



# CONSENT AND CAPACITY BOARD RULES OF PRACTICE

## NOTE

The Board will issue a **Users' Guide to the Rules of Practice** following the proclamation of the Rules for the purpose of assisting those using the Rules.

If you have any questions concerning the Rules, please contact the Board at (416) 327-4142 or fax at (416) 327-4207. Access to all relevant legislation is available through the Board's website at [www.ccboard.on.ca](http://www.ccboard.on.ca)

French version available upon request. Please contact the Board.

## PREAMBLE

These Rules have been adopted by the Consent and Capacity Board (the "Board") pursuant to section 25.1 of the *Statutory Powers Procedure Act*. Except where their application is statutorily excluded, these Rules apply to hearings held under the *Health Care Consent Act, 1996*, *Long-Term Care Act, 1994*, *Mental Health Act* and *Substitute Decisions Act, 1992*.

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## **PURPOSE OF THE RULES**

1.1 The purpose of these Rules is to provide a just, fair, accessible and understandable process for parties to proceedings before the Board. The Rules attempt to facilitate access to the Board; to promote respectful hearings; to promote consistency of process; to make proceedings less adversarial, where appropriate; to make proceedings as cost effective as possible for all those involved in Board proceedings and for the Board by ensuring the efficiency and timeliness of proceedings; to avoid unnecessary length and delay of proceedings; and to assist the Board in fulfilling its statutory mandate of delivering a just and fair determination of the matters which come before it.

## **APPLICATION OF RULES**

2.1 These Rules apply to all proceedings of the Board.

2.2 Where any of these Rules conflicts with any statute or regulation or where the application of these Rules is statutorily excluded, the provisions of the statute or regulation shall prevail.

2.3 Where something is not provided for in these Rules, the practice may be decided by referring to a similar provision in these Rules.

## **BOARD POWERS**

3.1 The Board may exercise any of its powers under these Rules on its own initiative or at the request of any party. Unless otherwise provided, members of the Board, sitting alone or in a panel of three or five members to deal with particular applications, may exercise the powers provided to the Board in these Rules.

3.2 During any proceeding, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it. The Board may decide the procedure to be followed for any proceeding and may make procedural directions or orders at any time. The Board may impose such conditions as are appropriate and fair.

3.3 The Board may waive or vary any of these Rules at any time in order to ensure the fair and just determination of the proceedings before it.

## **COMPUTING TIMES**

4.1 In computing time periods under these Rules or in an order or decision, except as provided by statute or where a contrary intention appears:

(a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;

(b) where the time for doing an act under these Rules expires on a non-business day, the act may be done on the next day that is a business day;

(c) where, under these Rules, a document would be deemed to be received or service would be deemed to be effective on a day that is a non-business day, it shall be deemed to be received or effective on the next day which is a business day; and

(d) if a document is received after 4 p.m. on a business day, it shall be deemed to have been received on the next business day.

4.2 “Business day” means any day other than a Saturday, Sunday or a holiday. A “holiday” includes New Year’s Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, Civic and Provincial Holidays (including the first Monday in August), the birthday or the day fixed by proclamation of the Governor General for the celebration of the birthday of the reigning Sovereign, Victoria Day, Canada Day, Labour Day, Remembrance Day and any day appointed by proclamation of the Governor General or Lieutenant Governor as a public holiday or for a general fast or thanksgiving, and when any holiday, except Remembrance Day, falls on a Sunday, the day next following is in lieu thereof a holiday.

## **PARTIES**

5.1 The following persons are parties to an application for the purpose of these Rules:

- (a) persons specified as parties by the statute under which the application arises; and
- (b) any other person the Board specifies.

5.2 In deciding whether to specify a person as a party to an application, the Board may consider:

- (a) the nature of the case;
- (b) the issues;
- (c) whether the person has a genuine interest in the issues;
- (d) whether the person’s interests may be directly and substantially affected by the hearing or its result;
- (e) whether the person is likely to make a useful and distinct contribution to the Board’s understanding of the issues in the hearing; and
- (f) any other relevant factor.

5.3 The Board may require persons who have similar interests to designate one person to act as their spokesperson, or to co-ordinate their submissions.

5.4 If it appears to the Board, prior to the commencement of or at any time during the hearing, that the subject of the application will not have legal representation at the hearing, the Board may exercise its powers under section 81 of the *Health Care Consent Act, 1996* to arrange legal representation for that person.

