

# Occupational Therapists Act

CHAPTER 21 OF THE ACTS OF 1998

*as amended by*

2008, c. 3, s. 9; 2012, c. 48, s. 36



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CHAPTER 21 OF THE ACTS OF 1998  
amended 2008, c. 3, s. 9; 2012, c. 48, s. 36

**An Act Respecting  
the Practice of Occupational Therapy**

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### Short title

**1** This Act may be cited as the *Occupational Therapists Act*. 1998, c. 21, s. 1.

### Interpretation

**2** In this Act,

- (a) “Board” means the Board of the College;
- (b) “College” means the College of Occupational Therapists of Nova Scotia;

(c) “committee” includes a committee of the Board, an investigation committee or a hearing committee as the context requires;

(d) “complaint” means any complaint, report or allegation in writing and signed by a person regarding the conduct, actions, competence, character, fitness, health or ability of a member, former member, professional corporation or the employees thereof, or any similar complaint, report or allegation initiated by the Registrar or referred pursuant to subsection 46(7);

(e) “court” means the Supreme Court of Nova Scotia;

(f) “Credentials Committee” means the committee appointed by the Board that deals with the registration and licensing of members and applicants for registration and such other matters as provided by the regulations;

(g) “disciplinary committee” means an investigation committee or a hearing committee;

(h) “disciplinary matter” means any matter involving an allegation of professional misconduct, conduct unbecoming an occupational therapist or professional incompetence including incompetence arising out of physical or mental incapacity;

(i) “former Act” means Chapter 321 of the Revised Statutes, 1989;

(j) “hearing committee” means a hearing committee appointed pursuant to this Act;

(k) “investigation committee” means an investigation committee appointed pursuant to this Act;

(l) “licence” means a valid and subsisting licence issued pursuant to this Act;

(m) “mediation” means any form of alternative dispute resolution;

(n) “member” means a person who is registered in the Register and holds a licence;

(o) “occupational therapist” means a person who is licensed to practise occupational therapy under this Act;

(p) “occupational therapy” means the performance of professional services requiring substantial specialized knowledge of occupational therapy theory in order to promote, develop, restore, improve or maintain optimal occupational functioning in the area of self-care, productivity and leisure and includes, but is not limited to,

(i) the application and interpretation of procedures designed to evaluate occupational functioning,

(ii) the planning, administration and evaluation of developmental, restorative, maintenance, preventative and educational programs,

- (iii) providing education, health promotion, consultation, management, research or other such services that implement and advance the practice of occupational therapy;
- (q) “Peer Assessment Committee” means a committee appointed by the Board that deals with peer assessment;
- (r) “permit” means a permit issued to a professional corporation pursuant to this Act;
- (s) “professional corporation” means a company incorporated pursuant to the *Companies Act* and this Act for the purpose of carrying on the practice of occupational therapy;
- (t) “prescribed” means prescribed by regulations;
- (u) “Register” means the Register of the College kept pursuant to this Act;
- (v) “registered” means registered pursuant to this Act;
- (w) “Registrar” means the person holding the office of Registrar pursuant to this Act;
- (x) “Society” means the Nova Scotia Society of Occupational Therapists or any corporation or body that may be designated by the regulations as a successor to the Nova Scotia Society of Occupational Therapists;
- (y) “spouse” means
  - (i) a person married to another person,
  - (ii) a man and a woman who, not being married to each other, live together as husband and wife and have so lived for at least one year, or
  - (iii) as otherwise defined by the regulations. 1998, c. 21, s. 2.

**Effect of use of words “occupational therapist”**

**3** The words “occupational therapist” or any like words or expressions implying a person recognized by law as an occupational therapist in the Province, when used in any regulation, rule, order or by-law made pursuant to an Act of the Legislature enacted or made before, at or after the coming into force of this Act, or when used in any public document, includes a person registered in the Register who holds a licence. 1998, c. 21, s. 3.

COLLEGE OF OCCUPATIONAL  
THERAPISTS OF NOVA SCOTIA

**Objects and powers**

**4 (1)** The Nova Scotia Association of Occupational Therapists constituted by the former Act is hereby continued as a body corporate, to be called the College of Occupational Therapists of Nova Scotia, and is composed of its members.

(2) The College has perpetual succession and a common seal, with power to acquire, hold, lease, mortgage and otherwise dispose of real and personal property, and may sue and be sued.

(3) In order that the public interest may be served and protected, the objects of the College are to

(a) regulate the practice of occupational therapy and govern its members in accordance with this Act and the regulations;

(b) establish, maintain and develop standards of knowledge and skill among its members;

(c) establish, maintain and develop standards of qualification and practice for the practice of occupational therapy;

(d) establish, maintain and develop standards of professional ethics among its members; and

(e) administer this Act and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act.

(4) In addition to any other power conferred by this or any other Act, the College may do such things as it considers appropriate to advance the objects of the College and, without limiting the generality of the foregoing, may

(a) purchase, take in, lease, exchange, hire, construct and otherwise acquire and hold, sell, mortgage, hypothecate, lease out or otherwise deal with any real or personal property;

(b) draw, make, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, warrants and other negotiable and transferable instruments;

(c) engage such agents and employees as it, from time to time, deems expedient;

(d) expend the moneys of the College in the advancement of its objects and the interests of the profession of occupational therapy in such manner as it deems expedient;

(e) establish and maintain such offices and agencies as it deems expedient;

(f) invest and deal with any moneys and funds of the College that are not immediately required, in such manner as it deems expedient;

(g) improve, manage, develop, exchange, dispose of, turn to account or otherwise deal with the real or personal property of the College;

(h) borrow money for the use of the College on its credit, limit or increase the amount to be borrowed, issue bonds, debentures,



debenture stock and other securities on the credit of the College and pledge or sell such securities for such sums or at such prices as may be deemed expedient;

(i) do such things as are incidental or necessary to the exercise of the powers referred to in clauses (a) to (h). 1998, c. 21, s. 4.

#### **Annual meetings**

**5 (1)** There shall be an annual meeting of the College at such time and place as prescribed.

**(2)** An annual report shall be distributed at or before the annual meeting for review by the membership, and shall include a report by an auditor.

**(3)** Auditors shall be recommended by the Board but shall be subject to the approval of the College at the annual meeting. 1998, c. 21, s. 5.

### BOARD

#### **Powers**

**6 (1)** There shall be a Board of the College to be constituted as provided in Section 7.

**(2)** The Board shall, subject to this Act, govern, control and administer the affairs of the College and, without limiting the generality of the foregoing, may make regulations

(a) providing for the management of the College, including the keeping of the registers to be kept pursuant to this Act;

(b) providing for the holding of meetings of the College or the Board, quorum requirements and the conduct of such meetings;

(c) fixing the time and place for regular meetings of the Board, determining by whom meetings may be called, regulating the conduct of meetings, providing for emergency meetings and regulating the notice required in respect of meetings;

(d) providing for the appointment of such committees as the Board deems expedient;

(e) respecting the composition, powers and duties of such committees as may be appointed by the Board, and providing for the holding and conduct of meetings of such committees;

(f) respecting the powers, duties and qualifications of the Registrar and the officers, agents and employees of the College;

(g) prescribing fees payable pursuant to this Act by applicants and members and, where the Board deems it advisable, designating different classes of applicants and members and prescribing different fees for different classes;

- (h) prescribing the fees and allowances of members of the Board and committees and providing for the payment of necessary expenses of the Board and committees;
  - (i) respecting the recognition of schools and examinations as prerequisites to registration and licensing;
  - (j) respecting the educational qualifications of applicants for registration as members;
  - (k) prescribing the seal of the College;
  - (l) providing for the execution of documents by the College;
  - (m) prescribing examinations to be written by applicants for registration;
  - (n) respecting residential qualifications of applicants for registration as members and associate members;
  - (o) prescribing forms and providing for their use;
  - (p) providing procedures not inconsistent with this Act for the making, amending and revoking of regulations;
  - (q) respecting the information to be included in the Register;
  - (r) prescribing a code of ethics, subject to approval by the College at an annual or special meeting;
  - (s) governing elections of members of the Board.
- (3)** The Board may, with the approval of the Governor in Council, make regulations
- (a) respecting the registration and licensing of members;
  - (b) respecting continuing-competency requirements, including continuing-education requirements or practice-hour requirements of members for registration;
  - (c) respecting the limiting or qualifying of a member's licence including, but not limited to, procedures and interventions;
  - (d) respecting the evaluation of, and licensing requirements of, members and applicants for registration who have not practised occupational therapy for at least one year;
  - (e) respecting a peer-assessment program in accordance with this Act and programs of continuing education, including requiring members to participate in any such programs and providing for any other matter that will facilitate or give effect to such programs;
  - (f) respecting supervised practice, monitoring supervised practice and the delegation of acts of occupational therapy and any

other ancillary matters, and providing for the establishment of a committee or committees to deal with such matters;

(g) respecting the disciplining of members and the revocation or suspension of licences issued pursuant to this Act;

(h) respecting the reporting and publication of decisions in disciplinary matters;

(i) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practice;

(j) prescribing the records and accounts to be kept by members and professional corporations with respect to their practice, and providing for the production, inspection and examination of such records and accounts;

(k) providing that the licence of a member be suspended without notice or investigation upon contravention of any regulation that requires the member to pay a fee, file a document or do any other act by a specified or ascertainable date, and providing for the re-instatement of a licence so suspended;

(l) notwithstanding subsection 7(1), changing the number and characteristics of appointments to the Board;

(m) determining the procedure to be followed at hearings by a disciplinary committee;

(n) prescribing the type of professional liability insurance or other form of malpractice coverage a member shall hold;

(o) respecting supervised practice and the delegation of acts of occupational therapy and any other ancillary matters;

(p) prescribing the manner of proof as to matters required to be proven by applicants for permits;

(q) fixing reasonable fees payable for the issuance and renewal of permits;

(r) providing that the permit of a professional corporation is suspended without notice or investigation upon contravention of any regulation that requires the corporation to pay a fee or assessment, file a document or do any other act by a specified or ascertainable date, and providing for the re-instatement of a permit so suspended;

(s) prescribing the grounds upon which the Board may review a decision of the Registrar pursuant to subsection 78(7) and the procedures to be followed in reviewing any such decision;

(t) providing for the re-instatement or re-issuance of any permit suspended or revoked pursuant to this Act and prescribing the

terms and conditions upon which re-instatement or re-issuance of a permit may be granted;

(u) providing for the creation and maintenance of a register of professional corporations;

(v) providing for the filing of periodic returns by professional corporations;

(w) providing for the annual renewal of permits and prescribing the terms and conditions upon which renewals may be granted;

(x) prescribing the types of names and business names by which

(i) a member as a sole proprietor,

(ii) a professional corporation,

(iii) a partnership with one or more occupational therapists,

(iv) a partnership of two or more professional corporations, or

(v) a partnership of one or more professional corporations and one or more individual occupational therapists, may be known;

(y) prescribing the nature of communications with the public, including advertising, that may be undertaken by a member as a sole proprietor, a partnership or a professional corporation;

(z) prescribing access to the minute book records of a professional corporation by the Registrar;

(aa) defining any word or expression used but not defined in this Act;

(ab) further defining any word or expression defined in this Act;

(ac) respecting and governing such other subjects, matters and things as may be required to give effect to the objects of the College and this Act.

