

## CHAPTER 76

### An Act Respecting the New Brunswick Association of Occupational Therapists

*Assented to December 8, 1988*

WHEREAS the New Brunswick Association of Occupational Therapists prays that it be enacted as hereinafter set forth;

THEREFORE, Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

1 This Act may be cited as the *Occupational Therapy Act*.

#### PART I INTERPRETATION

2(1) For the purposes of this Act

"Association" means the New Brunswick Association of Occupational Therapists merged with the New Brunswick Society of Occupational Therapists and as one body corporate continued under section 3;

"by-laws" means the by-laws made under this Act;

"Council" means the Council of the Association as constituted under section 5;

"Executive" means the Executive Committee of the Association constituted under section 6;

"health professional" means a person who provides a service related to

- (a) the preservation or improvement of the health of individuals, or
- (b) the diagnosis, treatment or care of individuals who are injured, sick, disabled or infirm,

and who is regulated under a private Act of the Legislature with respect to the provision of the service and includes a social worker registered under the *New Brunswick Association of Social Workers Act, 1988*;

"member" means a member of the Association;

"occupational therapist" means a person whose name is entered in the register as an occupational therapist;

"practice of occupational therapy" means the art and science which utilizes the analysis and application of selected rehabilitative, educational and vocational activities to restore, maintain and enhance performance throughout the life-span, in the areas of self-care, productivity and leisure and without limiting the generality of the foregoing, addresses problems impeding functional independence in order to:

- (a) maintain and promote existing healthy functions,
- (b) diminish pathology and restore function,
- (c) facilitate learning of skills essential for adaptation and productivity, and
- (d) modify activities, equipment and environment to enable clients to achieve their highest level of independence and quality of life;

"register" means a register kept pursuant to section 9;

"registered" means entered in the register, and "registration" has a corresponding meaning;

"Registrar" means the person holding office of Registrar under section 6;

"regulations" means the regulations made under this Act.

"professional incompetence" Repealed: 1996, c.82, s.8.

"professional misconduct" Repealed: 1996, c.82, s.8.

2(2) The words "occupational therapist", "*ergothérapeute*" or any like words, initials or expressions used alone or in combination with other words or expressions connoting a person recognized by law as an occupational therapist or person entitled to carry on the practice of occupational therapy or connoting a member of the Association, when used in any provision of an act of the Legislature or any regulation, rule, order or by-laws made under an act of the Legislature enacted or made before, at or after the commencement of this Act or when used in any public document, shall be read as including a person or professional corporation whose name is entered in the register or corporation's register as an occupational therapist or occupational therapy corporation.

1996, c.82, s.8.

## PART II

### BODY CORPORATE

3(1) The Association incorporated by Chapter 58 of the 1977 Acts of New Brunswick as the New Brunswick Association of Occupational Therapists and the New Brunswick Society of Occupational Therapists are merged and shall continue as one body corporate without share capital under the name the New Brunswick Association of Occupational Therapists and subject to this Act this body corporate has the capacity, rights, powers and privileges of a natural person.

3(2) The objects of the Association are to

- (a) ensure the protection of the public;
- (b) promote an understanding of the value and use of occupational therapy among all treatment and rehabilitation groups and the general public and to promote its further development;
- (c) regulate the practice of occupational therapy and supervise and govern its members in accordance with this Act, the regulations and the by-laws;
- (d) establish, maintain and develop standards of qualification and practice for the practice of occupational therapy;
- (e) establish, maintain and develop standards of knowledge and skill among its members;
- (f) establish, develop and maintain ethical standards in the practice of occupational therapy among its members;
- (g) provide services to the members, as the Association considers desirable and which are not inconsistent with the object of ensuring the protection of the public;
- (h) perform such other duties and exercise such other powers as are imposed or conferred on it by or under any other Act.

## PART III

### MEMBERSHIP

4(1) Every person registered by the Association in accordance with this Act is a member of the Association subject to any term, condition or limitation to which the registration is subject.

- 4(2) Every person
- (a) who makes application in the prescribed form to the Registrar for registration under this Act,
  - (b) who pays the prescribed fee,
  - (c) who meets the criteria and compliance for membership as set out in the regulations, and
  - (d) who satisfies the Registration Committee that the person has graduated from a school of occupational therapy approved by the Canadian Association of Occupational Therapists and that the person has met the qualifications for registration as prescribed by regulation,

shall be registered in the register of the Association subject to any term, condition or limitation to which the registration is subject.

4(3) Every person who is registered under this Act is registered and entitled to practice as, and to be described as a registered occupational therapist, subject to any term, condition or limitation of registration to which the registration is subject.

4(4) A member may resign membership by filing with the Registrar a resignation in writing and the registration is thereupon cancelled, subject to the continuing jurisdiction of the Association in respect of any disciplinary action, under the Act, arising out of the member's conduct or in the practice of occupational therapy while a member.

4(5) Membership may be terminated for non-payment of any prescribed fee after giving the member at least thirty days notice of the default and intention to cancel, subject to the continuing jurisdiction of the Association in respect of any disciplinary action, under the Act, arising out of conduct or in the practice of occupational therapy while a member.

4(6) Where a membership has been terminated for non-payment of fees and the member applies for re-registration, the member shall pay the prescribed renewal fee, the prescribed re-registration fee and a fee for failure to register.

