Office at least 7 days before the Hearing a telephone number at which they can be reached during the Hearing and shall ensure that they can be reached at the telephone number provided to the Hearings Office beginning at 5 minutes before the proceeding is scheduled to commence.

(5) Where all or part of a proceeding is to be conducted electronically and the proceeding involves witnesses, the electronic hearing shall be conducted through a platform that permits the Discipline Panel and the parties to both see and hear the witnesses simultaneously.

8.03 Written Proceedings

(1) The Discipline Panel may hold all or part of a proceeding in writing with the consent of the parties.

(2) All documents in a written proceeding shall be delivered according to the schedule ordered by the Discipline Panel or agreed to by the parties.

RULE 9 - PROCEDURE RELATED TO THE HEARING

9.01 Public Access to Hearing

(1) A Hearing shall be open to the public in accordance with section 45 of the *Code*.

9.02 Electronic Devices and Publication of Proceedings

(1) No person may:

(a) take or attempt to take a photograph, audio or video recording or other record by any means at a proceeding; or

(a) publish, broadcast, reproduce or otherwise disseminate a photograph, audio or video recording or other record taken,

whether in compliance with or in contravention of this sub-rule.

(2) Sub-rule 9.02(1) does not apply to:

(a) a person unobtrusively making handwritten or typed notes, or sketches at a proceeding;

(b) a party or a party's representative unobtrusively making an audio recording at a proceeding that is used only as a substitute for handwritten or typed notes for the purposes of the proceeding;

(c) a person taking a photograph, audio or video recording or other record with the prior written authorization of the Discipline Panel;

(d) the court reporter assigned to the proceeding; or

(e) a person using a device to compensate for a disability.

9.03 Information Relating to Registrant's Capacity

(1) If there is information in a proceeding to suggest that the Registrant may be incapacitated, the Discipline Committee may:

(a) ask the parties if they have had an opportunity to consider the information and whether all or part of the conduct at issue in the allegations relates to the Registrant's capacity;

(b) ask the parties whether or not there are parallel incapacity proceedings;

(c) grant an adjournment to permit the College to consider whether to initiate incapacity proceedings;

(d) if a finding has been made by the Discipline Committee and if there are parallel incapacity proceedings, ask the parties for details of the status of the incapacity proceedings and any order made by the Fitness to Practise Committee;

(e) permit the parties to make submissions about whether the public should be excluded from all or part of the Hearing; and/or

(f) do anything else relevant that may assist the Discipline Panel in

the circumstances.

9.04 Oral and Written Arguments

(1) A Discipline Panel may place reasonable limits on the length of oral and/or written submissions.

(2) A Discipline Panel may, after hearing submissions, order the parties to submit written arguments on some or all of the issues at the Hearing, and may give directions as to the form and timing of such written arguments.

9.05 Use of Evidence by Hearing Panel

(1) Nothing is admissible in evidence at a Hearing that would be inadmissible in a court in a civil action.

(2) The findings of a Discipline Panel shall be based exclusively on evidence admitted before it.

9.06 Obtaining a Summons to Compel the Attendance of a Witness

(1) A party who requires a witness to attend the hearing and believes they require a summons to compel them to attend must complete the Summons to Witness Form available through the Hearings Office and provide it to the Hearings Office for signature by the Chair or their delegate.

(2) The summons may require the person summonsed to produce at the Hearing, documents and things specified in the summons.

(3) The summons must be served personally on the person to be summonsed.

(4) The person summonsed is entitled to receive the same fees or allowances for attending or participating in the hearing as are paid to a person summonsed to attend before the Superior Court of Justice. The party obtaining the summons must pay the fees or allowances.

9.07 Excluding Witnesses

(1) A Discipline Panel may order that one or more witnesses be excluded from the hearing until called to give evidence.

(2) An order under sub-rule (1) may not be made in respect of a party to the proceeding or a witness whose presence is required to instruct counsel, but the Discipline Panel may require any such witness to give evidence before other witnesses are called to give evidence on behalf of that party.