5.5 In order to exercise its powers under section 81 of the *Health Care Consent Act, 1996*, the Board or its administrative staff may make inquiries for the sole purpose of determining whether the subject of the application is or may be incapable with respect to treatment, admission to a care facility or a personal assistance service and/or whether he or she wishes to be represented by counsel at the hearing.

## **FILING APPLICATIONS AND OTHER DOCUMENTS WITH THE BOARD**

6.1 In these Rules, “filing” of any document means the delivery in person or by fax of that document to the Board’s Deputy Registrar and its receipt by the Board.

6.2 An application, notice or any other document shall be filed with the Board, unless otherwise directed by the Board.

6.3 Subject to Rule 4, documents are deemed to be filed as of the date and time they are received by the Board.

### **SERVICE OF DOCUMENTS**

7.1 Service may be effected by:

- (a) personal delivery of a document to a person or to the person's lawyer or agent in the proceeding;
- (b) faxing the document to the last known fax number of the person or to the person's lawyer or agent in the proceeding;
- (c) delivery of the document by courier or Priority Post, to the last known address of the person or to the person's lawyer or agent in the proceeding; or
- (d) any other means authorized or permitted by the Board for delivery of the document or for communicating the information contained in the document.

7.2 If the Board is aware that the subject of an application is a young person under the age of 16, a document shall be served on the young person or the young person's lawyer in the proceeding, if any. If the young person does not have a lawyer, a document may be served on both the young person and the Children's Lawyer.

7.3 Unless advised to the contrary by a person's lawyer or agent, the Board shall assume that the lawyer or agent in the proceeding knows the whereabouts of the person and is able to contact that person.

7.4 Service is deemed to be effective, when delivered by:

- (a) personal delivery, before 4 p.m. on the day of delivery, and after that time, on the next day;
- (b) fax, before 4 p.m. on the date it was sent, and after that time, on the next day;
- (c) courier, on the day after the courier picks it up for delivery; or
- (d) any means authorized or permitted by the Board, on the date specified by the Board in its direction.

7.5 After an application is filed with the Board, a party may waive service by the Board or by any other party, of a notice of hearing or any other document.

7.6 Parties serving documents shall clearly show their name, address, and telephone and fax numbers on a covering document.

### **INCOMPLETE OR TECHNICALLY DEFECTIVE APPLICATIONS**

8.1 In this section, "Board" includes the Board's administrative staff.

8.2 Upon receiving an application that appears incomplete, the Board will contact the person submitting the application to obtain the missing information. If information required to establish the nature of the application, the parties thereto or other facts material to the ability to hold a hearing

cannot be obtained following reasonable inquiry, the Board may decide not to process the application.

8.3 Upon receiving an application that appears to be materially defective, the Board will notify the person submitting the application of the defect. If the defect is not remedied, the Board may decide not to process the application.

8.4 The Board shall give the applicant and such other persons as the Board deems appropriate notice of its decision not to process the application and set out the reasons for the decision and the requirements for commencement processing of the application.

8.5 The application will be deemed to have been received by the Board if and when these requirements have been met to the satisfaction of the Board.

### **DISMISSAL OF APPLICATION WITHOUT HEARING**

9.1 The Board may dismiss an application without a hearing if:

- (a) the application is frivolous, vexatious or is commenced in bad faith;
- (b) the application relates to matters that are outside of the jurisdiction of the Board; or
- (c) the statutory requirements for bringing the application have not been met.

9.2 Before dismissing an application under this section, the Board shall give notice of its intention to dismiss the application to:

- (a) all parties to the application, if the application is being dismissed for reasons referred to in Rule 9.1(b); or
- (b) the party who commenced the application, if the application is being dismissed for any other reason.

9.3 The notice of intention to dismiss an application shall set out the reasons for the intended dismissal and inform the parties of their right to make written submissions to the Board with respect to the dismissal within five days of service of the notice.

### **NOTICE OF WITHDRAWAL OF APPLICATION**

10.1 An applicant who does not want to continue with all or part of an application may withdraw all or part of the application by faxing a notice of withdrawal to the Board.

10.2 A party in the proceedings before the Board who, before the time of the hearing, takes an action that makes a hearing unnecessary shall notify the Board about such action immediately by fax.

10.3 An application cannot be withdrawn until the Board receives a written notice of withdrawal or until the Board is reasonably satisfied that appropriate documentation has been completed. If, for any reason, the Board is not satisfied that an application has been properly withdrawn or that a hearing has become unnecessary, the Board may proceed with the hearing.

