

SCHEDULE 7 TO BY-LAW NO. 1

CODE OF CONDUCT FOR COUNCIL MEMBERS

PURPOSE

1. The purpose of the Code of Conduct is to ensure that members of council properly perform their duties in a manner that promotes the highest standard of public trust and integrity.

PREAMBLE

2. In order to fulfil their duties, it is expected that all members of council shall
 - (a) familiarize themselves with the *Regulated Health Professions Act, 1991* and its *Health Professions Procedural Code*, the *Dentistry Act, 1991*, the regulations under those Acts and the by-laws and policies of the College;
 - (b) place the interests of the public, the College, its council and committees above all other competing interests;
 - (c) exercise reasonable care, diligence, skill and prudence in carrying out their duties;
 - (d) be fully prepared to participate in meetings of council and meetings of committees or panels of committees to which they are appointed by reading background material and documents provided to them by the College and attending meetings when called on to do so; and

- (e) participate in council and committee meetings in a respectful, courteous and professional manner recognizing the diverse background, skills and experience of council and committee members.
3. Neither section 1 nor section 2 shall be considered a part of this by-law in determining whether a breach of the Code of Conduct has taken place.

THE CODE OF CONDUCT

4. (1) In performing his or her duties, each member of council shall
- (a) comply with the provisions of the *Regulated Health Professions Act, 1991* and its *Health Professions Procedural Code*, the *Dentistry Act, 1991*, the regulations made under both Acts and the by-laws and policies of the College;
 - (b) ensure that confidential information received by him or her is not disclosed by him or her except as required for the performance of his or her duties or as directed by council;
 - (c) not communicate with members of any statutory committee or take any other action which could be reasonably perceived as influencing or attempting to influence any member of a committee in making a statutory decision, except where he or she is a member of the panel which is making that decision or, where there is no panel, of the committee making that decision;¹

¹ This would include but not be limited to applications for registration or reinstatement, matters coming before the Inquiries, Complaints and Reports Committee respecting a member's conduct, an investigation by the College of a member's conduct, matters coming before the Quality Assurance Committee relating to an individual member and matters relating to discipline or fitness to practise proceedings in relation to a member. This would not prevent a member of council from making a submission to the Quality Assurance Committee respecting a statutory decision that does not specifically relate to a member's conduct and/or compliance with the College's Quality Assurance Program.

- (d) comply with the College's by-laws respecting conflict of interest and bias including avoiding and, where that is not possible, declaring any appearance of or actual conflict of interest or bias in accordance with the provisions of that by-law;
 - (e) respect and support² every decision of council regardless of the level of prior individual disagreement with that decision;
 - (f) follow the established policies and processes of the College regarding College communications;
 - (g) be respectful of staff, fellow councillors and non-council committee members and in particular, but without limiting the generality of the foregoing, not engage in behaviour that might reasonably be perceived as verbal, physical or sexual abuse or harassment;
 - (h) not use his or her position as a member of council to obtain or attempt to obtain employment or preferential treatment for themselves, family members, friends or associates; and
 - (i) refrain from including or referencing council or committee titles or positions held at the College in any personal or business promotional material, advertisement or business cards.
- (2) A member of council who fails to comply with any of the provisions of subsection 4(1) shall have breached this Code of Conduct.

- 5.** Where a member of council believes that another member of council has breached this Code of Conduct and that it is both necessary and in the interests

² It shall not be a breach of this provision for a member of council to simply state publicly that he or she did not personally support the decision provided the member of council did indeed vote against the decision at the time the decision was made. In keeping with best practices and in order to establish that the statement was true, a member of council in this position should ask that his or her dissenting vote be recorded at the time the vote was taken. The minutes will then reflect this fact.

Any attempt to explain why the member of council did not support the decision could be considered a breach of this provision regardless of how the member voted on it. Therefore while a member of council may acknowledge that he or she voted against a motion and, if asked, explain his or her reason for doing so, the member must do so in a manner that both respects and supports council's decision and not use the forum as an opportunity to question the decision of council or to provoke further discussion or debate on the issue.

of the College to formally deal with that alleged breach, he or she may provide a written statement to the registrar setting out the name of the member of council who he or she believes breached the Code which statement shall include the factual basis for that belief and the reasons why he or she believes that it is both necessary and in the interest of the College to formally deal with the alleged breach.