**(4)** All the regulations of the College shall be available for inspection by any person, free of charge, at the head office of the College at all reasonable times during business hours.

**(5)** A certificate purporting to be signed by the Registrar stating that a certain regulation of the College was, on a specified day or during a specified period, a duly enacted regulation of the College in full force and effect constitutes *prima facie* evidence in any court of that fact without proof that the person who signed it is the Registrar or that it is the Registrar's signature.

(6) A resolution in writing, or counterparts of a resolution, signed by two thirds of all members entitled to vote thereon at a meeting of the College is as valid and effective as if duly passed at a meeting of the members of the College.

(7) A member of the Board, or of a committee of the Board or of the College, may participate in any meeting of the Board or committee of the Board or of the College, with the exception of the hearing committee when it is conducting a hearing, as the case may be, by telephone or other communications facilities that permit all persons participating in a meeting to communicate with each other, and a member participating in a meeting by such means is deemed to be present at the meeting.

(8) A meeting of the Board, or of a committee of the Board, with the exception of the hearing committee when it is conducting a hearing, or of the College, may be held by conference telephone call or other communications facilities that permit all persons participating in the meeting to communicate with each other, and all members participating in the meeting by such means are deemed to have been present at the meeting.

(9) Where ten per cent of the membership of the College request in writing, whether by petition or otherwise, that a special general meeting be held, the Board shall hold such meeting within fifteen working days of determining that ten per cent of the members have requested such a meeting. 1998, c. 21, s. 6.

#### **Constitution of Board and terms of office**

7 (1) The Board consists of

(a) four members of the College elected in the manner provided by this Act; and

(b) three persons appointed by the Governor in Council, all of whom are persons who

(i) are not members of the College, and

(ii) have shown an interest in serving on the Board.

(2) Members of the Board shall be elected or appointed to office for a term of two years.

(3) Notwithstanding subsection (2), the terms of office of members of the Board upon the first election or appointment of members of the Board shall be

(a) two members of the College elected for a term of one year;

(b) two members of the College elected for a term of two years; and

(c) three persons appointed by the Governor in Council, one for a term of one year and two for a term of two years.

(4) Notwithstanding subsections (2) and (3), persons appointed by the Governor in Council hold office until such time as they are re-appointed, or until their successors are appointed, even if such appointment or re-appointment does not occur until after their specified term of office has expired.

(5) Notwithstanding subsection (1), the persons who, at the coming into force of this Act, make up the Board of the Nova Scotia Association of Occupational Therapists pursuant to the former Act constitute the Board until the election or appointment of members pursuant to subsection (3).

(6) Elections required by this Section shall be held no later than six months after the coming into force of this Act.

(7) Only members of the College who practise occupational therapy in the Province are eligible to vote in an election of the Board. 1998, c. 21, s. 7.

#### **Selection of Board members**

8 (1) Every member in good standing is eligible to be nominated as and vote for a candidate for membership on the Board.

(2) Elected or appointed members of the Board shall not be members of the Board for more than three consecutive terms.

(3) In this Section, “consecutive” means that twelve months or less occurred between the end of one term and the commencement of the next. 1998, c. 21, s. 8.

#### **Regulations of Board**

9 The Board may make regulations governing elections of members of the Board and in those regulations may

- (a) provide for the procedure for the nomination of candidates;
- (b) provide for the appointment or designation of presiding officers for the election;
- (c) prescribe the forms to be used;
- (d) prescribe the procedure to be used for the holding of the elections and for determining the persons elected as members of the Board. 1998, c. 21, s. 9.

#### **Secret ballot**

10 Members of the Board shall be elected by secret ballot. 1998, c. 21, s. 10.

#### **Destruction of ballots**

11 The ballots used at an election shall not be destroyed until all petitions pursuant to Section 12 in respect of the election have been decided and, until

that time, the ballots shall be retained by the Registrar together with all other papers in connection with the election. 1998, c. 21, s. 11.

#### **Petition against election**

**12 (1)** A person may petition the Board against the election of a person to the Board by filing a petition with the Registrar within fifteen days after the election.

**(2)** The petitioner shall state in the petition the grounds on which the election is disputed.

**(3)** The petitioner shall serve a copy of the petition upon the person whose election is disputed.

**(4)** Where a petition is filed with the Registrar pursuant to subsection (1), the Board shall hold an inquiry and, where

(a) the election is found to be illegal; or

(b) the person is found not to be eligible to be nominated as a candidate for membership on the Board,

shall order that a new election be held. 1998, c. 21, s. 12.

#### **Elections**

**13 (1)** The Registrar

(a) in case of failure in an election to elect the required number of duly qualified members of the Board; or

(b) in case of a vacancy occurring from the death or resignation of a member of the Board or from any other cause,

shall cause an election to be held within sixty days for the purpose of filling the vacancy.

**(2)** Notwithstanding subsection (1), where a vacancy occurs for any reason within six months before the date of an election of members of the Board, the vacancy shall be filled at such election.

**(3)** Where an election is held pursuant to subsection (1) to fill a vacant Board position, the term of office for the vacant Board position shall be the remainder of the unexpired term of such position. 1998, c. 21, s. 13.

#### **End of term of office**

**14** An elected member of the Board ceases to hold office where

(a) the member resigns by notice in writing delivered to the Registrar;

(b) the member ceases to be a member in good standing of the College, as defined in the regulations; or

(c) the member is absent from three consecutive meetings of the Board, unless excused by the Board. 1998, c. 21, s. 14.

#### **Executive Committee and officers**

**15 (1)** The Board shall elect annually from its members a Chair, a Vice-chair, a Secretary and a Treasurer who constitute the Executive Committee.

**(2)** The Executive Committee

(a) may exercise all of the powers; and

(b) shall perform all the duties,

of the Board with respect to any matters that the Board may delegate to it or that, in the opinion of the Executive Committee, require immediate attention.

**(3)** The Board shall appoint a Registrar, who must be an occupational therapist as defined by the regulations for the purpose of this subsection and who shall hold office during the pleasure of the Board, at such salary or other remuneration as the Board determines.

**(4)** The Board may appoint an Acting Registrar who shall exercise the powers and duties of the Registrar in the event of the death or incapacity of the Registrar or the Registrar's absence from the Province.

**(5)** The Board may appoint such other officers, agents or employees at such salary or other remuneration, and for such term of office, as the Board considers necessary to assist it in carrying out its duties pursuant to this Act.

**(6)** The Board shall meet at least three times in each calendar year. 1998, c. 21, s. 15.

#### **Committees**

**16** The Board may appoint annually such committees from among members of the Board or the College as the Board considers necessary to assist it in carrying out its duties pursuant to this Act. 1998, c. 21, s. 16.

#### **Chair of meetings**

**17 (1)** Subject to subsection (2), the Chair shall preside at all meetings of the Board and of the College.

**(2)** Where the Chair is absent from a meeting, the Vice-chair or, in the Vice-chair's absence, some other member chosen by the members present shall preside at the meeting.



(3) Except in the event of an equal number of votes being given for and against a resolution at any meeting, the Chair or other presiding officer shall not vote. 1998, c. 21, s. 17.

REGISTER OF THE COLLEGE OF  
OCCUPATIONAL THERAPISTS OF NOVA SCOTIA

**Registration**

**18 (1)** The Board shall keep a Register in which shall be entered the name, address and qualifications of all persons who are entitled pursuant to this Act to be registered in the Register.

(2) The name, address and qualifications of every person who, at the coming into force of this Act, is registered pursuant to the former Act, shall be entered in the Register, but shall continue under any stipulations or limitations attached to the person's previous registration.

(3) The Registrar shall issue a licence to every person who, at the coming into force of this Act, is registered pursuant to Section 12 of the former Act.

(4) Every licence issued pursuant to subsection (3) is subject to any conditions or limitations attached to the registration pursuant to the former Act. 1998, c. 21, s. 18.

**Entries to be made in register**

**19 (1)** The Board shall direct the Registrar to enter in the Register the name, address and qualifications of any person who

(a) has successfully completed the certification exam if prescribed by the regulations;

(b) has successfully completed an occupational-therapy program prescribed by the regulations;

(c) satisfies the Board that the person possesses the qualifications required in the regulations for registration in the Register;

(d) complies with this Act and the regulations and any conditions imposed by the Registrar and the Board; and

(e) complies with Section 25.

(2) Upon receiving a direction from the Board pursuant to subsection (1), the Registrar shall

(a) enter the name, address and qualifications of the person named in the direction in the Register; and

(b) issue a licence to the person. 1998, c. 21, s. 19.

## PROVISIONAL REGISTRATION

**Effect of provisional registration**

**20 (1)** Notwithstanding anything contained in this Act, where a person applies to be registered pursuant to this Act and the Registrar is satisfied that the person

- (a) meets
  - (i) in a manner that would be satisfactory to the Board, the requirements for registration in the relevant register with such exceptions as may be required by regulations, and
  - (ii) the requirements of Section 25; and
- (b) has paid the prescribed fees,

the Registrar may, before the matter is brought to the Credentials Committee for its direction,

- (c) enter the name, address and qualifications of the person in the relevant register; and
- (d) issue a licence to the person, subject to such terms and conditions as may be prescribed by the regulations, including the maximum period of validity of the registration and the licence.