4(7) Where a membership has been revoked or suspended for cause, and the member applies for re-registration, the member shall pay the prescribed fee and the prescribed re-registration fee.

4(8) Every person who is a member of the Association and who is registered by the Association and licensed to practice occupational therapy at the time of the coming into force of this Act, shall continue to be a member of the Association, shall continue to be licensed to practice occupational therapy and shall be deemed to have been registered in accordance with this Act, subject to any term, condition or limitation, to which the member's registration is subject at the time of the coming into force of this Act.

4.1 A person whose registration is revoked, expired or suspended continues to be subject to the jurisdiction of the Association in respect of any disciplinary action under this Act arising out of the person's conduct or actions referable to the time when the person was registered or during the period of suspension.

1996, c.82, s.8.

#### **PART IV COUNCIL**

5(1) A board of directors, who shall be elected by the members of the Association, shall be known as the Council and shall consist of not more than ten persons. The Council shall control, govern and manage the business of and domestic affairs of the Association.

5(2) Two members of the Council who shall not be members of the Association, occupational therapists or former occupational therapists shall be appointed as follows:

- (a) one member who shall represent the public shall be appointed by the Council from a panel of not less than three persons nominated by the Executive Committee; and

(b) one member who shall be a member of the public and shall be appointed by the Minister of Health and Community Services from a panel of not less than three persons nominated by Council.

**5(3)** The Council shall elect annually from amongst its members the following officers:

- (a) President,
- (b) President-Elect,
- (c) Secretary, and
- (d) Treasurer.

**5(4)** The number of members of the Council, their respective terms of office, the manner of their appointment or election and their qualifications and the filling of vacancies shall be established and governed by the by-laws of the Association.

**5(5)** The members of the Board of the Association elected or appointed at the time of the coming into force of this Act shall be deemed to be the members of the Council and shall be deemed to have been appointed or elected in accordance with this Act and shall hold office until the next annual meeting of the Association after the coming into force of this Act.

**6(1)** There shall be an Executive Committee of the Council composed of the

- (a) President;
- (b) President-Elect;
- (c) Secretary;
- (d) Treasurer; and
- (e) the past president of the Association.

**6(2)** The Council shall appoint a Registrar, who while of good behavior shall hold office for a two year term and such other officers and staff as may, from time to time, be necessary, in the opinion of the Council, to perform its work under the Act and regulations.

**6(3)** Notwithstanding subsections (1) and (2), the members of the Board and the Registrar who have been appointed prior to the coming into force of this Act shall be deemed to have been appointed in accordance with this Act and shall hold office until the next annual meeting of the Association after the coming into force of this Act.

**7(1)** Unless this Act otherwise provides, the Council may by resolution make, amend or repeal any by-law regulating the business or domestic affairs of the Association and without limiting the generality of the foregoing make by-laws

- (a) respecting the management of the property of the Association;
- (b) respecting banking and finance;
- (c) prescribing the seal of the Association;
- (d) fixing the financial year of the Association and providing for the audit of the accounts and transactions of the Association;
- (e) prescribing forms and providing for their use;

- (f) prescribing the remuneration of the members of the Council and the members of the statutory committees established under this Act and providing for the payment of the necessary expenses of the Council and the statutory committees in the conduct of their business;
- (g) prescribing the remuneration of the members of the Executive Committee and the members of any committee established by the Executive Committee and providing for the payment for the necessary expenses of the Executive Committee and committees in the conduct of their business.
- (h) respecting the application of the funds of the Association and the investment and re-investment of any of its funds not immediately required, and providing for the safekeeping of its securities;
- (i) respecting membership of the Association in a national organization with similar functions, the payment of an annual assessment and provisions for representatives at meetings;
- (j) providing for the appointment, composition, powers and duties of committees, other than committees with functions or powers or duties the same as or similar to those exercised by the statutory committees, as may be required by the Council;
- (k) respecting the composition, quorum, number of members, the terms of office, qualifications and the manner of appointment of members on the statutory committees;
- (l) respecting the number of members of the Council;
- (m) respecting and governing the qualifications, nominations and elections of members to the Council, and contraverted elections;
- (n) respecting the conditions under which a member shall cease to hold office as a member of the Council;
- (o) governing the nomination and election of the officers of the Association as provided for under section 5 and contraverted elections;
- (p) prescribing the conditions disqualifying members from sitting on the Council and governing the filling of vacancies on the Council;
- (q) governing the filling of vacancies on the Executive Committee;
- (r) respecting the calling, holding and conducting of meetings of the Council and the duties of members of the Council;
- (s) respecting the calling, holding and conducting of meetings of the membership of the Association;
- (t) respecting the submission of written reports by the Registrar to the Council;
- (u) respecting such other matters as the Council considers appropriate to administer this Act or to advance or protect the interests of the public, the Association or the members,
- (v) respecting such other matters as are entailed in carrying on the business of the Association,

and such by-laws shall be valid, binding and effective from the date of the Council's resolution enacting the by-law until the by-law is amended or repealed by an ordinary resolution at an annual, special or general meeting of the Association or until it ceases to be effective under subsection (4) and where a by-law is amended at such meeting, it continues in effect in the form in which it is amended.

7(2) Any amendment or repeal of a by-law by the Council shall be made by by-law.