(3) Where an order is made excluding one or more witnesses from the hearing, no person shall communicate or permit the communication to an excluded witness. of any evidence given during the witness' absence from the hearing until after the witness has been called and has given evidence.

9.08 Vulnerable Witnesses and Evidence of Sexual History

(1) A Discipline Panel may permit a support person to be present and to sit near a vulnerable witness while testifying, and may issue directions regarding the conduct of the support person during the testimony of the witness.

(2) A Discipline Panel may order that a vulnerable witness provide their testimony in a manner that would allow the vulnerable witness to not see the Registrant, if the Discipline Panel is of the opinion that this is likely to help the witness give complete and accurate testimony or that it is in the best interest of the witness, would not unduly impair the ability of the Registrant to make full answer and defence and if the condition set out in sub-rule 9.08(2)(a) is satisfied:

(a) When a screen or CCTV is used, the Discipline Panel and the Representatives for the parties and/or a representative appointed pursuant to sub-rule 9.08(3) must be able to see and hear the witness testify and the parties must be able to communicate with their lawyers or representative while the witness is testifying.

(3) Where a witness is vulnerable, and a Registrant is not represented, the Prosecutor may apply to have a representative appointed to conduct the cross-examination of the witness and the Chair or the Discipline Panel may order that a representative be appointed to cross-examine the witness.

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

of that activity, the complainant is:

(a) more likely to have consented to the sexual activity that forms the subject matter of the allegations; or

(b) less worthy of belief.

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

(a) is not being called for the purpose of supporting an inference described in rule 9.08(4);

(b) is relevant to an issue at the hearing;

(c) is of specific instances of sexual activity; and

(d) has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.

(6) In determining whether evidence is admissible under rule 9.08(5), the Committee Chair or Discipline Panel shall consider:

(a) the interests of justice, including the right of the member to make full answer and defence;

(b) society's interest in encouraging the reporting of sexual misconduct by health professionals;

(c) whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case;

(d) the need to remove from the fact-finding process any discriminatory belief or bias;

(e) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility;

(f) the potential prejudice to the complainant's personal dignity and

right of privacy;

(g) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and

(h) any other factor that the Discipline Committee considers relevant.

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

9.09 Expert Witnesses and Reports

(1) A party who intends to call an expert witness at a Hearing must, not less than 10 days before the Hearing, serve an expert report on the other party. The expert report must be signed by the expert, and must set out the expert's name, address and qualifications, and the substance of their proposed testimony; or, if the expert has not prepared a written report, a written summary of the expert's evidence.

(2) Each party must inform any prospective expert witness that it is the duty of an expert to assist the Discipline Panel on matters within the expert's expertise, and
that this duty overrides any obligation to the person from whom they have received instructions or payment. The expert must certify by signing an Acknowledgement of Duty of Expert Witness Form that the expert is aware of and understands this duty.

(3) Where the Discipline Panel hears testimony of an expert witness, it may also admit the expert witness' report as an exhibit at the Hearing.

(4) A Discipline Panel may, in its discretion, allow a party to introduce expert evidence that is inadmissible under this Rule, and may make directions it considers necessary to ensure that the other parties are not prejudiced.

9.10 Non-party Participation in Hearing

(1) On application by a person who is not a party to the proceedings, a Discipline Panel may allow a non-party to participate in a Hearing if,

(a) the good character, propriety of conduct or competence of the non-party is in issue at the Hearing; or

(b) the participation of the non-party would, in the opinion of the

Discipline Panel, be of assistance to the panel.

(2) The Discipline Panel must determine the extent to which a non-party who is allowed to participate may do so, including the ability of the person to make oral or written submissions, to lead evidence and to cross-examine witnesses.

9.11 Public Access to Hearing Record

(1) A member of the public has, subject to any order prohibiting publication, a right to access the Notice of Hearing, a copy of the transcript of evidence if a certified copy has already been transcribed and produced, any Agreed Statement of Fact, and any Joint Submission as to Penalty, without having to bring a motion, subject to any redactions pursuant to sub-rule (5).