**(2)** Every registration made and every licence issued pursuant to this Section is valid and remains in full force and effect until ratified, varied or vacated by the Credentials Committee at a meeting requested by such person or the Registrar, or held at the instigation of the Credentials Committee itself.

**(3)** Subject to subsection (7), where the registration or licence of a person is varied or vacated pursuant to subsection (2), the Registrar shall give notice to such person forthwith in accordance with Section 69, and the registration or licence of that person is deemed to be varied or vacated as of the date on which service was made or deemed to have been made on the person.

**(4)** Where the registration or licence of a person is varied or vacated pursuant to subsection (2), the person may request the opportunity to appear before the next scheduled meeting of the Board, with or without legal counsel, where the Board shall consider the application in accordance with this Act.

**(5)** No member of the Board who considered the application pursuant to subsection (2) shall participate in the Board's consideration of the application.

- (6)** After hearing the applicant and the Registrar, the Board may
  - (a) direct the Registrar to issue to the applicant a licence or specialist's licence;

(b) direct the Registrar to issue to the applicant a licence or specialist's licence subject to such conditions, limitations or restrictions as the Board considers appropriate;

(c) adjourn further consideration of the application, pending completion by the applicant of such training, upgrading, clinical examinations or other examinations as the Board may designate; or

(d) direct the Registrar to refuse the application where the Board is not satisfied that the applicant meets the criteria set out in subsection (1).

(7) Where a hearing is requested pursuant to subsection (4), the registration or licence of the person requesting the hearing shall not be varied or vacated until the Board has completed its consideration of the application. 1998, c. 21, s. 20.

#### **Referral to Credentials Committee**

**21 (1)** Where the Registrar is not satisfied with the evidence presented by a person applying for registration, the Registrar

(a) may; or

(b) where the applicant so requests in writing, shall,

refer the matter to the Credentials Committee.

(2) Upon a referral pursuant to subsection (1), the Credentials Committee, in consultation with the Registrar, shall consider the eligibility of the application and may make such inquiries or demand such further information as the Committee sees fit, and the Committee shall consider the application in accordance with this Act.

(3) Where the person requests the opportunity to appear before the Credentials Committee, this request shall be granted and the person may appear with legal counsel. 1998, c. 21, s. 21.

### DEFINED REGISTER

#### **Method of maintaining Defined Register**

**22 (1)** The Board may keep a register, called the Defined Register, in which shall be entered the name, address, qualifications and terms and conditions of registration of all persons who may be entitled pursuant to this Act and the regulations to be registered therein.

(2) The Board may make regulations, which shall take effect upon approval by a general meeting of the College and by the Governor in Council,

(a) governing the persons or classes of persons who may be registered in the Defined Register;

(b) dividing the Defined Register into parts representing the classes of persons who may be registered;

(c) prescribing the qualifications required for registration in the Defined Register;

(d) prescribing the extent to which and terms and conditions under which persons registered in the Defined Register may engage in the practice of occupational therapy; and

(e) prescribing by whom applications may be made pursuant to this Section, and the procedure on such applications.

(3) The Board may direct the Registrar to register in the Defined Register the name, address and qualifications and terms and conditions of registration of any person who

(a) satisfies the Board that that person possesses the qualifications required for registration in the Defined Register; and

(b) complies with Section 25.

(4) Upon receiving a direction from the Board pursuant to subsection (3), the Registrar shall enter in the Defined Register the name, address and qualifications and any terms and conditions of registration of the person named therein, and issue a licence to the person. 1998, c. 21, s. 22.

#### SPECIALISTS REGISTER

##### **Method of maintaining Specialists Register**

23 (1) The Board may keep a register called the Specialists Register in which shall be entered the name, address, qualifications and ~~specialty~~ [speciality] of all members who are entitled pursuant to this Act and the regulations to be registered in the register.

(2) The Board may, with the approval of the Governor in Council, make regulations

(a) defining classes of specialists in the various branches of occupational therapy;

(b) dividing the Specialists Register into parts representing the classes of specialists as defined by the Board;

(c) prescribing the qualifications required for registration in the Specialists Register;

(d) providing for the regulation and prohibition of the use, terms, titles or designations by members indicating specialization in any branch of occupational therapy.

(3) The Board may direct the Registrar to enter in the Specialists Register the name, address, qualifications and specialty of any occupational therapist who

- (a) holds a licence;
- (b) satisfies Board that the practitioner possesses the qualifications required for registration in the Specialists Register; and
- (c) complies with Section 25.

(4) Upon receiving a direction from the Board pursuant to subsection (3), the Registrar shall enter in the Specialists Register the name, address, qualifications, specialty and any terms and conditions of registration of the person named therein, and issue a specialist's licence to the person. 1998, c. 21, s. 23.

#### **Consequences of conviction**

24 Notwithstanding anything contained in this Act, where a person has been convicted or found to be guilty by a court in or out of Canada of any offence that is inconsistent with the proper professional behaviour of an occupational therapist, including a conviction under the *Criminal Code (Canada)* or the *Narcotics Control Act*, and such person applies for registration, the Registrar and the Board may refuse to register the person, but the Board may, at any time, permit such person to be registered or to remain registered upon such terms and conditions as the Board may direct. 1998, c. 21, s. 24.

#### **Prerequisites to registration**

- 25 Any person who applies for registration pursuant to this Act shall
- (a) apply in the prescribed manner;
  - (b) satisfy the Board that that person is the person named in any diploma or documentation submitted in support of the application;
  - (c) satisfy the Board that that person is of good character;
  - (d) provide such information as the Board may require; and
  - (e) pay the prescribed fee. 1998, c. 21, s. 25.

#### **Change of address**

26 A member of the College who changes address shall promptly inform the Registrar who shall enter the change in the Register. 1998, c. 21, s. 26.

### ANNUAL FEES

#### **Manner of payment and consequences of non-payment**

- 27 (1) Every member shall pay to the Registrar, or such person as the Registrar may designate,
- (a) at the time that the member is registered; and

(b) on or before a date or dates prescribed by the Board in each year thereafter,

the prescribed annual registration or licence fee.

(2) Every member who is registered in the Register, Specialists Register or Defined Register shall pay to the Society, or such person as it may designate,

(a) within one month of the time that the member is registered; and

(b) on or before a date prescribed by the Society in its by-laws, in each year thereafter,

the prescribed annual membership dues of the Society for that member's class or type of membership.

(3) Prior to the due date of the annual membership dues, the Society shall give notice to every member in such form and in such manner as the Society may prescribe by by-law.

(4) The Society shall notify the Registrar if a member fails to make a payment pursuant to subsection (2).

(5) A member is deemed to have paid the membership dues to the Society pursuant to subsection (2) until such time as the Society notifies the Registrar that the member has failed to do so.

(6) The licence and specialist's licence of any member who fails to pay prescribed annual fees as required by subsection (1) or (2) or who fails to comply within the prescribed period with any continuing competence requirements established in regulations shall be suspended in accordance with the procedure prescribed by the regulations.

(7) The Registrar shall forthwith notify in writing any person whose licence has been suspended pursuant to this Section.

(8) The prescribed annual licence fees payable by members of the College pursuant to subsection (1) shall be determined by the Board. 1998, c. 21, s. 27.

### **Relicensing**

**28 (1)** Where the licence or specialist's licence of a member has been suspended pursuant to subsection 27(6), or where there has been non-compliance with continuing competency requirements, or in any other case where the licence or specialist's licence of a registered person has expired or lapsed pursuant to this Act or the former Act for non-payment of fees, such person may apply to the Registrar for relicensing.

(2) Where a person referred to in subsection (1) satisfies the Registrar

(a) of the person's intention to practise occupational therapy in the Province;

(b) as to the person's activities since the date of the suspension or expiry or lapsing of the person's licence;

(c) that the person has maintained and possesses an appropriate level of skill and knowledge in occupational therapy;

(d) as to the person's good standing in all jurisdictions in which the person has practised occupational therapy since the date of the suspension or expiry or lapsing of the person's licence;

(e) that the person has paid all fees or any other amount owing to the College and the Society and such administrative fees as may be prescribed; and

(f) that the person has complied with continuing competency requirements,

the Registrar may issue a licence to such person and issue a specialist's licence to such person in the specialities in which the person formerly held a specialist's licence.

(3) Where the Registrar is not satisfied with the evidence presented pursuant to subsection (2), the Registrar

(a) may; or

(b) where the applicant so requests in writing, shall,

refer the matter to the Credentials Committee.

(4) Upon a referral pursuant to subsection (3), the Credentials Committee, in consultation with the Registrar, shall consider the eligibility of the application and may make such inquiries or demand such further information as the Committee sees fit, and the Committee shall consider the application in accordance with this Act.

(5) Where the person requests the opportunity to appear before the Credentials Committee, this request shall be granted and the person may appear with legal counsel.

(6) Where the registration or licensing of a person is refused pursuant to subsection (4), the person may request the opportunity to appear before the next scheduled meeting of the Board, with or without legal counsel, where the Board shall consider the application in accordance with this Act.

(7) No member of the Board who considered the application pursuant to subsection (4) shall participate in the Board's consideration of the application.

- (8) After hearing the applicant and the Registrar, the Board may
- (a) direct the Registrar to issue to the applicant a licence;
  - (b) direct the Registrar to issue to the applicant a licence subject to such conditions, limitations or restrictions as the Board considers appropriate;
  - (c) adjourn further consideration of the application, pending completion by the applicant of such training, upgrading, clinical examinations or other examinations as the Board may designate; or
  - (d) direct the Registrar to refuse the application, where the Board is not satisfied that the applicant meets the criteria set out in subsection (2). 1998, c. 21, s. 28.

#### **Restrictions on licences**

**29** Every licence or specialist's licence issued pursuant to Section 28 is subject to any conditions, limitations or restrictions contained in the licence or specialist's licence that had expired, lapsed or been suspended pursuant to subsection 27(6), unless the Board orders otherwise. 1998, c. 21, s. 29.

### ANNUAL LIST

#### **Publication of list**

**30** The Registrar shall, in each year, cause to be published in the manner prescribed an annual list that

- (a) includes the names of those persons who hold a licence;
- (b) includes the names of those persons who hold a specialist's licence; and
- (c) includes the names of those persons listed in the Defined Register. 1998, c. 21, s. 30.