7(3) The Council shall cause a copy of the by-laws made under subsection (1) and of any amendments thereto

(a) to be forwarded to each member with the notice of the next following annual meeting or with notice of any special or general meeting called for considering the same, and at such meeting the by-law may be confirmed, rejected, repealed or amended by ordinary resolution;

(b) to be available for public inspection in the head office of the Association at all reasonable times during the day, free of charge.

7(4) If a by-law is repealed by the members, or if the Council does not submit the by-law to the members as required under subsection (3), the by-law ceases to be effective immediately and no subsequent Council's resolution making that by-law or any by-law having substantially the same purpose or effect is effective until it is confirmed by the members at the next annual meeting or special or general meeting called for that purpose.

8(1) The Council may make regulations which are subject to the approval of the members at an annual, special or general meeting of the Association, and which have been approved by the Minister of the Department of Health and Community Services,

(a) respecting any matter with regard to the issuing, suspension, renewal, reinstatement and revocation of registration;

(b) providing for classes of registration and governing the curriculum of education, training requirements and qualifications for the issuing of registration for any class thereof and prescribing the terms, conditions and limitations thereof;

(c) providing for a class of non-practising members and the terms, conditions or limitations to which this class of registration is subject;

(d) providing for the maintenance and inspections of a register of persons permitted to practice occupational therapy and for the issuance of registration by the Registrar;

(e) respecting the designation of honorary or life members of the Association and the rights of honorary or life members;

(f) prescribing fees respecting provisional registration;

(g) requiring the payment of fees for issuing initial registration, annual registration, examinations, penalties for late payment, and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;

(h) respecting the eligibility for registration and in particular respecting the curriculum of education, training requirements and professional examinations to be passed in order to be eligible for registration, qualifications for the issuing of registration and imposition of any term, condition or limitation on any registration;

(i) respecting the practice of occupational therapy by professional corporations and prescribing the types of names, designations and titles by which

(i) a professional corporation,

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

(iii) a partnership of one or more professional corporations and one or more individual practitioners,

may be known;

(j) governing standards of knowledge and skill to be developed and maintained among the members of the Association;

(k) prescribing the tasks that may be performed by a person serving a period of clinical fieldwork for the practice of occupational therapy and the terms and conditions under which this person may perform those tasks;

- (l) defining classes of specialists in the various branches of the practice of occupational therapy, prescribing the qualifications required, providing for the suspension or revocation of any such designation, and for the regulation and prohibition of the use of terms, titles or designations by members indicating specialization in any branch of the practice of occupational therapy;
- (m) authorizing persons other than members to perform specified tasks in the practice of occupational therapy under the supervision or direction of a member;
- (n) prohibiting the practice of occupational therapy by a member where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (o) providing for a programme of continuing education or refresher courses or training periods for members to uphold their standard of competence;
- (p) prescribing the cases in which a member may be obliged to serve a period of refresher training;
- (q) respecting the reporting and publication of decisions in disciplinary matters;
- (r) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (s) respecting the duties and authority of the Registrar;
- (t) providing for the exemption of any member from any provision of the Regulations under such special circumstances in the public interest as the Council considers advisable;
- (u) determining what members may include in their public advertisements and the conditions under which they advertise;
- (v) respecting any matter of policy concerning which the Council considers that regulations are necessary or desirable to uphold the standards of occupational therapy for the protection of the public or as are entailed in carrying out the purposes of this Act.

**8(2)** The Council shall prescribe, by regulation, a code of ethics for the purpose of governing the duties of a member towards the public, patients and the Association and, in particular, the duty of a member to discharge professional obligations with integrity and this code shall contain, *inter alia*,

- (a) provisions determining what conduct of a member is derogatory to the dignity of the Association;
- (b) provisions defining what behaviour of a member is incompatible with the dignity or practice of occupational therapy;
- (c) provisions requiring a member to preserve the secrecy of confidential information that becomes known to a member in the course of practice;
- (d) a provision specifying that a member, in the course of practice, shall not deny services to any person requiring services for reason of that person's race, colour, sex, religion, nationality, or ethnic origin.

**8(3)** Any amendment or repeal of a regulation by the Council shall be made by regulation.

**8(4)** The Council shall cause a copy of any regulation made under subsections (1) and (2) and any of the amendments

- (a) to be forwarded to each member with the notice of the next following annual meeting or with notice of any special or general meeting called for considering the same, and at such meeting the regulation may be confirmed, rejected, repealed or amended by ordinary resolution;

(b) to be available for public inspection in the head office of the Association at all reasonable times during the day, free of charge.

8(5) If a regulation is repealed by the members, or if the Council does not submit the regulation to the members as required under subsection (4), the regulation ceases to be effective and no subsequent Council's resolution making that regulation or any regulation having substantially the same purpose or effect is effective until it is confirmed by the members at the next annual meeting or special or general meeting called for that purpose.

1996, c.82, s.8.

## PART V REGISTRATION

9(1) The Registrar shall maintain

(a) a register in which is entered every person who is eligible to engage in the practice of occupational therapy, identifying any specialist status and the terms, conditions and limitations attached to the registration and shall note on the register every revocation, suspension and cancellation of a registration or recognition of specialist status, and such other information as the Registration Committee or Discipline Committee directs;

(b) a corporations register in which shall be entered the name and address of every professional corporation permitted to carry on the practice of occupational therapy pursuant to the Act and the names and addresses of the officers and directors of such corporations; and

(c) rosters of members in which shall be entered the name and address of every person who is entitled to membership in any category of membership established by by-laws and who is not otherwise registered in the register of members.