## **NOTICE OF HEARING**

11.1 Notice of a hearing shall be served by the Board on the parties and other persons as permitted by statute.

11.2 In addition to providing the information required by statute, the Board may include in a notice of hearing any other information or directions it considers necessary for the proper conduct of the hearing.

11.3 The Board may serve notice of a hearing by way of telephone call, only if the Board considers this form of notice appropriate and necessary in the circumstances.

11.4 If, at the commencement of a hearing, the Board is not satisfied that all parties have received notice of the hearing, the Board may adjourn the hearing until all parties have received proper notice.

## **PLACE OF HEARING**

12.1 Unless the Board decides otherwise, the hearing will be held as close as possible to the place where the person who is the subject of the application is physically located at the time of the hearing.

## **MOTIONS**

13.1 "Motion" means a request for the Board's ruling or decision on a particular issue at any stage within a proceeding or intended proceeding.

13.2 A motion may be made by a party to the proceeding or by a person with an interest in the proceeding.

13.3 A person who has an interest in the proceeding and makes a motion will be dealt with by the Board as if he or she were a party for the purposes of the motion only.

13.4 At the earliest possible date before the hearing, and in any event no later than 4 p.m. on the day before the hearing, the party or person who wishes to bring a motion shall give notice of the motion to all other parties and to the Board. If necessary, leave to bring a motion may be sought at the commencement of the hearing.

13.5 Except as otherwise permitted by the Board, all motions shall be heard at the commencement of the hearing.

13.6 Notice of a motion does not need to be in any particular form. In appropriate circumstances, notice may be given by telephone call. Notice of a motion must adequately set out the grounds for the motion and the relief requested.

13.7 The Board may direct the procedure to be followed for dealing with a motion and set applicable time limits. The Board may direct that the motion will be dealt with in writing or by any other means.

## **PRE-HEARING CONFERENCES**

14.1 The Board may, at the request of a party or on its own initiative, direct the representatives for the parties, either with or without the parties, and any party not represented by counsel to appear before a member of the Board for a pre-hearing conference for the purpose of considering any or all of the following:

- (a) the identification, simplification and/or resolution of some or all of the issues;
- (b) identifying facts or evidence that may be agreed upon by the parties;
- (c) identifying all parties to the hearing;
- (d) the estimated duration of the hearing;
- (e) identifying the witnesses;
- (f) any other matter that may assist the just and most expeditious disposition of the proceeding.

14.2 The Board may direct the parties to serve documents or submissions prior to the pre-hearing conference.

14.3 A pre-hearing conference will not be held unless the party who is the subject of the application has legal representation.

14.4 A pre-hearing conference shall be conducted by a Board member.

14.5 A pre-hearing conference may be held in person, in writing or electronically. A pre-hearing conference shall not be open to the public.

14.6 All documents intended to be used at the hearing that may be of assistance in achieving the purposes of a pre-hearing conference shall be made available to the member presiding at the pre-hearing conference.

14.7 (1) At the conclusion of the pre-hearing conference,

- (a) counsel or any party not represented may sign a memorandum setting out the results of the conference; and/or
- (b) the member of the Board who presides at a pre-hearing conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding, including an order adding parties, and the memorandum or order binds the parties unless the member presiding at the hearing orders otherwise to prevent injustice.

(2) A copy of a memorandum or an order made under subrule (1) shall be placed in the hearing file and made accessible to the hearing panel.

14.8 No communication shall be made to the panel presiding at the hearing of the proceeding with respect to any statement made at pre-hearing conference, except as disclosed in the memorandum or order under Rule 14.7.

14.9 Upon conclusion of the pre-hearing conference, all original documents shall be returned to the party who provided them.

14.10 The member of the Board who presides over a pre-hearing conference shall not participate in the hearing unless all parties consent.

## **MEDIATION**

15.1 Mediation, which is part of the proceeding but not a part of the hearing, may be held for the purpose of attempting to reach a settlement of any or all of the issues, or at least their simplification

15.2 The Board may arrange for mediation only if all the parties consent to participate in the process. Any party can, at any time during the mediation, request an end to the mediation process. If such a request is made, mediation ends and a hearing will take place, if appropriate.

15.3 Mediation will not be held unless the party who is the subject of the application has legal representation.

15.4 Mediation shall be conducted by a person designated by the chair to sit as a mediator.

15.5 If a member of the Board presides over a mediation, that member shall not participate in the hearing unless all parties consent.