### PRIVILEGES

#### **Surrender and preserving jurisdiction**

**31 (1)** The licence or specialist's licence of a member may only be surrendered by the member after notice in writing to the Board and with the consent of the Board.

**(2)** Where a member ceases to be a member for any reason, or where a person ceases to be registered or licensed for any reason, such person remains subject to the jurisdiction of the College in respect of any disciplinary matter arising out of the person's conduct while a member or while registered. 1998, c. 21, s. 31.



## PROHIBITIONS

**Offence**

**32 (1)** A person licensed pursuant to this Act who practises occupational therapy in violation of any condition or limitation contained in the person's licence is guilty of an offence.

- (2)** A person who practises occupational therapy
- (a) while the person's licence is suspended or revoked; or
  - (b) without a licence,

is guilty of an offence. 1998, c. 21, s. 32.

**Offence**

**33 (1)** A member of the College who leaves the Province and practises occupational therapy on the member's return to the Province prior to providing the Registrar with a certificate of good standing from all jurisdictions in which the member had practised during such absence is guilty of an offence.

**(2)** The Board may waive the requirements of subsection (1) and may make regulations exempting members from the requirements of subsection (1) where members have been absent from the Province for a period shorter than the maximum period prescribed in the regulations. 1998, c. 21, s. 33.

**Prohibition**

**34 (1)** Except as provided in this Act or the regulations, no person, other than an occupational therapist who holds a licence, shall

- (a) publicly or privately, for hire, gain or hope of reward, practise or offer to practise occupational therapy;
- (b) hold himself or herself out in any way to be entitled to practise occupational therapy; or
- (c) assume any title or description implying or designed to lead the public to believe that that person is entitled to practise occupational therapy.

**(2)** No person is entitled to receive a fee, reward or remuneration for

- (a) professional services rendered to any person in the practice of occupational therapy; or
- (b) occupational therapy appliances supplied to any person in the practice of occupational therapy,

unless registered and licensed at the time the services were provided or the appliances were rendered. 1998, c. 21, s. 34.

**Offence**

**35** A person who knowingly furnishes false information in an application pursuant to this Act, or in any statement or return required to be furnished pursuant to this Act or the regulations, is guilty of an offence. 1998, c. 21, s. 35.

**Method of payment**

**36 (1)** In a prosecution for an offence contrary to this Act or the regulations, the onus of proof that a person accused of an offence has the right to practise occupational therapy, or that a person comes within any of the exemptions provided by this Act, is on the person accused.

**(2)** Where a violation of this Act or the regulations by a person who does not have the right to practise occupational therapy continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues.

**(3)** For the purpose of this Act, proof of the performance of one act in the practice of occupational therapy on one occasion is sufficient to establish that a person has engaged in the practice of occupational therapy. 1998, c. 21, s. 36.

**Offence**

- 37 (1)** A person who violates
- (a) this Act, except for Sections 74 to 86;
  - (b) a regulation made pursuant to clause 6(3)(i) or (j); or
  - (c) a regulation made pursuant to clause 23(2)(d),

is guilty of an offence, and the *Summary Proceedings Act* applies in addition to any penalty otherwise provided for in this Act or the regulations.

**(2)** All fines and penalties payable under this Act as a result of a prosecution by or on behalf of the College belong to the College.

**(3)** Any information to be laid pursuant to this Act may be laid by the Registrar or any member of the College authorized by the Board, with the consent of the Minister of Health. 1998, c. 21, s. 37.

## EXEMPTIONS

**Exemption from application of Act**

- 38** Nothing in this Act applies to or prevents
- (a) the domestic administration of family remedies;
  - (b) the practice of the religious tenets or general beliefs of any religious organization;

- (c) the furnishing of first aid or emergency assistance in the case of emergency, if such aid or assistance is given without hire, gain or hope of reward;
- (d) the manufacture, fitting or selling of artificial limbs or similar appliances;
- (e) the practice of medicine by a person who is registered pursuant to the *Medical Act*;
- (f) the practice of optometry by a person who is licensed pursuant to the *Optometry Act*;
- (g) the practice of nursing by a person who is registered pursuant to the *Licensed Practical Nurses Act*;
- (h) the practice of dentistry or dental surgery by a person who is registered pursuant to the *Dental Act*;
- (i) the practice of dispensing optician by a person who is registered pursuant to the *Dispensing Opticians Act*;
- (j) the practice of denturology by a person who is licensed pursuant to the *Denturist Act*;
- (k) the practice of psychology by a person who is licensed pursuant to the *Psychologists Act*;
- (l) the practice of chiropractic by a person who is registered pursuant to the *Chiropractic Act*;
- (m) the practice of pharmacy by a person who is registered pursuant to the *Pharmacy Act*;
- (n) the practice of dietetics by a person who is registered pursuant to the *Professional Dietitians Act*;
- (o) the practice of radiological technology by a person registered pursuant to the *Medical Radiation Technologists Act*;
- (p) the practice of dental technology by a person registered pursuant to *Dental Technicians Act*;
- (q) the practice of nursing by a person registered pursuant to the *Registered Nurses Act*; or
- (r) the practice of physiotherapy by a person registered pursuant to the *Physiotherapy Act*. 1998, c. 21, s. 38.

#### CLIENT RECORDS

##### **Custodian**

**39 (1)** In this Section, “client records” includes all documents, charts, x-rays, photographic film or any other form of record relating to the clients of a member.

- (2) Where
- (a) a member
    - (i) dies, disappears, is imprisoned, leaves the Province or surrenders the member's licence or specialist's licence,
    - (ii) is struck off a register or is the subject of suspension of licence or specialist's licence,
    - (iii) has been found to be an incapacitated or unfit member, or
    - (iv) neglects the practice of occupational therapy;
  - and
  - (b) adequate provision has not been made for the protection of the member's clients' interests,

the College may, with or without notice as the court directs, request the court to appoint a custodian who is an occupational therapist to take possession of the client records of the member.

- (3) A custodian appointed pursuant to subsection (2) shall
- (a) hold and protect all client records taken into custody;
  - and
  - (b) distribute copies of the client records, as may be appropriate, to the occupational therapists of the clients concerned, including the member referred to in subsection (2), and to the duly appointed representatives of the clients, or the clients themselves unless there are reasonable grounds to believe it would not be in the best interest of the client to make that information available, subject to such fees as the court may direct or the regulations may prescribe.

(4) In an order made pursuant to subsection (2), or in a subsequent order made on the application of the College or the custodian, with or without notice as the court directs, the court may

- (a) authorize the custodian to employ professional assistance to carry out the custodian's duties;
- (b) direct any sheriff to seize, remove and place in the possession of the custodian client records;
- (c) where there are reasonable grounds to believe that any client records may be found in any premises, safety deposit box or other receptacle, direct the sheriff to enter the premises or open the safety deposit box or other receptacle;
- (d) direct the owner of any premises, or person in possession of any premises, or any bank or other depository of client records to deal with, hold, deliver or dispose of such client records as the court directs;

(e) give directions to the custodian as to the disposition of client records;

(f) make provision for the remuneration, disbursements and indemnification of the custodian in the course of the custodian's duties;

(g) make provision for the discharge of a custodian either before or after completion of the responsibilities imposed upon the custodian by any order made pursuant to this Section; and

(h) give such further directions as the court considers are required in the circumstances.

(5) Unless the court otherwise directs, it shall be sufficient for the custodian to give notice by newspaper advertisement, to clients, occupational therapists or the general public, that the custodian has possession of the client records of a member.

(6) Subject to any order of the court, or where one year has passed from the date of the court order appointing the custodian, whichever is earlier, the custodian shall report to the Board, which may discharge the custodian or make any order it deems appropriate regarding any client records remaining in the hands of the custodian, and the custodian's compliance with the order of the Board discharges the custodian in respect of those client records affected.

(7) Unless otherwise ordered pursuant to subsection (6), upon discharge of a custodian pursuant to subsections (6) and (9), the College shall take into permanent custody client records and assume the responsibilities of a custodian as provided in subsection (3).

(8) The College may destroy records after the passage of a minimum period of time as ordered by the court or as set by regulations.

(9) The court may, upon the application of the College made either *ex parte* or on such notice as the court directs, remove a custodian from office and, where the court deems it expedient, appoint another custodian in the custodian's place, and may include in such order such further directions as are required in the circumstances.

(10) A member in respect of whom an order has been made pursuant to this Section may, after giving notice to the College and to the custodian, apply to the court to vary or set aside an order made pursuant to this Section and to direct the custodian to place all or part of the client records back into the possession of the member upon such terms as may be just.

(11) The court may give directions as to service of any notice required or order made pursuant to this Section.

(12) No action for damages lies against the College, the Board or any committee, member, officer or employee of the College for anything done or omitted to be done in good faith pursuant to this Section, or against a custodian or any other person acting in good faith pursuant to this Section or an order issued pursuant to this Section.

(13) This Section applies *mutatis mutandis* to former members of the College. 1998, c. 21, s. 39.

#### INJUNCTION

##### **Circumstances for order**

40 (1) Where a member, whose licence to practise has been suspended pursuant to this Act or the regulations, does or attempts to do anything contrary to this Act or the regulations, the doing of such thing may be restrained by an injunction of the court at the instance of the Board.

(2) Where a person other than a member does or attempts to do anything contrary to this Act, the doing of such thing may be restrained by an injunction of the court at the instance of the Board. 1998, c. 21, s. 40.

#### DISCIPLINE

##### **Method of initiating complaint**

- 41 Complaints may be initiated by
- (a) any official body corporate or association;
  - (b) the Registrar; or
  - (c) any other person. 1998, c. 21, s. 41.

##### **Power to employ assistance**

42 The College or a disciplinary committee may employ, at the expense of the College, such legal or other assistance as it considers necessary for the purpose of the investigation of any disciplinary matter. 1998, c. 21, s. 42.

##### **Duty to maintain confidentiality**

43 Every person involved in the administration of this Act and any member of the Board, or a committee of the Board or the College, shall maintain confidentiality with respect to all health information that comes to that person's knowledge regarding clients, and with respect to all matters that come to that person's knowledge relating to a peer assessment, except

- (a) in connection with the administration of Sections 41 to 63 and the regulations or proceedings thereunder;
- (b) to one's own legal counsel;
- (c) as otherwise required by law; or

(d) with the consent of the person to whom the information relates. 1998, c. 21, s. 43.