9(2) The Registrar shall register any applicant therefor who is eligible to be registered and qualified under this Act, the by-laws and the regulations.

9(3) The Registrar shall refer to the Registration Committee every application for registration.

9(4) The Registrar shall remove or cause the removal of the name of any person from the register

(a) who voluntarily withdraws membership,

(b) who fails to pay any prescribed fees, after having been given notice, or

(c) whose membership has been suspended or revoked for cause in accordance with this Act.

9(5) The register and corporations register shall be open for inspection by the public at all reasonable times, free of charge, but the Registrar may refuse any person access to or the privilege of inspecting the registers if there is cause to believe that such person is seeking access for or inspection primarily for commercial purposes or purposes unrelated to the practice of occupational therapy.

9(6) The Registrar shall issue or cause to be issued annually or otherwise a certificate of registration to persons whose names are entered in the register or corporations register and each such certificate shall state the date on which it expires and any terms, conditions or limitations imposed on the registration of the person in respect of whom the certificate is issued.

9(7) Any member whose registration has been revoked or suspended shall without demand forthwith deliver the certificate of registration to the Registrar.

9(8) A statement certified under the hand of the Registrar respecting the records of the Association or the registration of a person is admissible in evidence in any proceeding as *prima facie* proof of the facts set out in such certificate relating to the registration or non-registration of any such person and any term, condition or limitation in respect of the registration of any such person.



**PART VI**  
**PROFESSIONAL CORPORATIONS**

- 10(1)** No corporation shall be entitled to have its name entered in the register or roster other than the corporations register.
- 10(2)** No professional corporation shall be entitled to vote at any meeting of the Association.
- 10(3)** All the provisions of this Act, the by-laws and regulations applicable to a member apply with all necessary modifications to a professional corporation unless otherwise expressly provided.
- 11(1)** The articles of incorporation, articles of continuance or other incorporating documents of each professional corporation shall permit and shall not prevent the corporation from
- (a)* engaging in every phase and aspect of rendering the same occupational therapy services to the public that an occupational therapist is authorized to render;
  - (b)* having the capacity and exercising the rights, powers and privileges of a natural person as may be necessary or incidental or ancillary to the rendering of occupational therapy services including without restricting the foregoing, the power
    - (i)* to purchase, lease or otherwise acquire and to own, mortgage, pledge, sell, assign, transfer or otherwise dispose of, and to invest in, deal in or with, real or personal property;
    - (ii)* to contract debts and borrow money, issue and sell or pledge bonds, debentures, notes and other evidences of indebtedness and execute such mortgages, transfers of corporate property and other instruments to secure the payment of corporate indebtedness as required; and
    - (iii)* to enter into partnership, consolidate or merge with or purchase the assets of another corporation or individual rendering the same type of professional services.
- 11(2)** The legal and beneficial ownership of a majority of the issued shares of a professional corporation shall be vested in one or more members and shall entitle such member or members to elect all of the directors of the professional corporation.
- 11(3)** No member who is a shareholder of a professional corporation shall enter into a voting trust agreement, proxy or any other type of agreement vesting in a person who is not a member, the authority to exercise the voting rights attached to any or all of the member's shares, and every shareholder who does so commits an offence.
- 11(4)** The practice of occupational therapy on behalf of a professional corporation shall be carried on by occupational therapists.
- 11(5)** The registration of a professional corporation may be revoked, or its renewal withheld, by the Registrar where any of the conditions specified in subsections (1), (2), (3) and (4) no longer exist.
- 11(6)** Where a professional corporation ceases to fulfill any condition specified in subsection (2) or (4) by reason only of
- (a)* the death of a member,
  - (b)* the striking off or other removal, from the register, of the name of a member, or
  - (c)* the suspension or revocation of the registration of a member,
- the professional corporation has ninety days from the date of the death, striking off, removal, suspension or revocation, as the case may be, in which to fulfill the condition, failing which the Registrar shall revoke the registration of the professional corporation.
- 11(7)** A corporation which is registered may practice occupational therapy in its own name, subject to any conditions, restrictions or limitations as may be prescribed by regulation or as set out in its registration.

**11(8)** The name of each professional corporation shall contain the words "Professional Corporation" or "*corporation professionnelle*".

**12(1)** The relationship of a member to a professional corporation, whether as a shareholder, director, officer or employee, does not affect, modify or diminish the application to the member of the provisions of this Act, the by-laws or the regulations.

**12(2)** The liability for professional services rendered by any person carrying on the practice of occupational therapy is not affected by the fact that the practice of occupational therapy is carried on by such person as an employee of and on behalf of a professional corporation.

**13(1)** Nothing contained in this Act shall affect, modify or limit any law applicable to the confidential or ethical relationships between an occupational therapist and a patient.

**13(2)** The relationship between a professional corporation carrying on the practice of occupational therapy and a person receiving the professional services of the corporation is subject to all applicable laws relating to the confidential and ethical relationship between an occupational therapist and the patient.