(2) If a member of the public wishes to have access to any other part of the Hearing Record, the person must bring a motion before the Discipline Panel or Committee Chair and must give notice to the parties and any other interested person. The Notice of Motion must set out the purpose, scope of the access and the intended use being sought and, if the person is requesting permission to duplicate an exhibit, sufficient details that would allow the Committee Chair or Discipline Panel to consider whether or not duplication would adversely affect the integrity of the exhibit.

(3) Prior to making its decision on a motion for access to all or part of the Hearing Record, the Committee Chair or Discipline Panel must consider the submissions of the person seeking access, the parties and any other persons having an

interest. The Committee or Discipline Panel may consider the following factors:

(a) the general principle that hearings be open to the public;

(b) the intended use of the exhibit;

(c) proprietary or privacy interests in the exhibit;

(d) the timing of the request and, specifically, whether it was made during or after the Hearing;

(e) interference with the proper and orderly conduct of the Hearing;

(f) interference with the Registrant's right to a fair hearing; and

(g) any other factor that may be relevant to the Committee's or Discipline Panel's decision.

(4) In the event that the Committee Chair or Discipline Panel decides to grant access to all or part of the Hearing Record, it may decide to limit who may access the Hearing Record and how it may be used. The Committee Chair or Discipline Panel must be satisfied that the security of any exhibit will be protected, and may provide for supervision and control of any exhibit by a person designated by it.

(5) Before granting a member of the public access to any part of the Hearing Record, the College must redact any portion of the material that is the subject of an order prohibiting publication and may redact the document(s) to prevent disclosure of the names and any other identifying personal information of any complainants, patients, or witnesses, and the names of any institutions.

RULE 10 - AWARDS OF COSTS

10.01 Costs for Non-compliance with Rules

(1) Where a Discipline Panel is entitled to order the payment of costs and/or expenses by a party pursuant to section 53 or 53.1 of the *Code*, the Discipline Panel may consider, among other factors, the failure of a party to comply with these Rules and whether the conduct of the party has been unreasonable, frivolous or vexatious or a party has acted in bad faith, including but not limited to late requests for adjournments.

10.02 Procedure for Requesting Costs

(1) Subject to subsections (2) and (3) below, a party requesting an order for costs must provide an explanation and, where practicable, evidence of the costs they have incurred.

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

(3) Tariff A does not interfere with a Discipline Panel's discretion to order costs relating to:

(a) the investigation and the prosecution of the misconduct; and/or

(b) the conduct of the hearing that departs from the Tariff where the Discipline Panel determines that it is appropriate to do so.

RULE 11 - REINSTATEMENT APPLICATIONS

(1) This Rule applies to applications for reinstatement made under sections 72 and 73 of the *Code.*

(2) A Registrant making an application for reinstatement must deliver a Notice of Application specifying:

(a) the order sought;

(b) the grounds of the application;

(c) the evidence that the former Registrant intends to rely on; and

(d) the anticipated length of the Hearing.

(3) A Registrant making an application for reinstatement must comply with the policies and practices of the College, including those related to credentialing requirements and re-entering practice.

(4) Unless the Committee directs otherwise, the former Registrant making an application for reinstatement must deliver eight (8) copies of:

(a) the record of the original Hearing;

(b) the record of any previous applications for reinstatement (including the transcript of any previous reinstatement hearing);

(c) the recordpt of the original Hearing; and

(d) any document upon which the former Registrant intends to rely.

(5) The Committee will not schedule a reinstatement application for a Hearing until the former Registrant complies with sub-rules (2), (3) and

(4).

(6) Once a reinstatement application has been scheduled, the Hearings Office shall deliver a Notice of Reinstatement Hearing to the parties.

TARIFF A

COSTS TO THE COLLEGE OF CONDUCTING A HEARING

Costs and expenses of a day of hearing $8,778.00

Costs and expenses of a half day of hearing $5,852.00

In effect: September 11, 2024

College of Medical Laboratory Technologists of Ontario

FORM 1: NOTICE OF MOTION

DISCIPLINE COMMITTEE OF THE COLLEGE OF MEDICAL LABORATORY TECHNOLOGISTS OF ONTARIO

B E T W E E N:

COLLEGE OF MEDICAL LABORATORY TECHNOLOGISTS OF ONTARIO

and

[INSERT NAME OF REGISTRANT]

NOTICE OF MOTION

THE [IDENTIFY MOVING PARTY] WILL make a motion to the Discipline Committee of the College of Medical Laboratory Technologists of Ontario, on [day], [date], at [time], or as soon after that time as the motion can be heard electronically/in writing, at 25 Adelaide St E #2100, Toronto, Ontario.