15.6 Mediation shall not be open to the public.

15.7 After mediation, all documents shall be returned to the party who provided them. Documents created or statements made for the sole purpose of mediation are not part of the record and are not admissible in a hearing unless all parties consent. Discussions held at mediation are privileged and may not be disclosed in further proceedings

15.8 If all parties to mediation wish to resolve all or some of the issues in dispute by way of an order of the Board, a request in writing shall be made by the parties to the mediator. The request shall record the agreements and undertakings made during mediation. The request shall be submitted forthwith to the Board by the mediator.

## **WRITTEN AND ELECTRONIC HEARINGS**

16.1 In appropriate cases and where permitted by law, the Board may decide in its discretion to conduct all or any part of the proceedings in person or by way of written or electronic hearing.

16.2 In deciding whether to hold a written or electronic proceeding, the Board may consider any relevant factors, including but not limited to:

- (a) the suitability of a written or electronic hearing format considering the subject matter of the hearing;
- (b) whether the nature of the evidence is appropriate for a written or electronic hearing, including whether credibility is in issue and the extent to which facts are in dispute;
- (c) the extent to which the matters in dispute are questions of law;
- (d) avoidance of unnecessary length or delay of the hearing;
- (e) the convenience of the parties;
- (f) the ability of the parties to participate in a written or electronic hearing;
- (g) the cost, efficiency and timeliness of proceedings; and
- (h) whether the hearing deals with procedural or substantive matters.

16.3 If possible, a party who objects to a written or electronic proceeding shall file a written objection with the Board before the hearing. An objection to an electronic hearing shall set out how an electronic hearing would cause that party significant prejudice. An objection to a written hearing shall set out the reasons why a written hearing is not appropriate.

#### **HEARINGS IN ENGLISH AND FRENCH**

17.1 Subject to the provisions of the *French Language Services Act*, the Board may conduct its proceedings in English or French, or partly in English and partly in French.

17.2 Parties are required to notify the Board if they or their witnesses wish to receive any or all services in the French language. This notification shall occur at the time the application is made or at the earliest possible opportunity thereafter.

#### **INTERPRETERS**

18.1 If a party or a party's witness requires an interpreter in a language other than the language of the hearing, the party shall notify the Board. This notification shall occur at the time the application is made or at the earliest possible opportunity thereafter.

18.2 If a health practitioner, legal counsel, helping professional or rights adviser is of the opinion that a party or a party's witness requires an interpreter at the hearing, that person shall notify the Board office at the earliest possible opportunity.

18.3 The Board, at its expense, will arrange for an interpreter as it deems necessary for the proper conduct of the hearing.

18.4 Where a written submission or written evidence is provided in a language other than the language of the hearing, the Board may order any person presenting the submission or evidence to provide it in the language of the hearing if the Board considers it necessary for the fair disposition of the matter.

#### **SPECIAL NEEDS**

19.1 Parties, lawyers and agents, and witnesses should notify the Board of their request for accommodation of any special needs during the hearing process. This notification shall occur at the time the application is made or at the earliest opportunity thereafter. The Board will determine, in its discretion, whether those special needs can be met.

19.2 If a health practitioner, a helping professional or a rights adviser is of the opinion that a party has special needs that should be met during the hearing process, that person shall notify the Board office at the earliest possible opportunity.

#### **PROCEDURE AT A HEARING**

20.1 The Board controls its own process and will determine its own practices and procedures during the hearing according to the legislation and principles of common law.

20.2 Unless directed otherwise by the chair of the Board, only members of the Board who are also members of the Law Society of Upper Canada shall preside over hearings.

### **PUBLIC ACCESS TO HEARINGS**

21.1 All Board hearings shall be open to the public except where, in accordance with the criteria provided in section 9(1) of the *Statutory Powers Procedure Act*, the Board is of the opinion that a matter should be heard in the absence of the public. At any time after the commencement of the hearing, the Board may close the hearing on its own initiative or at the request of a party.

### **ADJOURNMENTS**

22.1 Once commenced, a hearing may be adjourned at the discretion of the Board. The Board may adjourn the hearing on its own initiative or at the request of a party. In granting an adjournment, the Board may impose such conditions as it considers appropriate.

22.2 At the request of the parties or on its own initiative, the Board may recess or adjourn the hearing to allow parties to attempt to resolve the issues in dispute.