**13(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.

## **PART VII OFFENCES**

**14(1)** Subject to subsections (3) and (4) no person shall

(a) use the title "Occupational Therapist" or "*ergothérapeute*" or the designation "Occupational Therapy" or "*ergothérapie*" or any other word or words of such designation or in any manner seek to convey the impression that the person is practising as an occupational therapist under this Act, or

(b) use the letters "O.T." or "erg." or any letter or letters similar thereto,

unless such person is registered in accordance with this Act.

**14(2)** No person shall use the designation of "Occupational Therapy", "*ergothérapie*" or any word or words indicative of such designation to describe a service unless such service has a registered occupational therapist under this Act as an employee or consultant.

**14(3)** Any professional corporation that breaches or permits the breach of any condition, limitation or restriction imposed upon its registration commits an offence and its directors and shareholders are deemed to commit the same offence.

**14(4)** Students who practise occupational therapy under the supervision of a member in accordance with the regulations may use the title "Student Occupational Therapist" or "Occupational Therapist Student".

**14(5)** No person shall practise occupational therapy within New Brunswick under any name or title containing the words "Professional Corporation" or "*corporation professionnelle*" or the abbreviations "P.C." or "C.P." unless that person is duly incorporated as a corporation and the corporation is registered hereunder, or unless otherwise expressly authorized by statute and every person so practising occupational therapy commits an offence.

**14(6)** Nothing in this Act applies to or prevents

(a) the practice of occupational therapy by an occupational therapist employed by the Government of Canada in the course of employment by that Government;

(b) the manufacture, fitting or selling of artificial limbs, or similar appliances;

- (c) the practice of a nursing assistant by a person who is registered under the *Registered Nursing Assistants Act*;
- (d) the practice of physiotherapy by a person who is registered under the *Physiotherapy Act 1985*;
- (e) the practice of dentistry by a person who is authorized to carry on such practice under the provisions of the *New Brunswick Dental Act, 1985*;
- (f) the practice of chiropractic by a person who is registered under the *The Chiropractic Act*;
- (g) the practice of radiological technology by a person registered under *The Radiological Technicians Act 1958* or *The Medical Radiation Technologists Act*;
- (h) the practice of nursing by a person authorized to practise nursing under the provisions of the *Nurses Act*;
- (i) the practice of medicine by a person registered under the *Medical Act*;
- (j) the practice of psychology by a person who is licensed under *The College of Psychology Act*;
- (k) the practice of podiatry by a person authorized to practice under the *Podiatrists Act*;
- (l) the practice of speech-language pathology or audiology by a person authorized to practice speech-language pathology or audiology under the provisions of the *Speech-Language Pathology and Audiology Act*.

#### **PART VIII**

##### **STATUTORY COMMITTEES**

**15(1)** The Council shall establish and appoint as hereinafter provided the following committees

- (a) Registration Committee,
- (b) Complaints Committee,
- (c) Discipline Committee, and
- (d) Appeal Committee,

and may establish such other committees than these statutory committees as the Council from time to time considers necessary.

**15(2)** The Council shall appoint one of the members of the Committee to be the Chairperson of the Committee.

#### **PART IX**

##### **REGISTRATION COMMITTEE**

**16(1)** The Registration Committee

- (a) shall consist of not less than three members who are occupational therapists who do not hold office on Council;
- (b) shall determine the eligibility of applicants for registration and may require an applicant to take and pass such additional examinations as the Council may set or approve and pay such fee as may be prescribed or to take such additional training as the Registration Committee specifies or to take additional fieldwork as the Registration Committee specifies;
- (c) shall determine whether the applicant meets the criteria for membership and may exempt the applicant from such criteria;
- (d) shall submit a written report every six months to the Council containing a summary of the applications for membership in the Association referred to it by the Registrar during the preceding six months and the disposition of same.

**16(2)** The Registration Committee may direct the Registrar to register an applicant, refuse to register an applicant or register an applicant subject to such terms, conditions and limitations as the Committee specifies.

**16(3)** Where the Registration Committee proposes

- (a) to refuse to grant registration to an applicant,
- (b) to attach terms, conditions or limitations to a registration, or
- (c) to require an applicant to take additional examinations, additional training or additional fieldwork,

the Registrar, on behalf of the Committee, shall serve notice of the refusal or the proposal of the Committee, together with written reasons therefor, on the applicant.

**16(4)** Subsection (3) does not apply to a refusal to grant registration to a person who was previously registered and whose registration was suspended or revoked as a result of a decision of the Discipline Committee.

**16(5)** A notice under subsection (3) shall inform the applicant of entitlement to a hearing of the application before the Appeals Committee if the applicant mails or delivers within thirty days after such notice is served, a notice in writing to the Appeals Committee requesting such a hearing and a copy of such notice to the Registrar.

**16(6)** Where an applicant does not request a hearing under subsection (5), the Registrar shall so notify the Registration Committee and the Committee may carry out the proposal stated in its notice under subsection (3).

## **PART X**

### **COMPLAINTS COMMITTEE**

**17(1)** The Complaints Committee shall have not less than three members. One member shall be a representative of the public or government and shall not be an occupational therapist or former occupational therapist. The other members shall be occupational therapists who do not hold office on Council.