#### **Power to investigate other matters**

**44** A person or disciplinary committee investigating a disciplinary matter concerning a member may investigate any other disciplinary matter concerning the member that arises in the course of the investigation. 1998, c. 21, s. 44.

#### **Prerequisite for action**

**45 (1)** Where a disciplinary committee

(a) learns that the registration or licence of a member has been suspended or revoked for reasons of professional misconduct, conduct unbecoming or incompetence by another licensing or regulatory authority;

(b) has provided the member with such notice as it may prescribe of a hearing together with a copy of the relevant decision of the other licensing or regulatory authority; and

(c) has heard such evidence as is offered by the member, if any, at the hearing as to why the member should not be subject to disciplinary action,

the disciplinary committee may take any of the actions contemplated by clause 60(2)(e).

**(2)** Where a member has been convicted of an offence pursuant to the *Criminal Code* (Canada) or the *Narcotics Control Act* (Canada) or has been convicted of an offence as referred to in Section 24, the disciplinary committee may, by such notice as it prescribes, require the member to attend a hearing to establish why the member should not be subject to disciplinary action.

**(3)** For the purpose of subsection (2), a certificate of conviction of a member is conclusive evidence that a person has committed the offence stated therein unless it is shown by the member that the conviction has been quashed or set aside.

**(4)** When a disciplinary committee is conducting a hearing pursuant to this Section, it may, if it deems proper, take any of the actions contemplated by clause 60(2)(e). 1998, c. 21, s. 45.

### INVESTIGATION COMMITTEE

#### **Duties and powers of committee**

**46 (1)** The Board shall appoint a committee or committees to be known as an investigation committee.

- (2) An investigation committee shall be composed of at least three persons.
- (3) A committee shall
- (a) have a chair appointed by the Board who is a member or former member of the Board;
  - (b) have as a member at least one person who is a member or former member of the Board and a member of the College; and
  - (c) have as a member at least one person who does not hold a degree of occupational therapy or equivalent, who may be a member or former member of the Board.
- (4) Notwithstanding subsection (3), any two members of the committee constitute a quorum.
- (5) The Board may appoint additional members to the committee who are members of the College but who need not be members or former members of the Board.
- (6) The committee shall
- (a) investigate complaints regarding a disciplinary matter concerning any member of the College;
  - (b) investigate any matter referred to the committee by the Registrar; and
  - (c) perform such other duties as may be assigned to it by the Board.
- (7) The Registrar may refer a matter to the committee notwithstanding that a written complaint has not been filed with the Registrar.
- (7A) The investigation committee and each member of the investigation committee have all of the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment.
- (8) Without receipt of a written complaint, the committee may
- (a) do all things necessary to provide a full and proper investigation;
  - (b) appoint a person or persons to conduct an investigation or practice audit, or both.
- (9) Upon receipt of a written complaint and upon giving to the member a copy of the complaint, the committee may require the member to



(a) submit to physical or mental examinations by such qualified persons as the committee designates;

(b) submit to an inspection or audit of the practice of the member by such qualified persons as the committee designates;

(c) submit to such examinations as the committee directs to determine whether the member is competent to practise occupational therapy;

(d) produce records and accounts kept with respect to the member's practice.

**(10)** Where the member fails to comply with subsection (9), the committee may suspend or restrict the registration or licence, or both, of the member until the member complies.

**(11)** Where the committee has, pursuant to clause (9)(a), (b) or (c), required a member to submit to physical or mental examinations or submit to inspection or audit of the practice by a qualified person designated by the committee, the committee shall deliver to the member any report it receives from the designated qualified person.

**(12)** The committee or person appointed to conduct an investigation pursuant to clause (8)(b) may

(a) employ such other experts as the committee or person deems necessary;

(b) require the member or any other member of the College, who may have information relevant to the investigation, to attend before the committee or the person conducting the investigation to be interviewed;

(c) investigate any other matter relevant to the conduct, capacity or fitness of a member to practise occupational therapy that arises in the course of the investigation.

**(13)** The committee may

(a) dismiss the complaint;

(b) attempt to resolve the matter informally;

(c) with the consent of both parties, refer the matter, in whole or in part, for mediation;

(d) refer the matter, in whole or in part, to a hearing committee;

(e) counsel the member;

(f) caution the member;

(g) counsel and caution the member;

- (h) reprimand the member with the member's consent; or
- (i) with the consent of the member, require the member to undergo such treatment or re-education as the committee considers necessary.

(14) Where the committee is considering a decision to counsel, caution or counsel and caution a member pursuant to clause (13)(e), (f) or (g), the committee shall give notice to the member and the member shall be given the opportunity to appear, with or without legal counsel, before the committee prior to the committee making a decision.

(15) A member who has consented to a requirement for treatment or re-education pursuant to clause (13)(i) may consent to such requirement in principle, while reserving the right to appeal the actual content of the requirement for treatment or re-education to a hearing committee within fifteen days of receiving notice thereof.

(16) Parties to an appeal pursuant to subsection (15) shall bear their own costs.

(17) An appeal pursuant to subsection (15) shall be conducted without oral testimony and a hearing committee shall review an agreed statement of facts supplied by the legal counsel for the College and signed by the member.

(18) Where an agreed statement of facts is not filed within thirty days of filing the notice of appeal, the consent of the member is deemed to have been withdrawn and the matter referred back to the investigation committee which may consider other actions or dispositions as authorized by this Act.

(19) When making findings pursuant to clauses (13)(e), (f), (g), (h) or (i), a committee may make any combination of the dispositions that are set out in those clauses, or the committee may make such other dispositions as it considers appropriate, in accordance with the objects of this Act.

(20) The member and the complainant shall be advised in writing of the disposition of the committee. 1998, c. 21, s. 46; 2012, c. 48, s. 36.

#### **Further duties and powers**

47 (1) Notwithstanding anything contained in this Act, where

(a) an investigation committee receives information that indicates that a member may be incompetent or guilty of professional misconduct or conduct unbecoming; and

(b) the investigation committee concludes that it is in the public interest to suspend from practice or restrict the practice of the member,

the investigation committee may, without a hearing,

(c) immediately suspend the registration or licence or specialists licence, or both, of the member on a temporary basis; or

(d) immediately impose restrictions on the registration or licence or specialists licence, or both, of the member on a temporary basis.

(2) The member shall receive, forthwith, notice in writing, with reasons, of a decision made pursuant to subsection (1).

(3) Subject to a determination pursuant to subsection (5), a decision pursuant to subsection (1) continues in force until final resolution by a hearing committee which shall occur without undue delay.

(4) The member who receives written notice pursuant to subsection (2) may request, in writing, an opportunity to meet with the investigation committee.

(5) Where a request is received pursuant to subsection (4), the investigation committee shall

(a) provide an opportunity for the member to meet with the committee within ten days of the written request; and

(b) after meeting with the member, may confirm, vary or terminate the suspension or restrictions imposed pursuant to subsection (1). 1998, c. 21, s. 47.

#### **Hearing committee**

48 Notwithstanding anything contained in this Act, where a decision is made pursuant to subsection 47(1), subject to any disposition made pursuant to subsection 47(5), a hearing committee shall be appointed pursuant to subsection 52(1) to proceed with a hearing to determine whether the member is guilty of charges relating to a disciplinary matter. 1998, c. 21, s. 48.

#### **Continuance of power of former members**

49 Notwithstanding that a member or members of an investigation committee or a hearing committee have ceased to hold office by reason of the lapse of their appointments, such member or members are seized with the jurisdiction to complete any matter the committees have commenced if necessary to retain a quorum and, for this purpose, such member or members continue to have the same powers, privileges, immunities and duties as are provided by this Act and the regulations. 1998, c. 21, s. 49.

### SETTLEMENT AGREEMENT

#### **Method of dealing with proposed agreement**

50 (1) After an investigation committee refers a matter to a hearing committee pursuant to clause 46(13)(d), the member complained of may, at any

time prior to the commencement of the hearing, tender to the investigation committee a proposed settlement agreement, in writing, consented to by legal counsel for the College that includes an admission of a disciplinary matter violation or violations and the member's consent to a specified disposition, conditional upon the acceptance of the agreement by a hearing committee.

(2) The investigation committee may, in its discretion, recommend or refuse to recommend acceptance of the proposed settlement agreement by the hearing committee.

(3) Where the investigation committee recommends the acceptance of the proposed settlement agreement, it shall instruct legal counsel for the College to advise the hearing committee hearing the complaint of its recommendation.

(4) Where the investigation committee refuses to recommend the proposed settlement agreement, the hearing shall proceed without reference to the proposed settlement agreement.

(5) Where the hearing committee appointed to hear the complaint accepts the recommendation of the investigation committee, it shall confirm such acceptance by written decision that incorporates the settlement agreement.

(6) Where the hearing committee appointed to hear the complaint rejects the recommendation of the investigation committee,

- (a) it shall advise the Registrar of its decision;
- (b) it shall proceed no further with the hearing of the complaint;
- (c) a new hearing committee shall be appointed to hear the complaint and no member of the committee that considered the proposed settlement agreement shall be a member of the new committee; and
- (d) the investigation committee retains jurisdiction over a complaint until the commencement of the hearing by a hearing committee. 1998, c. 21, s. 50.

#### INVESTIGATION COMMITTEE AND NON-MEMBERS

##### **Investigation of non-member**

51 The Registrar may request the committee to investigate the activities of a non-member but the committee has no compulsory powers in relation to the investigation of the non-member, except that the committee may require a member who may have information relevant to the investigation to attend before the committee or the person conducting the investigation to be interviewed. 1998, c. 21, s. 51.

## HEARING COMMITTEE

**Composition and functions**

**52 (1)** A hearing committee shall be appointed for the purpose of hearing any charges relating to a disciplinary matter against a member when a disciplinary matter is referred, in whole or in part, to a hearing committee.

**(2)** A hearing committee shall be composed of at least three persons of whom one member shall be appointed by the Board as the chair.

**(3)** The committee shall have as members

(a) at least one person who does not hold a degree in occupational therapy or equivalent, who is a member of the Board; and

(b) at least two members of the Board.