6. (1) The Commissioner as referred to in this Code of Conduct shall be a former judge of the Ontario Superior Court appointed by council to act in that capacity.
- (2) The Adjudication Committee referred to in this Code of Conduct is that committee described in section 10.
7. (1) When a member of council provides the written statement referred to in section 5, that member shall also indicate to the Registrar whether the decision to appoint an Adjudication Committee shall be made by the Executive Committee or the Commissioner.
- (2) When the member of council who provided the written statement referred to in section 5 directs that the decision to appoint an Adjudication Committee should be that of the Commissioner, that member of council shall
 - (a) deposit with the College the sum of \$3,500 in such form as is acceptable to the registrar ("Deposit"); and
 - (b) sign an agreement in a form acceptable to the registrar by which he or she agrees that should the Adjudication Committee find that the allegation(s) is frivolous, vexatious or made in bad faith or that the member knew or ought to have known the allegation(s) was false, he or she agrees
 - (i) to repay the College any costs incurred as a result of the member's filing of the written statement including, without limitation, the

College's expenses associated with the use of the Commissioner, the College's expenses associated with the use of the Adjudication Committee and any legal costs which the College pays under this by-law to the member who was alleged to have breached this Code of Conduct; and

- (ii) to resign as a member of council effective immediately upon the Adjudication Committee finding that the allegation(s) was frivolous, vexatious or made in bad faith or that the member knew or ought to have known the allegation(s) was false.

- 8. (1) Subject to subsection 8(2), the registrar shall establish a committee hereinafter referred to as the "Adjudication Committee" where he
 - (a) receives information from a person other than a member of council and the registrar determines that there are reasonable and probable grounds to believe that a breach of the Code of Conduct has taken place and is also satisfied that it is both necessary and in the interests of the College to formally deal with the alleged breach, or
 - (b) receives a written statement referred to in section 5 and is directed to do so by either the executive committee or the Commissioner.
- (2) The registrar shall not establish an Adjudication Committee where to do so requires the direction of the Commissioner unless and until the member of council from whom the registrar received the written statement referred to in section 5 fully complies with the requirements of subsection 7(2).
- (3) Where the registrar is required to obtain the direction of the executive committee under clause 8(1)(b), the registrar shall bring the matter forward for consideration at the next regular scheduled meeting of the executive committee.

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- (4) A meeting of the executive committee to consider whether to provide the direction referred to in clause 8(1)(b) shall be held in-camera.
 - (5) Where the registrar is required to obtain the direction from the Commissioner under clause 8(1)(b), the registrar shall refer the matter to the Commissioner for consideration within seven days after all of the requirements of subsection 8(2) have been met.
 - (6) Where the registrar is required to establish an Adjudication Committee, the registrar shall take all reasonable steps to do so within ten days of being directed to do so by either the executive committee or the Commissioner.
9. (1) The Commissioner shall not direct the registrar to establish an Adjudication Committee unless the Commissioner is satisfied that
- (a) the facts set out in the written statement referred to in section 5, if true, would constitute a breach of this Code of Conduct;
 - (b) it is in the interest of the College to further investigate and/or adjudicate the allegation(s); and
 - (c) there is no reason to believe, based on the information currently available to the Commissioner, that the allegation(s) is frivolous, vexatious or made in bad faith.
- (2) A decision under subsection 9(1) shall be final and is not subject to review by anyone including, without limitation, council or a committee of the College.
 - (3) Where the Commissioner decides not to direct the registrar to establish an Adjudication Committee, the Deposit shall be forfeited to the College to offset the College's expenses associated with the use of the Commissioner.