**17(2)** The Complaints Committee shall consider and investigate complaints made by members of the public or members of the Association regarding the conduct or actions of any member of the Association but no action shall be taken by the Complaints Committee under subsection (3) unless,

- (a) a written complaint signed by the complainant has been filed with the Registrar, stating summarily the nature, time and place of the conduct or actions concerning the member about whom the complaint is made; and
- (b) the member whose conduct or actions are being investigated has been notified forthwith of the complaint and given at least two weeks in which to submit in writing to the Complaints Committee any explanations or representations the member may wish to make concerning the complaint.

**17(3)** The Complaints Committee, in accordance with the information it receives, may,

- (a) invite the parties to meet to endeavour to effect an informal settlement of the matter complained of where the complaint is deemed by the Complaints Committee to be of a minor nature and affects primarily the relationship between the complainant and the member complained against rather than the public interest;
- (b) direct the matter be referred, in whole or in part, to the Discipline Committee or to the Council for the purposes of section 21;
- (c) direct that the matter not be disposed of under paragraph (a) or referred under paragraph (b);
- (d) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act, the regulations or by-laws.

**17(4)** The Complaints Committee shall give its decision made under subsection (3) and the reasons therefor in writing to the Registrar for the purposes of subsection (5).

**17(5)** Where the Complaints Committee has disposed of a complaint in accordance with subsection (3), the Registrar shall forward to the member and to the complainant by registered mail, a copy of the written decision made by the Complaints Committee and the reasons therefor.

**17(6)** The Complaints Committee shall submit a written report every six months to the Council containing a summary of the complaints received during the preceding six months by source and type of complaint and the disposition of such complaints.

**17(7)** The Complaints Committee shall conduct its proceedings in accordance with its rules of procedure and may provide for the investigation of any complaint and in no case is the Committee bound by technical rules of evidence or procedure applicable in judicial proceedings.

**17.1(1)** Where the Complaints Committee refers a matter to the Discipline Committee and where the Council considers the action necessary to protect the public pending the conduct and completion of proceedings before the Discipline Committee in respect of a member, the Council may, subject to subsection (2), make an interim order

- (a) directing the Registrar to impose specified terms, conditions and limitations upon the member's registration, or
- (b) directing the Registrar to suspend the member's registration.

**17.1(2)** No order shall be made by the Council under subsection (1) unless the member has been given

- (a) notice of the Council's intention to make the order, and
- (b) at least ten days to make representation to the Council in respect of the matter after receiving the notice.

**17.1(3)** Where the Council takes action under subsection (1), the Council shall notify the member of its decision in writing.

**17.1(4)** An order under subsection (1) continues in force until the matter is disposed of by the Discipline Committee, unless the order is stayed pursuant to an application under subsection (5).

**17.1(5)** A member against whom action is taken under subsection (1) may apply to The Court of Queen's Bench of New Brunswick for an order staying the action of the Council.

**17.1(6)** If an order is made under subsection (1) by the Council in relation to a matter referred to the Discipline Committee, the Association and the Committee shall act expeditiously in relation to the matter.

1996, c.82, s.8.

## **PART XI DISCIPLINE COMMITTEE**

**18** Notwithstanding section 17, the Council may direct the Discipline Committee to hold a hearing and determine any specified allegation of professional misconduct or of incompetence, on the part of any member.

1996, c.82, s.8.

**19(1)** The Discipline Committee shall,

- (a) have not less than three members. One member shall be a representative of the public or government and shall not be an occupational therapist or former occupational therapist. The other members shall be occupational therapists who do not hold office on Council;
- (b) when so directed by the Council or the Complaints Committee, hear and determine allegations of professional misconduct or incompetence against any member;

- (c) hear and determine matters referred to it under section 21; and
- (d) perform such other duties as are assigned to it by the Council.

**19(2)** In the case of hearings into allegations of professional misconduct or of incompetence, the Discipline Committee shall

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) permit the member to present a full and complete defence;
- (c) determine whether upon the evidence and the facts so ascertained the allegations are proved;
- (d) determine whether, in respect of the allegations so proved, the conduct or actions of the member constitutes professional misconduct or incompetence; and
- (e) if the committee finds that the conduct or actions of the member constitutes professional misconduct or incompetence, determine the penalty to be imposed.

**19(3)** The Discipline Committee may find that a member has committed an act of professional misconduct if the member

- (a) has been found guilty of or has pleaded guilty to an offence that is relevant to the member's suitability to practice or carry out professional responsibilities upon proof of such conviction or plea,
- (b) in the opinion of the Discipline Committee, has seriously digressed from recognized professional standards or rules of practice of the profession,
- (c) has sexually abused a client, or
- (d) has failed to file a report pursuant to section 29.6.

**19(4)** The Discipline Committee may find a member to be incompetent if in its opinion the member has displayed in direct or indirect professional care of a client or in professional responsibilities, a lack of knowledge, skill or judgement, or disregard for the welfare of the client or the welfare of the institution served or the welfare of the public of a nature or to an extent that demonstrates that the member is unfit to continue to practice occupational therapy or to continue to carry out professional responsibilities or to practice occupational therapy without restrictions.

**19(5)** Where the Discipline Committee finds that the conduct or actions of a member constitutes professional misconduct or incompetence, the Committee shall hear the parties with respect to the penalty and shall impose the penalty and serve the written decision on the parties within thirty days after the close of the hearing.

**19(6)** Where the facts with which a member is charged are of such a nature that their continuation or repetition would tend to compromise seriously the protection of the public, the Committee may make an order imposing provisional suspension of the member subject to the final disposition to be given within thirty days of a hearing by the Committee.