**(4)** Notwithstanding subsection (3), any two members of the committee constitute a quorum.

**(5)** Subject to the regulations, the hearing committee may do all things necessary to provide a full and proper inquiry.

**(6)** In a matter over which a hearing committee has jurisdiction, the hearing committee and each member of the committee has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

**(7)** Upon the application of

(a) any party to the hearing;

(b) the chair of the hearing committee; or

(c) legal counsel for the College or hearing committee,

the Registrar of the College shall sign and issue a summons to witness for the purpose of procuring the attendance and evidence of witnesses before the hearing committee.

**(8)** It is the duty of the member who is charged in a disciplinary matter to appear at the hearing, but in the event of non-attendance by such member, the hearing committee, upon proof by affidavit, statutory declaration or other evidence acceptable to the hearing committee of service of the notice, pursuant to subsection (9), may proceed with the hearing and, without further notice to such member, render its decision and take such other action as it is authorized to take pursuant to this Act.

**(9)** Unless the member has agreed to a shorter notice period, a notice of hearing shall be served at least thirty days before the holding of the hearing upon the member whose disciplinary matter is being heard.

(10) A notice of a hearing shall state the details of the charges and the time and place of the holding of the hearing, and shall be signed by the Registrar.

(11) The College shall place the notice as provided for in subsection (10) in such publications as it deems necessary in order to inform the public. 1998, c. 21, s. 52.

#### **Inadmissible evidence**

**53 (1)** The following evidence is not admissible before a hearing committee unless the opposing party has been 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, a copy of the expert's written report or, where 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.

(2) Notwithstanding subsection (1), a hearing committee may, in its discretion, allow the introduction of evidence that would be otherwise inadmissible under subsection (1) and may make directions it considers necessary to ensure that a party is not prejudiced. 1998, c. 21, s. 53.

#### **Prohibition of communication**

**54** No member of a hearing committee 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, with the exclusion of communications where the sole purpose is to make administrative arrangements. 1998, c. 21, s. 54.

#### **Expert opinions**

**55** Where a hearing committee obtains expert opinion regarding occupational therapy with respect to a hearing, it shall make the nature of the opinion known to the parties and the parties may make submissions with respect to the opinion. 1998, c. 21, s. 55.

#### **Access of public to hearing**

**56 (1)** Subject to subsection (2), a hearing shall be open to the public.

(2) The hearing committee may make an order that the public, in whole or in part, be excluded from a hearing or any part of it if the hearing committee 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 desirability of avoiding public disclosure of those matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or

(c) the safety of a person may be jeopardized.

(3) Where it thinks fit, the hearing committee may make orders it considers necessary to prevent the public disclosure of matters disclosed at a hearing, including orders prohibiting publication or broadcasting of those matters.

(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.

(5) The hearing committee may make an order that the public be excluded from the part of a hearing dealing with a motion of an order pursuant to subsection (2).

(6) The hearing committee may make any order necessary to prevent the public disclosure of matters disclosed in the submission relating to any motion described in subsection (5), including prohibiting the publication or broadcasting of those matters.

(7) Subject to any orders pursuant to this Section, the hearing committee shall state, at the hearing, its reasons for any order made pursuant to this Section. 1998, c. 21, s. 56.

#### **Right to attend**

57 Where a hearing committee makes an order pursuant to subsection 56(2), wholly or partly, because of the desirability of avoiding disclosure of matters in the interest of a person affected,

(a) the committee shall allow the parties, the complainant and their legal and personal representatives; and

(b) the committee may allow such other persons as the committee considers appropriate,

to attend the hearing. 1998, c. 21, s. 57.

#### **Publication ban**

58 A hearing committee shall, on the request of a witness, other than the member, whose testimony is in relation to allegations of misconduct of a sexual nature by a member involving the witness, make an order that no person shall pub-

lish the identity of the witness or any information that could disclose the identity of the witness. 1998, c. 21, s. 58.

#### **Treatment of evidentiary material**

**59 (1)** The hearing committee 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 at the party's request and expense, the complainant at the complainant's request and expense and other persons the hearing committee or the Registrar considers appropriate at those persons' request and expense; and
- (c) copies of the transcript of any part of the hearing that is not closed nor the subject of an order prohibiting publication are available to any person at that person's expense.

**(2)** Where a transcript of a part of a hearing that is the subject of an order for a closed hearing or an order prohibiting publication is filed with a court in respect of proceedings, only the court, the parties to the proceedings and the complainant may examine it unless the court or the hearing committee orders otherwise. 1998, c. 21, s. 59.

#### **Procedure at hearing**

**60 (1)** At a hearing of the hearing committee, a member is entitled to all the rights of natural justice, including the right to be represented by legal counsel, to know all the evidence considered by the hearing committee, to present evidence and to cross-examine witnesses.

**(2)** A hearing committee

- (a) shall hear each case in such manner as it deems fit;
- (b) may require the member to
  - (i) submit to physical or mental examinations by such qualified persons as the committee designates,
  - (ii) submit to an inspection or audit of the member's practice by such qualified persons as the committee designates,
  - (iii) undergo such examinations as the hearing committee directs to determine whether the member is competent to practise occupational therapy, and
  - (iv) produce records and accounts kept with respect to the member's practice;
- (c) where the member fails to comply with clause (b), may resolve that the registration or licence or specialist's licence, or both, of the member be suspended until the member does;



(d) where the committee has, pursuant to subclause (b)(i), (ii) or (iii), required a member to submit to physical or mental examinations, or submit to inspection or audit of the practice by a qualified person designated by the committee, shall deliver to the member any report it receives from the designated qualified person;

(e) shall determine whether the member is guilty of charges relating to a disciplinary matter, and

(i) where there is a guilty finding, may determine that

(A) the registration or licence or specialist's licence, or both, of the member be revoked and that member's name be stricken from the registers in which it is entered,

(B) the licence or specialist's licence, or both, of the member be suspended

(I) for a fixed period, or

(II) for an indefinite period until the occurrence of some specified future event or until compliance with conditions prescribed by the committee,

(C) conditions, limitations or restrictions be imposed on the licence or specialist's licence, or both, of the member,

(D) the member undergo such treatment or re-education as the committee considers necessary,

(E) such fine as the committee considers appropriate to a maximum of fifteen thousand dollars be paid by the member to the College for the purpose of funding occupational therapy education and research and peer assessment as determined by the Board,

(F) the member be reprimanded,

(G) such other disposition as it considers appropriate be imposed, or

(ii) where there is a not guilty finding, the committee may dismiss the charges; and

(f) shall file its decision, including reasons, at the offices of the College.

(3) When making dispositions pursuant to clause (2)(e), the committee may impose one or more of the penalties that are set out therein, or the com-

mittee may make such other dispositions as it considers appropriate, in accordance with the objects of this Act.

(4) The Registrar shall provide the member, the complainant and such other persons as the Registrar considers appropriate with a copy of the decision of the hearing committee except that, where there are references identifying clients or other persons other than the complainant, those references as well as other personal information about those persons shall be deleted where, in the Registrar's opinion, it is appropriate.

(5) The decision of a hearing committee has effect immediately upon service on the member or from such time as the decision may direct.

(6) The hearing 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. 1998, c. 21, s. 60.

#### **Inadmissibility of evidence in legal proceeding**

**60A (1)** In this Section,

(a) "civil proceeding" means any proceeding of a civil nature other than an arbitration proceeding or a proceeding before an adjudicative tribunal, board or commission or inquiry; and

(b) "legal proceeding" means any civil proceeding, discovery, inquiry, proceeding before a tribunal, board or commission or arbitration, in which evidence may be given, and includes an action or proceeding for the imposition of punishment by fine, penalty or imprisonment for the violation of a Provincial enactment, but does not include any proceeding or hearing conducted pursuant to this Act or the regulations.

(2) A witness in any legal proceeding, whether a party to the proceeding or not, is excused from answering any question as to any proceedings of an investigation committee or a hearing committee, and is excused from producing any report, statement, memorandum, recommendation, document or information prepared for the purpose of the investigative, disciplinary and hearing processes of the College, including any information gathered in the course of an investigation or produced for an investigation committee, a hearing committee or staff members of the College.

(3) Subsection (2) does not apply to documents or records that have been made available to the public by the College.

(4) Unless otherwise determined by a court of competent jurisdiction, a decision of an investigation committee or a hearing committee is not admissible in a civil proceeding other than in an appeal or a review pursuant to this Act. 2008, c. 3, s. 9.

## COSTS

**Contents of order for costs**

**61 (1)** When a hearing committee finds a member guilty of charges relating to a disciplinary matter, it may order that the member pay the costs of the Board, in whole or in part.

**(2)** When a member is ordered to pay costs pursuant to subsection (1), the Board may make it a condition of the registration or licence of the member that such costs be paid forthwith, or at such time and on such terms as the Board may fix.

- (3)** For the purpose of this Section, “costs of the Board” include
- (a)** expenses incurred by the College, the Board, the investigation committee and the hearing committee;
  - (b)** honoraria paid to members of the investigation committee and the hearing committee; and
  - (c)** solicitor and client costs and disbursements of the College relating to the investigation and hearing of the complaint. 1998, c. 21, s. 61.

## APPEAL

**Procedure on appeal**

**62 (1)** The member complained against may appeal on any point of law from the findings of the hearing committee to the Nova Scotia Court of Appeal.

**(2)** The notice of appeal shall be served upon the Registrar and the complainant.

**(3)** The record on appeal from the findings of a hearing committee shall consist of a copy of the transcript of the proceedings, the decision of the committee and the evidence before the hearing committee certified by the chair of the hearing committee.

**(4)** The *Civil Procedure Rules* governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal that are not inconsistent with this Act apply *mutatis mutandis* to appeals to the Nova Scotia Court of Appeal pursuant to this Section.

**(5)** Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the Nova Scotia Court of Appeal has jurisdiction to, pending a decision by the Nova Scotia Court of Appeal, grant a stay of any order made pursuant to this Act where, in its discretion, it deems it fit. 1998, c. 21, s. 62.

## REINSTATEMENT

**Procedure for making application**

**63 (1)** A person whose licence or specialist's licence has been revoked by a resolution of a hearing committee pursuant to subclause 60(2)(e)(i), may apply to the Board for

(a) the entering of the person's name, address and qualifications on the Register or Defined Register and, if applicable, the Specialists Register;

(b) the issuance of a licence; and

(c) the issuance of a specialist's licence in any specialty in which the person held a specialist's licence at the time of such resolution of the hearing committee.