THE MOTION IS FOR [set out the specific Order that is sought].

THE GROUNDS FOR THE MOTION ARE [specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on].

THE FOLLOWING DOCUMENTARY EVIDENCE WILL be used at the hearing of the motion: [list the affidavits or other documents to be relied on].

[Date] [Name, address, telephone and facsimile number of the moving party or their representative]

TO: [Name, address, telephone and facsimile number of responding party or their representative]

College of Medical Laboratory Technologists of Ontario

FORM 2: ORDER

DISCIPLINE COMMITTEE OF THE COLLEGE OF MEDICAL LABORATORY TECHNOLOGISTS OF ONTARIO

[names of Discipline Committee members])
) [day and date(s) of hearing]
)

B E T W E E N:

COLLEGE OF MEDICAL LABORATORY TECHNOLOGISTS OF ONTARIO

and

[INSERT NAME OF REGISTRANT]

ORDER

THIS MOTION, made by [identify moving party] for [state the relief sought in the Notice of Motion], was heard by the Discipline Committee of the College of Medical Laboratory Technologists of Ontario [electronically/in writing] at 25 Adelaide St E #2100, Toronto, Ontario on [day], [date]].

ON READING the [list the material filed on the motion] and on hearing the submissions of [(name of the moving party) or representative for (name of moving party), [where applicable, add "(name of moving party) appearing in person" or "no one appearing for (name of moving party), although properly served as appears from (indicate proof of service)],

THE DISCIPLINE COMMITTEE ORDERS that …

[signature of chair]

College of Medical Laboratory Technologists of Ontario

FORM 3: PRE-HEARING CONFERENCE MEMORANDUM

DISCIPLINE COMMITTEE OF THE COLLEGE OF MEDICAL LABORATORY TECHNOLOGISTS OF ONTARIO

B E T W E E N:

COLLEGE OF MEDICAL LABORATORY TECHNOLOGISTS OF ONTARIO

and

[INSERT NAME OF REGISTRANT]

PRE-HEARING CONFERENCE MEMORANDUM [OF THE COLLEGE OR OF THE REGISTRANT]

Date of Pre-hearing Conference:

College Counsel:

Defence Representative (if applicable):

BACKGROUND INFORMATION

1. Please attach a copy of the Notice of Hearing to this memorandum.

2. Set out a brief statement of the College's [Registrant's] case, including factual disputes and the anticipated evidence of witnesses.

3. Provide a description of the legal issues to be determined at the hearing.

4. Attach a copy of any document that would assist the Presiding Officer at the pre-hearing conference.

ADDITIONAL STEPS BEFORE THE HEARING

5. Motions:

    - Will you be bringing any motions?

- If so, what order will you seek and on what grounds?
- When do you intend to bring each motion?

6. Disclosure:
    - Are there any issues with respect to disclosure?
    - Has the College made full disclosure to the Registrant?
    - Have both parties produced all of the expert reports upon which they intend to rely?
    - If disclosure has not yet been completed, can the parties agree on a date by which it will be done?
7. Admissions:
    - Are there any facts or allegations that can be admitted?
    - Can the admissibility of documents be agreed upon?
    - Is it possible to develop an Agreed Statement of Facts?
    - Is it possible to develop a Joint Submission on Penalty?
8. Joint Book of Documents:
    - Is it a possible to develop a Joint Book of Documents?
    - If so, by what date will the Joint Book be delivered?
    - Should the Discipline Panel be able to review the Joint Book before the Hearing?
9. Written arguments:
    - Are there any issues which should be dealt with through written argument instead of oral argument during the Hearing or during a motion?
    - When should written arguments be delivered by?