**19(7)** The Discipline Committee may impose any one of the following penalties, or any combination of them, on a member whose conduct or actions have been found to constitute professional misconduct or incompetence:

- (a) revocation of the registration of the member or withdrawal of the recognition of specialist status or both;
  - (a.1) if the registration of the member is revoked, specify a period of time before which the member may not apply for reinstatement;
- (b) suspension of the registration of the member for a stated period or withdraw the recognition of specialist status;

(c) impose such restrictions on the registration of the member for such a period and subject to such conditions as the Discipline Committee designates, including conditions of engaging in professional activities or practising only under supervision, not engaging in sole practice, requiring periodic inspections by the Discipline Committee or its delegate or reporting to the Discipline Committee about specified matters;

(d) admonish or reprimand the member, and if deemed warranted, direct that the fact of such reprimand or admonishment be recorded on the register;

(e) impose a fine to a maximum of five thousand dollars to be paid by the member for payment into the funds of the Association;

(f) require the member to undertake to limit professional activities in lieu of suspension;

(g) order the member to undergo counselling;

(h) direct the member to satisfy the Committee that physical handicaps, mental handicaps, or problems caused by drug or alcohol have been overcome;

(i) order publication of the member's name incidental to any of the foregoing orders where the Registrar is not otherwise required to do so;

(i.1) direct that the result of the proceeding be entered into the records of the Association and be made available to the public incidental to any other penalty imposed under this subsection;

(j) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates;

(k) make such other or ancillary orders as the Committee considers appropriate or requisite.

**19(8)** A member whose registration has been revoked, suspended or subjected to conditions, terms or limitations shall forthwith return the certificate of registration to the Registrar.

**19(9)** The decision of the Discipline Committee shall be recorded in writing and signed by the members of the Committee who conducted the hearing and it shall contain the findings and conclusions made on the hearing and the reasons for the decision.

**19(10)** Where the Discipline Committee finds that a member has committed an act of professional misconduct or is incompetent, a copy of the decision shall be served on the person complaining in respect of the conduct or action of the member.

**19(11)** Where the Discipline Committee suspends, revokes or restricts a registration or recognition of specialist status on the ground of incompetence or professional misconduct involving the sexual abuse of a client, the decision shall take effect immediately notwithstanding that an appeal has been taken from the decision.

**19(12)** Where the Discipline Committee suspends, revokes or restricts the registration or recognition of specialist status of a member on a ground other than for incompetence or professional misconduct involving the sexual abuse of a client, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

**19(13)** Subject to subsection (13.1), a member whose registration or recognition of specialist status is revoked or suspended by the Discipline Committee may request that it be re-instated before the expiry of the term of the penalty by filing a petition with the Discipline Committee.

**19(13.1)** Where the Discipline Committee has specified a period of time under paragraph (7)(a.1), a member whose registration has been revoked may not apply for reinstatement before the period of time has elapsed.

**19(14)** If the Discipline Committee is of the opinion that the petition ought to be granted, it shall make an appropriate recommendation to the Council which shall make the final decision.

**19(15)** Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall continue to be a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if the term of office had not expired or terminated.

**19(16)** The Discipline Committee shall submit a written report every six months to the Council containing a summary of the origin, nature and disposition of any charges by it considered during the preceding six months and the characteristics of the member or members involved by location, experience and areas of specialty, if appropriate.

1996, c.82, s.8.

**20(1)** In proceedings before the Discipline Committee, the Association and the member whose conduct is being complained of in the proceedings are parties to the proceedings.

**20(2)** A party to a hearing may be represented by counsel or an agent.

**20(3)** A member whose conduct is being investigated before the Discipline Committee shall be afforded an opportunity to examine, before the hearing, any written or documentary evidence that will be produced or any report, the contents of which will be given in evidence at the hearing.

**20(4)** The members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject matter of the hearing other than at a previous hearing of the Discipline Committee, and shall not communicate directly or indirectly in relation to the subject matter of the hearing with any person or with any party or representative except upon notice to and opportunity for all parties to participate.

**20(5)** The Discipline Committee may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

**20(6)** The oral evidence taken before the Discipline Committee at the hearing shall be taken under oath and recorded and, if so required, copies or a transcript thereof shall be furnished to the parties at their own cost.

**20(7)** Notice of the time and the place of a hearing before the Discipline Committee shall be served on the member whose conduct is being complained of in the proceedings not less than fourteen clear days before the date fixed for the hearing by the Discipline Committee.

**20(8)** A notice under subsection (7) may be served personally or by prepaid registered mail addressed to the member to whom notice is to be given at the member's last known address and where notice is served by registered mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that the member, acting in good faith, through accident, illness or other cause beyond the member's control, did not receive notice, or did not receive the notice until a later date.

**20(9)** The Discipline Committee shall conduct all hearings *in camera*, but if the member whose conduct is being investigated requests otherwise by a notice delivered to the Registrar before the day fixed for the hearing, the Discipline Committee shall conduct the hearing in public except where

(a) matters involving public security may be disclosed; or

(b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

**20(10)** No member of the Discipline Committee shall participate in a decision of the Committee pursuant to a hearing unless she was present throughout the hearing and heard the evidence and argument of the parties.