**(2)** An application pursuant to subsection (1) shall not be made earlier than

(a) two years after the revocation; and

(b) six months after the previous application.

**(3)** The Board, upon

(a) being satisfied that the interest of the public has been adequately protected;

(b) being satisfied as to the intention of such person to practise occupational therapy in the Province;

(c) being satisfied as to the activities of such person since the time of the resolution of the hearing committee;

(d) such person producing a letter of good standing from all jurisdictions in which the person had practised occupational therapy since the date of such resolution of the hearing committee; and

(e) such person undergoing such clinical or other examinations as the Board may designate,

may direct the Registrar to

(f) enter the name, address and qualifications of such person in the Register or Defined Register and, where applicable, the Specialists Register;

(g) issue a licence to such person; and

(h) enter the name, address, qualifications and ~~specialties~~ [specialities] of such person in the Specialists Register, and issue a specialist's licence to the person in any specialty in which the person held a specialist's licence at the time of the resolution of the hearing committee pursuant to subsection 60(2)(e)(i),

upon such terms and conditions as the Board may direct. 1998, c. 21, s. 63.

#### PEER ASSESSMENT

##### Peer Assessment Committee

- 64 (1)** In this Section and in Sections 65 and 73,
- (a) “assessment” means an assessment pursuant to a peer-assessment program established pursuant to this Section;
  - (b) “assessors” means the assessors appointed by the Peer Assessment Committee pursuant to subsection (4).
- (2)** The Board shall establish a Peer Assessment Committee in accordance with the regulations.
- (3)** The Board may, by regulation or otherwise,
- (a) authorize the Peer Assessment Committee to do or cause to be done, on behalf of the parties, any or all such things as the parties thereto are otherwise empowered to do and deem necessary for the development and administration of a peer-assessment program, subject to the approval of the Board;
  - (b) provide for the financing of the operations of the Peer Assessment Committee and for cost-sharing arrangements;
  - (c) provide for the preparation of an annual budget and its approval by the Board;
  - (d) provide for the incorporation of the Peer Assessment Committee if considered advisable to achieve the objectives of the Committee; and
  - (e) do such other things as may be necessary or desirable to provide for the administration of the Peer Assessment Committee and for its operations.
- (4)** The Peer Assessment Committee may appoint members of the College or persons licensed as occupational therapists in other provinces as assessors for the purpose of the application of the peer-assessment program to members of the College.
- (5)** Subject to the approval of the Board, the Peer Assessment Committee shall develop and administer a peer-assessment program including
- (a) the assessment of the standards of practice of members including, but not limited to,
    - (i) standards for the clinical assessment and care of clients, and

(ii) standards for the maintenance of records of care administered to clients;

(b) the selection and education of assessors;

(c) communication with occupational therapists;

(d) budgetary and expense arrangements;

(e) the preparation of assessment reports;

(f) the development of policy and procedures of the Peer Assessment Committee and their delegation to subcommittees, assessors or employees as the Committee deems appropriate; and

(g) such further activities, including the establishment of other committees or subcommittees, for the better administration of the peer-assessment program.

**(6)** Every member whose standards of practice are the subject of an assessment shall co-operate fully with the Peer Assessment Committee and assessors.

**(7)** Without limiting the generality of the co-operation required by subsection (6), a member shall

(a) permit assessors to enter and inspect the premises where the member engages in the practice of occupational therapy;

(b) permit the assessors to inspect the member's records of care administered to clients;

(c) provide to the Peer Assessment Committee and assessors, in the form required, information requested by the Committee or assessors, as the case may be, in respect of the clinical assessment and care of clients by the member or the member's records of care administered to clients;

(d) confer with the Peer Assessment Committee or assessors when required to do so by the Committee or assessors;

(e) permit the re-assessments the Peer Assessment Committee or assessors deem necessary for the proper administration of a peer-assessment program; and

(f) comply with the remedial recommendations of the Peer Assessment Committee.

**(8)** Upon completion of an assessment, an assessor shall report to the Peer Assessment Committee which may

(a) receive the report of the assessor and make no recommendations to the member assessed; or

(b) confer with the member assessed and make any remedial recommendations to the member as the Committee considers

appropriate, and direct the member to comply with the recommendations.

(9) Costs incurred by the member in implementing the remedial recommendations made by the Peer Assessment Committee are payable by the member and are not the responsibility of the Committee, the Board or the College.

(10) Where an assessor or a member of the Peer Assessment Committee learns, in the course of an assessment, that a member of the College may be guilty of a disciplinary matter, the assessment shall be terminated, the member shall be advised and the matter shall be referred to the College to be dealt with as a complaint.

(11) The assessor or a member of the Peer Assessment Committee shall not provide any information to the College, except the information necessary to identify the nature of the complaint with sufficient particularity to enable an investigation committee to identify the matter it is required to investigate.

(12) Nothing in this Section prevents any other person from providing evidence of a disciplinary matter relating to a member.

(13) Each year the Peer Assessment Committee shall prepare and publish a report on its activities for the preceding year. 1998, c. 21, s. 64.

#### Witnesses

65 (1) In this Section,

(a) “legal proceeding” means

(i) a proceeding in any court, including a proceeding for the imposition of punishment by fine, penalty or imprisonment to enforce an Act of the Legislature or a regulation made under that Act, or any civil proceeding, and

(ii) a disciplinary proceeding pursuant to this Act;

(b) “witness” means any member or officer or employee of the College, any assessor or former assessor and any other person who, in connection with, or in the course of, a legal proceeding is called upon to provide information, to answer, orally or in writing, a question or to produce a document, whether under oath or not.

(2) A witness in a legal proceeding, whether a party or not, is excused from

(a) providing any information obtained by the witness in the course of or in relation to an assessment; and

(b) producing any document made by the Peer Assessment Committee, an assessor appointed under this Act or any other document which was prepared pursuant to or in relation to an assessment.

- (3) Subsection (2) does not apply to
- (a) records maintained by hospitals as required by the *Hospitals Act* or regulations made pursuant to that Act; or
  - (b) medical records maintained by attending physicians pertaining to a client.
- (4) Notwithstanding that a witness
- (a) is or has been an assessor or a member of a subcommittee of;
  - (b) has participated in the activities of; or
  - (c) has prepared a document for or has provided information to,

the Peer Assessment Committee, the witness is not, subject to subsection (2), excused from answering any question or producing any document that the witness is otherwise bound to answer or produce.

(5) An assessor or a member of the Peer Assessment Committee shall not provide evidence against a member in a disciplinary matter with respect to information given by the member to the assessor or a member of the Peer Assessment Committee in the course of an assessment of the member unless the member has knowingly given false information during the assessment or the disciplinary matter.

(6) Nothing in subsection (5) prevents any other person from providing evidence against a member in a disciplinary matter with respect to the information given by the member in the course of the member's assessment. 1998, c. 21, s. 65.

#### **Application of certain Sections and regulations**

**66** Sections 41 to 63 and 67 to 89 and all regulations pursuant to this Act that are applicable to members of the College apply with all necessary modifications to former members, unless otherwise expressly provided by this Act or the regulations. 1998, c. 21, s. 66.

### EVIDENCE

#### **Certificate as evidence**

**67** A certificate purporting to be signed by the Registrar stating that any person named therein was or was not, on a specified day or during a specified period, registered and licensed, is *prima facie* evidence in any court of that fact without proof that the person signing it is the Registrar or that it is the Registrar's signature. 1998, c. 21, s. 67.



**Effect of presence of name in document**

**68** The presence of the name of any person in a document purporting for any year to be an annual list published by the Registrar pursuant to Section 30 is *prima facie* evidence in any court of the fact that a person whose name so appears is or was registered and licensed at the time of publication of such annual list. 1998, c. 21, s. 68.

## NOTICES

**Service**

**69** Service of any notice, order, resolution or other document pursuant to this Act or the regulations may be made

- (a) upon a member by registered letter addressed to such person at the member's address as set forth in the Register; and
- (b) upon any other person by registered letter. 1998, c. 21, s. 69.

**Deemed day of service**

**70** Where service is made by registered letter, service is deemed to be made on the third day after the notice, order, resolution or other document is mailed, and proof that the notice, order, resolution or other document was addressed and posted in accordance with Section 69 is proof of service. 1998, c. 21, s. 70.

**Service on College**

**71** Service of any document on the College may be made by service on the Registrar. 1998, c. 21, s. 71.

## LIMITATIONS OF ACTIONS

**Exemption from liability**

**72** Where an occupational therapist entitled to practise occupational therapy in the Province, or any other province or country, voluntarily renders first aid or emergency treatment without the expectation of monetary compensation to a person outside of a hospital or occupational therapist's office, or in any other place not having proper and necessary medical facilities, that occupational therapist is not liable for the death of such person, or damages alleged to have been sustained by such person by reason of an act or omission in the rendering of such first aid or emergency treatment, unless it is established that such injuries were, or such death was caused by, conduct on the part of such occupational therapists that, if committed by a person of ordinary experience, learning and skill, would constitute negligence. 1998, c. 21, s. 72.

**Further exemption from liability**

**73 (1)** No action for damages lies against the Peer Assessment Committee, the College, the Board, the Registrar, an officer or employee the Peer Assessment Committee or College or Board, an assessor, a member of a committee

or subcommittee of the Peer Assessment Committee or the College or the Board, or a member of the Board or committee of the Board, or a member of the College

(a) for any act or failure to act, or any proceeding initiated or taken, in good faith under this Act, or in carrying out their duties or obligations as an officer, employee or member under this Act; or

(b) for any decision, order or resolution made or enforced in good faith under this Act.

(2) No action lies against any person for the disclosure of any information or any document or anything therein pursuant to this Act unless such disclosure is made with malice.

(3) Without limiting the generality of subsection (2), no action for damages lies against a member or other person for disclosing any books, records, papers and other documents in their possession or control when done pursuant to this Act, including clause 46(9)(d). 1998, c. 21, s. 73.

## INCORPORATION

### Professional corporations

74 Subject to this Act and the regulations, a professional corporation may engage in the practice of occupational therapy and occupational therapists may be employed by a professional corporation for the purpose of engaging in the practice of occupational therapy. 1998, c. 21, s. 74.