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- (4) Where the Commissioner directs the registrar to appoint an Adjudication Committee, the Deposit shall immediately be returned to the member of council who provided it.
 - (5) The Commissioner shall use his or her best efforts to make a determination under subsection 9(1) as soon as is reasonably possible.
 - (6) If for any reason the Commissioner has not made a determination within thirty days of the date the matter was referred to the Commissioner by the registrar, the Commissioner shall immediately advise the registrar of the reasons why he or she has been unable to make the determination.
- 10.** (1) The Adjudication Committee shall be composed of three persons.
- (2) One member of the committee shall be a former judge of the Ontario Superior Court selected by the registrar, who shall act as chair of the committee.
 - (3) The second member of the committee shall be a registrar/executive director or former registrar/executive director of a health profession regulated under the *Regulated Health Professions Act, 1991* or current or former chief executive or chief administrative officer of another self-regulated profession statutorily regulated pursuant to the laws of Ontario (e.g. the treasurer of the Law Society of Upper Canada), selected by the registrar.
 - (4) The third member of the committee shall be a person selected by the other two members of the committee.
 - (5) If for any reason a member or members of the Adjudication Committee, other than the chair, is/are unable or unwilling to continue as a member of the committee, the remaining member or members of the committee will constitute the Adjudication Committee.
 - (6) Where the chair of the Adjudication Committee is unable or unwilling to continue to act as a member of the committee, the registrar shall select another

former judge of the Ontario Superior Court, who shall act as chair of the committee.

- (7) In the event both members of the Adjudication Committee are unable or unwilling to act, the chair acting alone, shall constitute the Adjudication Committee.
- 11.** No member of the Adjudication Committee shall have any prior knowledge of the facts surrounding the alleged breach and each shall sign a confidentiality agreement in a form acceptable to the registrar before serving as a member of the committee.
- 12.** After appointing the two members of the Adjudication Committee as provided for in subsections 10(2) and (3), the registrar shall, within ten days of appointing those members,
- (a) provide to those members all of the information that the registrar has in connection with the alleged breach;
 - (b) advise those members that it is their responsibility to appoint a third member to the committee and to immediately thereafter notify the registrar of the name of that third member;
 - (c) advise the member of council who is alleged to have breached the Code of Conduct that an Adjudication Committee has been appointed pursuant to this by-law, provide a copy of everything provided to the Adjudication Committee to that member of council and advise that member of council that he or she will be contacted by the Adjudication Committee respecting the process it will follow regarding the alleged breach; and
 - (d) notify the executive committee in an in-camera meeting that an Adjudication Committee has been appointed and provide to the committee the name of the member of council who is the subject of the report and,

where the Adjudication Committee was established at the direction of the Commissioner, the name of the member of council who provided to the registrar the written statement referred to in section 5.

- 13.** Upon receipt of the identity of the member of the Adjudication Committee selected in accordance with subsection 10(4), the registrar shall immediately provide to that individual all of the information that the registrar has in connection with the alleged breach.
- 14.** If twenty-five days have expired from the date upon which the registrar was required to establish an Adjudication Committee and the Adjudication Committee has not yet been composed, the registrar shall provide notification of that fact and an explanation for the delay to
- (a) the member of council who was alleged to have breached the Code of Conduct;
 - (b) the executive committee, in an in-camera meeting; and
 - (c) the member of council who provided the written statement referred to section 5, where the Adjudication Committee was established at the direction of the Commissioner.
- 15.** The registrar shall administratively assist the Adjudication Committee in such manner as it requests but shall not participate or be present during any fact finding or deliberation of the committee.
- 16.** All meetings of the Adjudication Committee shall be held in-camera.

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17. (1) The Adjudication Committee shall
- (a) take such steps as it, in its sole discretion, feels necessary to fairly investigate the allegation(s) having regard to the seriousness of the allegation(s), and
 - (b) adopt such processes as it considers fair and reasonable to ensure that the member of council who has allegedly breached the Code of Conduct is given a reasonable opportunity to make a full and complete answer to the allegation(s).
- (2) The Adjudication Committee shall use its best efforts to complete the responsibilities provided to it under this by-law within ninety days of it being established.
- (3) If for any reason it is unable to complete the responsibilities provided to it under this by-law within ninety days of it being established, the Adjudication Committee shall report the reasons for the delay to the registrar immediately upon the expiry of the aforesaid ninety days and every thirty days thereafter, should the delay continue.
- (4) Upon receipt of the information required by subsection 17(3), the registrar shall provide an explanation for the delay to
- (a) the member of council who was alleged to have breached the Code of Conduct;
 - (b) the executive committee, in an in-camera meeting; and
 - (c) the member of council who provided the written statement referred to section 5, where the Adjudication Committee was established at the direction of the Commissioner.