- Should the Discipline Panel be able to review written arguments before the Hearing?

PLANNING THE HEARING

1. Hearing:

    - Are you ready for the Hearing?
    - Should the matter be expedited?
    - Are there any special considerations affecting the setting of a date (such as the availability of witness)?
    - How long will the Hearing last?
    - Estimate the length of time it will take to hear any motions you anticipate bringing during the Hearing.
    - List your witnesses and estimated length of time you anticipate it will take to hear their evidence.
    - Will you be requesting that the Committee issue a summons (to require a person to attend or provide evidence at the Hearing). If so, identify the person(s).
    - Do you object to the Committee issuing a summons requested by a party and, if so, on what grounds?

2. Memorandum or Directions

    - Should the Presiding Officer provide a signed Memorandum or written directions to the parties to record facts, documents or issues where the parties have reached agreement?
    - Are there any matters that should be included in a Memorandum or written directions to be given by the Presiding Officer?

_____ _____

(Date) (Signature of party or representative who will be attending the hearing)

College of Medical Laboratory Technologists of Ontario

FORM 4: REQUEST FOR ADJOURNMENT

DISCIPLINE COMMITTEE OF THE
COLLEGE OF MEDICAL LABORATORY TECHNOLOGISTS
OF ONTARIO

IN THE MATTER OF the *Regulated Health Professions Act*, 1991, S.O., 1991, C. 18, as amended, and the regulations thereunder, as amended;

AND IN THE MATTER OF the *Medical Laboratory Technology Act*, 1991, as so 1991, C.28, as amended, and the regulations thereunder, as amended;

AND IN THE MATTER of allegations of professional misconduct referred to the Discipline Committee of the College of Medical Laboratory Technologists of Ontario regarding
[enter Registrant's name].

REQUEST FOR ADJOURNMENT

A. A request for adjournment is being made by:

☐ Both parties jointly
☐ The College
☐ The Registrant

B. The adjournment is requested in respect of:

☐ A scheduled Pre-hearing Conference
☐ A hearing that has not commenced but is scheduled for _____
☐ A hearing that commenced on and was scheduled as follows:
Dates heard:
Dates remaining:

College of Medical Laboratory Technologists of Ontario

C. The reason for the request is:

D. The nature of the allegations against the Registrant are (or attach a copy of the Notice of Hearing):

E. If the request has not been made jointly, please confirm that the other party has been advised that the request is being made

☐ Yes
☐ No

F. If the request has not been made jointly, please summarize the other party's position on your adjournment request:

G. Please provide at least 5 alternative dates, or set of dates, that the parties would be available for the matter to proceed which fall within 60-90 days of the date(s) requested to be adjourned:

Name, address, telephone number and email of the requesting party or their

representative: Today's Date:

Name, address, telephone number and email of the responding party or their representative:

College of Medical Laboratory Technologists of Ontario

FORM 5: NOTICE OF APPLICATION - REINSTATEMENT

DISCIPLINE COMMITTEE OF THE COLLEGE OF MEDICAL LABORATORY TECHNOLOGISTS OF ONTARIO

B E T W E E N:

[INSERT NAME OF FORMER REGISTRANT]

and

THE COLLEGE OF MEDICAL LABORATORY TECHNOLOGISTS OF ONTARIO

NOTICE OF APPLICATION - REINSTATEMENT

[FULL NAME OF FORMER REGISTRANT] applies:

- For an order reinstating a former registrant's certificate of registration, under sections 72- 73 of the *Health Professions Procedural Code*

Details of the application are set out below.

Registrant and/or Representative's Full Name: _____

Signature: _____

Contact information: _____

Details of the Application:

(Provide details in numbered paragraphs below. Be sure to address the requirements set out in Rule 11 of the Discipline Committee Rules. You may attach supporting documents to this form.)

The grounds or reasons for the application are:

The evidence, including documents, that I intend to rely on, is:

The anticipated length of the hearing is:

Note: This form is not applicable to requests for reinstatement from registrants who have been suspended for non-payment of registration fees or for failing to maintain or provide professional liability insurance.