### Shareholding in professional corporations

75 (1) A majority of the issued shares of a professional corporation shall be legally and beneficially owned by one or more occupational therapists.

(2) A majority of the issued voting shares of a professional corporation shall be legally and beneficially owned by one or more occupational therapists.

(3) Subject to subsection (1) and (2), the spouse or child of an occupational therapist or any other person may own, beneficially or legally, shares of a professional corporation.

(4) Notwithstanding subsection (2), a person resident in Canada may hold legal title to issued shares of a professional corporation solely as trustee for the exclusive benefit of an occupational therapist, or the spouse or child of an occupational therapist, or a group of such individuals so long as no one other than an occupational therapist, or the spouse or child of an occupational therapist, acts as such a trustee without the written consent of the Registrar. 1998, c. 21, s. 75.

**Qualification for directors and president**

**76 (1)** A majority of the directors of a professional corporation shall be occupational therapists.

**(2)** The president of a professional corporation shall be an occupational therapist. 1998, c. 21, s. 76.

**Permit for professional corporation**

**77** A professional corporation shall not engage in the practice of occupational therapy unless the professional corporation is issued a permit under this Act and is in compliance with this Act and the regulations. 1998, c. 21, s. 77.

**Restriction on professional corporations**

**78 (1)** Notwithstanding anything contained in this Act, a professional corporation to which a permit is issued pursuant to this Section may practise occupational therapy in its own name.

**(2)** Notwithstanding subsection (1), no professional corporation shall be registered as an occupational therapist under this Act.

**(3)** The Registrar shall issue a permit to any professional corporation that fulfills the following conditions:

(a) files all required applications in the form prescribed by the regulations;

(b) pays all fees prescribed by the regulations;

(c) satisfies the Registrar that it is a professional corporation limited by shares that is in good standing with the Registrar of Joint Stock Companies under the *Companies Act* and the *Corporations Registration Act* and that it is a private company as defined by the *Securities Act*;

(d) satisfies the Registrar that the name of the professional corporation is not objectionable and is in accordance with the regulations;

(e) satisfies the Registrar that the requirements of Sections 75 and 76 have been met;

(f) satisfies the Registrar that the professional corporation holds such liability insurance as may be prescribed by the regulations;

(g) satisfies the Registrar that the persons who will carry on the practice of occupational therapy for or on behalf of the professional corporation are occupational therapists; and

(h) satisfies the Registrar that the professional corporation is in compliance with this Act and the regulations.

(4) A permit issued pursuant to subsection (3), or any renewal of a permit pursuant to subsection (5), expires on December 31st of the year for which it was issued or renewed.

(5) The Registrar may renew a permit upon such application and payment of such fee as may be required by the regulations where the Registrar determines that the requirements of subsection (3) are satisfied by the professional corporation.

(6) A permit issued pursuant to subsection (3), or renewed pursuant to subsection (5), may be suspended or revoked at any time by the Registrar if a professional corporation fails to satisfy any of the requirements prescribed in subsection (3).

(7) The Board may, in its discretion, review a decision of the Registrar to suspend or revoke a permit pursuant to subsection (6).

(8) For the purpose of this Act, the practice of occupational therapy shall not be carried on by or be deemed to be carried on by clerks, secretaries and other persons employed by the professional corporation to perform services that are not usually and ordinarily considered by law, custom and practice to be services that may be performed only by an occupational therapist. 1998, c. 21, s. 78.

#### **Deemed revocation of permit**

79 (1) Where a professional corporation practices occupational therapy only through the services of one occupational therapist and that occupational therapist dies, retires, becomes incompetent or is no longer licensed pursuant to this Act, or is suspended under this Act, the permit of such professional corporation is deemed to be revoked and such professional corporation shall cease to practise occupational therapy.

(2) Where a professional corporation practises occupational therapy through the services of more than one occupational therapist and such professional corporation ceases to fulfil any requirement prescribed in subsection 78(3) by reason of

- (a) the death of an occupational therapist;
- (b) the incompetency of an occupational therapist;
- (c) the revocation of the licence of an occupational therapist pursuant to this Act;
- (d) the suspension of the licence of an occupational therapist pursuant to this Act; or
- (e) the retirement from practice by an occupational therapist,

such professional corporation shall forthwith notify the Registrar and shall fulfil the requirements in question within one hundred and twenty days from the date of

death, incompetency, revocation, retirement or other removal or the suspension, as the case may be, of the occupational therapist, failing which the permit is deemed to be revoked and such professional corporation shall cease to practise occupational therapy effective upon the expiration of the one hundred and twenty day period.

(3) Where the permit of a professional corporation is deemed to be revoked under this Section and thereafter the professional corporation is able to demonstrate that it is in compliance with subsection 78(3), the professional corporation may apply to the Registrar to have its permit re-instated and the Registrar may, in the Registrar's discretion, re-instate the permit subject to such conditions as the Registrar may direct. 1998, c. 21, s. 79.

#### **Notification of change in professional corporation**

80 Where the shares of a professional corporation engaged in the practice of occupational therapy are transferred or where there is a change in the shareholders, directors or officers of the professional corporation, or any change in the location where the professional corporation carries on business, the professional corporation shall, within fifteen calendar days, notify the Registrar of such change. 1998, c. 21, s. 80.

#### **Effect of relationship to corporation**

81 The relationship of an occupational therapist to a professional corporation whether as a shareholder, director, officer or employee, does not affect, modify or diminish the application of this Act and the regulations to the occupational therapist. 1998, c. 21, s. 81.

#### **Liability and restrictions on transfer**

82 (1) All persons who carry on the practice of occupational therapy by, through or on behalf of a professional corporation are liable in respect of acts or omissions done or omitted to be done by them in the course of the practice of occupational therapy to the same extent and in the same manner as if such practice were carried on by them as an individual or a partnership, as the case may be, carrying on the practice of occupational therapy.

(2) No owner of voting shares of a professional corporation shall pledge, hypothecate, enter into a voting trust, proxy or any other type of agreement vesting in any other person who is not an occupational therapist the authority to exercise the voting rights attached to any or all of the owner's shares. 1998, c. 21, s. 82.

#### **Status of relationships**

83 (1) Nothing contained in this Act affects, modifies or limits any law applicable to the confidential or ethical relationships between an occupational therapist and a client.

(2) The relationship between a professional corporation and a client of the professional corporation is subject to all applicable laws relating to the confidential and ethical relationships between an occupational therapist and a client.

(3) All rights and obligations pertaining to communications made to or information received by an occupational therapist apply to the shareholders, directors, officers and employees of a professional corporation. 1998, c. 21, s. 83.

#### **Compellable witnesses**

**84** All shareholders, directors, officers and employees of a professional corporation are compellable witnesses in any proceedings under this Act. 1998, c. 21, s. 84.

#### **Certificate as evidence**

**85** A certificate purporting to be signed by the Registrar stating that a named professional corporation was or was not, on a specified day or during a specified period, a professional corporation entitled to practise occupational therapy according to the records of the Registrar, shall be admitted in evidence as *prima facie* proof of the facts stated therein without proof of the Registrar's appointment or signature. 1998, c. 21, s. 85.

#### **Liability of directors and officers**

**86** Where a professional corporation commits an offence contrary to this Act or the regulations, every person who, at the time of the commission of the offence, was a director or officer of the corporation is guilty of the same offence and subject to the same penalties unless the act or omission constituting the offence took place without the person's knowledge or consent or the person exercised all due diligence to prevent the commission of the offence. 1998, c. 21, s. 86.

#### **Offences and penalties**

**87 (1)** Every person who contravenes Sections 74 to 86 or the associated regulations is guilty of an offence and liable, on summary conviction, for a first offence to a fine not exceeding five hundred dollars and for a second or any subsequent offence to a fine not exceeding one thousand dollars.

(2) Where a professional corporation is convicted of an offence contrary to Sections 74 to 86 or the associated regulations, the permit of the corporation is suspended in default of paying any fine ordered to be paid until such time as the fine is paid.

(3) Where a professional corporation is convicted of a second or subsequent offence, the permit of the corporation may be revoked. 1998, c. 21, s. 87.

## GENERAL

**Publication of decisions**

**88 (1)** Subject to any publication bans, the College shall publish a hearing committee's decision or summary of the decision in its annual report and may publish the decision or summary in any other publication.

**(2)** Where the registration or licence, or specialist's licence, or both, of a member has been revoked or suspended or where conditions, limitations or restrictions are imposed on the licence or specialist's licence of a member, the College shall place a notice in such publications as it deems necessary in order to inform the public. 1998, c. 21, s. 88.

**Regulations Act**

**89** All regulations made pursuant to this Act are regulations within the meaning of the *Regulations Act*. 1998, c. 21, s. 89.

**Treatment of complaint under former Act**

**90 (1)** For greater certainty,

(a) a complaint made pursuant to the former Act shall continue to be proceeded with in accordance with this Act as nearly as circumstances permit; and

(b) in respect of that complaint, a complaints committee appointed pursuant to the former Act and its regulations and by-laws is deemed to be an investigation committee appointed pursuant to this Act.

**(2)** Nothing in subsection (1) precludes a complaint made pursuant to the former Act being investigated by an investigation committee appointed pursuant to this Act and, in such case, a complaints committee appointed pursuant to the former Act ceases to have any jurisdiction respecting that complaint. 1998, c. 21, s. 90.

**Matters pending under former Act**

**91 (1)** Upon the coming into force of this Act, any matter pending before the Board pursuant to the former Act shall, where not set down for a hearing to commence within sixty days of the coming into force of this Act, be transferred to a hearing committee appointed pursuant to this Act for hearing and determination, but otherwise shall be heard and determined by the Board pursuant to the former Act.

**(2)** Notwithstanding subsection (1), the parties may agree that a matter pending be transferred to a hearing committee appointed pursuant to this Act.

(3) The Board pursuant to the former Act shall be continued until all matters pending before it at the coming into force of this Act and not transferred to a hearing committee appointed pursuant to this Act have been finally decided. 1998, c. 21, s. 91.

**Repeal**

92 The former Act is repealed. 1998, c. 21, s. 92.

**Proclamation**

93 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 1998, c. 21, s. 93.

Proclaimed - April 7, 1999  
In force - April 8, 1999

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