### **EVIDENCE**

23.1 At a hearing, the Board may admit any evidence relevant to the subject matter of the proceeding. The Board may receive any facts agreed upon by the parties without proof or evidence. The Board may direct the form in which evidence shall be received.

### **ORDER OF PRESENTATION OF EVIDENCE**

24.1 Evidence at a hearing shall be presented by the parties in the order directed by the Board. Questioning of witnesses will follow in the same order as the parties adduced evidence.

### **FILING DOCUMENTS AT A HEARING**

25.1 Any person tendering a document as evidence in a hearing shall provide one copy for each member of the Board at the hearing and one copy for each party. Except as otherwise permitted by the Board, documents shall be tendered and exchanged among the parties prior to the commencement of the hearing and any objections to those documents raised at the commencement of the hearing.

### **OATH OR AFFIRMATION**

26.1 The Board may require that evidence be given under oath or affirmation.

## **WITNESSES**

27.1 The Board may issue a summons to a party or any other person or witness, on its own initiative or upon the request of a party, to give evidence and produce documents relevant to the proceedings. A party shall inform the Board as soon as possible concerning the need to summon a witness. The party is responsible for providing the Board with all the information necessary to prepare the summons.

## **RECORDING OF PROCEEDINGS**

28.1 The Board will arrange for the recording of the proceeding by:

- (a) verbatim reporter; or
- (b) a visual or audio recorder, or both.

28.2 Subject to Rule 28.1, recording devices of any sort are not permitted at a hearing. Provided the Board is notified of the request in advance of the hearing, the Board, in its discretion, may allow:

- (a) a credentialed, professional journalist acting in the course of his or her duties to unobtrusively make an audio recording at a hearing for the sole purpose of supplementing or replacing that person's notes; and/or
- (b) a person requiring an assistive device, who may use that device to enable them to participate in a hearing.

No other use shall be made of these recordings.

28.3 Any journalist permitted by Rule 28.2 to make an audio recording at a hearing shall give an undertaking in a form satisfactory to the Board that the recording will not be used for broadcast or any other purpose other than that permitted by Rule 28.2.

28.4 Except as provided in Rules 28.1 and 28.2, the panel of the Board conducting a hearing has no discretion to permit any other audio or visual recording of a hearing.

## **ARGUMENT AND SUBMISSIONS**

29.1 After all of the parties have had an opportunity to present evidence, the Board shall give all parties an opportunity to make a final argument in support of the decision or order they want the Board to make. No new evidence may be presented during final argument.

29.2 The Board may order the parties to submit written arguments on any issue and shall direct the order and timing of submission of written arguments.

## **DECISIONS, ORDERS AND REASONS FOR DECISIONS**

30.1 In addition to regular letter mail or fax, the Board may serve or deliver a decision and reasons for decision by any method it deems appropriate in the circumstances and which allows for proof of receipt, including but not limited to personal delivery.

## **AMENDING A DECISION**

31.1 The Board may at any time correct a typographical error, error of calculation, clerical error, or other similar error made in its decision or reasons.

31.2 The Board may at any time, if considers it advisable, review all or part of its own decision or order, and may confirm, vary, suspend or cancel the decision or order.

## **REQUESTING LEAVE TO MAKE A NEW APPLICATION**

32.1 A party to an application under section 32, section 34, section 50 or section 65 of the *Health Care Consent Act, 1996* which has been finally disposed of by the Board may request leave to make a new application within six months after the final disposition of the earlier application.

32.2 A request for leave to bring a new application shall be made in writing and signed by the person making the request.

32.3 The request must include:

- (a) details of the material change in circumstances which justifies reconsideration of, depending on the application, the decision to admit to a place of treatment or the person's capacity; and
- (b) any evidence which supports the request.

32.4 The Board shall issue a notice of the request to the parties to the application. The notice will include the information provided by the requester under Rule 32.3 (a) and will inform the parties of their right to deliver a written respond and supporting evidence to the Board within seven days.

32.5 In exceptional circumstances, the Chair of the Board or a member designated by the Chair may order a hearing, which may be held in person or electronically, to hear the request for leave. The chair of the Board or a member designated by the chair may make any other procedural order to deal with the request for leave to bring a new application as he or she considers appropriate.

32.6 The Board shall issue a written decision to grant or refuse leave after the seven-day period referred to under Rule 32.4 has expired.

32.7 Until leave to bring a new application is granted, any application made under section 32, section 34, section 50 or section 65 of the *Health Care Consent Act, 1996* brought within six months after the final disposition of an earlier application shall be deemed not received by the Board.