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- 18.** (1) The Adjudication Committee may, either before or after completing its investigation, attempt to resolve the issue in a manner acceptable to that committee without making any findings under subsection 19(1) or section 22.
- (2) Subject to subsection 18(3), any resolution under subsection 18(1) must be acceptable to
- (a) the Adjudication Committee,
 - (b) the member of council who is the subject of the allegation(s), and
 - (c) (i) the executive committee, where the matter was directed to the Adjudication Committee by the executive committee or the registrar³; or
 - (ii) the member of council who provided to the registrar the written statement referred to in section 5, where the matter was directed to the Adjudication Committee by the Commissioner.
- (3) Where the matter was directed to the Adjudication Committee by the Commissioner and a proposed resolution is acceptable to the Adjudication Committee and the member who is the subject of the allegation(s) but not acceptable to the member of council who provided the registrar with the written statement referred to in section 5, the Adjudication Committee may finalize the proposed resolution with consent of the executive committee.
- (4) A meeting of the executive committee to consider approving a proposed resolution shall be held in-camera.
- (5) Subject to subsection 18(6), no further action shall be taken in respect of the allegation(s) in the event the issue is resolved under subsection 18(1) or the member of council who is the subject of the allegation(s) resigns as a member of council.

³ The addition of these words is expected to be approved at an upcoming teleconference meeting of the Legal and Legislation Committee Committee.

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- (6) Where a resolution is made in accordance with this section, the executive committee shall report to council at the next regular meeting of council that an Adjudication Committee was appointed under this by-law and that the matter was successfully resolved by the Adjudication Committee.
 - (7) The report referred to in subsection 18(6) shall be provided to council at a meeting with the public excluded.
 - (8) The report under subsection 18(6) shall not include the nature of the allegation(s), the details of the resolution, the name of the member who is the subject of the allegation(s) or the name of the person/member who provided the information which gave rise to the establishment of the Adjudication Committee.
- 19.** (1) No further action in respect of the allegation(s) shall be taken where the Adjudication Committee finds that
- (a) the allegation(s) is frivolous, vexatious or made in bad faith;
 - (b) there is no merit to the allegation(s); or
 - (c) even if a breach did occur, it is not in the interests of the College to take further action in respect of the breach.
- (2) A decision under subsection 19(1) shall be final and is not subject to review by anyone including, without limitation, council or a committee of the College.
- 20.** (1) In the event the Adjudication Committee makes a finding under subsection 19(1), it shall report its findings and the reasons for its findings in writing to the person who is the subject matter of the allegation(s), to the registrar and, where the Adjudication Committee was established at the

direction of the Commissioner, to the member of council who provided to the registrar the written statement referred to section 5.

- (2) The registrar shall report the finding referred to in subsection 20(1) to the executive committee, in an in-camera session.
- 21.** (1) Subject to subsection 21(2), in the event that the Adjudication Committee makes a finding under subsection 19(1), the executive committee shall report that fact to council at the next regular meeting of council but shall not include in its report the nature of the allegation(s), the name of the member who is the subject of the allegation(s) or the name of the person/member who provided the information which gave rise to the establishment of the Adjudication Committee.
- (2) Where the member who is the subject of the allegation(s) provides a written direction to the registrar, the whole of the report of the Adjudication Committee shall be provided to council at council's next regular meeting.
 - (3) The report by the executive committee required by subsections 21(1) and (2) shall be provided to council at a meeting with the public excluded.

22. Where the Adjudication Committee determines that

- (a) a breach of the Code of Conduct did occur, and
- (b) it is in the interest of the College, in its view, for council to take further action in respect of the member who is found to have breached the Code of Conduct,

the Adjudication Committee shall

- (i) advise the member of council who is the subject matter of the allegation(s) and the registrar of that fact;

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- (ii) provide the member of council who is the subject of the allegation(s) and the registrar with a written report which shall include its findings and reasons for those findings; and
 - (iii) where the committee found the breach to have been sufficiently serious to have council consider disqualifying the member who has been found to have breached the Code of Conduct, provide in its report a statement to that effect and reasons for that finding.
- 23.** The registrar shall provide a copy of the report received under section 22 from the Adjudication Committee to the executive committee, in an in-camera meeting.
- 24.** (1) Where a report is made by the Adjudication Committee under section 22, a special meeting of council to deal with the matter shall be held at a place and time to be determined by the registrar as soon as reasonably practical.
- (2) The report of the Adjudication Committee made under section 22 shall be provided by the executive committee to council at a meeting with the public excluded.
- 25.** (1) The member of council who has been found by the Adjudication Committee under section 22 to have breached the Code of Conduct may make an oral and/or written submission to council but shall not be entitled to dispute the findings of fact made by the Adjudication Committee.
- (2) Where the Adjudication Committee was established as a result of a written statement referred to in section 5, the member of council who provided that written statement shall not be entitled to make oral or written submissions to council in respect of the findings of the Adjudication Committee.

26. Where the Adjudication Committee determined under section 22 that a breach of the Code of Conduct occurred, council may

- (a) demand an apology, in a form acceptable to council, and suspend the member from council until that apology is received or other resolution acceptable to council is reached; or
- (b) where council determines that the breach was wilful or caused by the gross neglect of the member or, that although inadvertent, the council member's action has had or is likely to have serious and substantial negative implications to the College, request the immediate written resignation of the member from council and if that resignation is not received forthwith, disqualify the member from sitting on council.

27. If council disqualifies the member in accordance with clause 26(b), it shall

- (a) in the case of a member of council appointed by the Lieutenant-Governor in Council, immediately advise the Minister of its decision; and
- (b) in the case of a member of council who is a member of the profession, treat the situation in the same way as if a vacancy had been created as a result of the resignation of that member of council.

PROCEDURAL AND OTHER SAFEGUARDS

28. (1) Subject to section 31, a resolution of at least two-thirds of the members of council present at a meeting duly called for that purpose shall be required in order to disqualify a member of council in accordance with clause 26(b).

(2) Any vote taken under subsection 28(1) shall be by secret ballot.

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- 29.** The member of council whose conduct is the subject of the allegation(s) and the member(s) of council, if any, who provided the written statement referred to in section 5, shall not be present or take part in any council deliberation or vote which is taken pursuant to this by-law.
- 30.** Any discussion, deliberation or vote by council taken under this by-law shall be with the public excluded from the meeting.
- 31.** The member of council who is the subject of a vote of council taken under this by-law and any member of council who provided the written statement referred to in section 5, if applicable, shall not be counted as a member of council in determining whether a quorum exists or whether the resolution was carried or defeated.

RECOVERY OF COSTS AND EXPENSES

- 32. (1)** A member of council who is the subject of the allegation(s) shall be entitled to be reimbursed by the College for reasonable legal costs incurred by that member, as determined by the chair of the Adjudication Committee, where the Adjudication Committee makes a finding under clause 19(1)(a) or (b) but in no other circumstance.
- (2)** A member of council who provided to the registrar the written statement referred to in section 5 shall be entitled to be reimbursed by the College for reasonable legal costs incurred by that member, as determined by the chair of the Adjudication Committee, where the Adjudication Committee makes a finding under clause 19(1)(c) or where it makes a finding under section 22 but in no other circumstance.

- (3) Except as provided for in subsections 32(1) and (2), no member of council shall be entitled to recover from or be reimbursed by the College for any costs or expenses incurred by him or her in relation to matters dealt with under this by-law.

DELAY

- 33. (1)** In the event that a matter referred to the Adjudication Committee has not been resolved or a report issued within one hundred and twenty days after the matter was referred to that committee by the registrar, the registrar shall determine the reason for the delay and report that fact as well as the reason for the delay to
- (a) the member of council who was alleged to have breached the Code of Conduct;
 - (b) the executive committee, in an in-camera meeting; and
 - (c) the member of council who provided the written statement referred to section 5, where the Adjudication Committee was established at the direction of the Commissioner.
- (2) The report required by subsection 33(1) shall be made by the registrar as soon as is reasonably practical after the expiry of the one hundred and twenty days referred to therein and every thirty days thereafter, in the event that the matter referred to the Adjudication Committee has not yet been resolved or a report issued.