**20(11)** Documents and other things put in evidence at a hearing of the Discipline Committee shall, upon the request of the person who produced them, be released to the person by the Committee upon the conclusion of the time limited for appealing from the decision or order of the Committee without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

**20(12)** Any member of the Discipline Committee may administer oaths and affirmations for the purposes of any of its proceedings.

**20(13)** The Discipline Committee shall conduct its proceedings in accordance with its rules of procedure and may do all things necessary to provide for the investigation of any complaint and in no case is the Committee bound by technical rules of evidence or procedure applicable in judicial proceedings.

**20.1(1)** Notwithstanding subsection 20(9) but subject to subsection (2), a complainant shall be given notice of and may attend a hearing before the Discipline Committee in its entirety, with or without counsel, and may make a written or oral submission to the Discipline Committee before the calling of evidence and after the completion of evidence.

**20.1(2)** At the request of a witness whose testimony is in relation to allegations of a member's misconduct of a sexual nature involving the witness, the Discipline Committee may exclude a complainant from the portion of the hearing that receives the testimony of the witness.

**20.1(3)** In subsection (2), "allegations of a member's misconduct of a sexual nature" means allegations that the member sexually abused the witness when the witness was a client of the member.

**20.1(4)** Subsections 20(7) and (8) apply with the necessary modifications to a notice given under subsection (1).  
1996, c.82, s.8.

## **PART XII INQUIRIES**

**21(1)** In this section,

"board of inquiry" means a board of inquiry appointed by the Council under this section;

"incapacitated member" means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable for the protection of the public or of the member that this member no longer be permitted to practice occupational therapy or engage in professional activities or that the member's practice or professional activities be restricted.

**21(2)** Where the Registrar receives information leading to the belief that a member may be an incapacitated member, the Registrar shall make inquiry and report to the Council who may, upon notice to the member, appoint a board of inquiry composed of members of the Association who shall inquire into the matter.

**21(2.1)** Where the Complaints Committee refers a matter to the Council for the purposes of this section, the Council shall, upon notice to the member, appoint a board of inquiry composed of members of the Association who shall inquire into the matter.

**21(3)** The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to a mental or physical examination by qualified medical practitioner to determine if the member's condition is incompatible with practice as an occupational therapist or with the member's ability to properly and competently carry out occupational activities and if the member fails to submit to any such examination the board of inquiry may order that the registration be suspended until the member complies.

**21(4)** The board of inquiry shall report its findings to the Council and deliver a copy thereof together with a copy of any medical report obtained under subsection (3) to the member affected and if, in the opinion of the Council, the evidence so warrants, the Council shall refer the matter to the Discipline Committee to hold a hearing and may suspend the member's registration until the determination of the capacity of the member becomes final.

**21(5)** The Association, the member whose capacity is being investigated and any other person specified by the Discipline Committee are parties to a proceeding under this section.

**21(6)** A legally qualified medical practitioner is not compellable to produce at the hearing case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment and such report shall be signed by the medical practitioner and served upon other parties to the proceedings,

(a) where the evidence is required by the Association, at least five days before the hearing commences; and

(b) where the evidence is required by the member about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not submitting the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

**21(7)** The Discipline Committee shall, after the hearing,

(a) make a finding as to whether or not the member is an incapacitated member; and

(b) where the member is found to be an incapacitated member,

(i) revoke the registration of the member, or

(ii) attach such terms, conditions or limitations to the registration as the Committee considers necessary and appropriate, or

(iii) suspend the member's registration for such period as the Committee considers appropriate.

**21(8)** The provisions of section 20 respecting proceedings of the Discipline Committee on hearings in respect of discipline apply *mutatis mutandis* to proceedings of the Discipline Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

**21(9)** The Registrar may give notice of an order made under subsection (7) to such persons as considered appropriate for the protection of the public.

1996, c.82, s.8.

**21.1** Paragraphs 19(7)(i) and (i.1) apply with the necessary modifications to an order made by the Committee under paragraph 21(7)(b).

1996, c.82, s.8.

### **PART XIII**

#### **APPEALS**

**22(1)** The Appeals Committee shall consist of not less than three members who are occupational therapists who do not hold office on Council but who have previously served as Council members.

**22(2)** Any party to proceedings before the Discipline Committee or Registration Committee may by filing a written notice of appeal at the head office of the Association within thirty days of the date on which notice of said decision is mailed to the last known address of the party, appeal the decision to the Appeal Committee.

**22(3)** In any appeal under this Act the Registrar shall obtain a transcript or such other record as exists of the evidence presented to the decision-making body being appealed from and shall prepare and present to the Appeal Committee a record on

appeal consisting of the transcript or other such record as exists, all exhibits and the order or other document evidencing the decision being appealed.

**23** On appeal the Appeal Committee may upon granting special leave, and only where it is shown that such evidence was not previously available, receive further evidence in the same manner and subject to the same rules and procedures as apply to the Discipline and Complaints Committees.

**24** After hearing the evidence or argument presented, the Appeal Committee may

- (a) draw inferences of fact and make any finding, determination or order that in its opinion ought to have been made;
- (b) vary the decision appealed from;
- (c) refer the matter back to the Committee from whom the appeal is taken for further consideration and decision;
- (d) confirm any decision appealed from; or
- (e) make such order as it may deem appropriate.

**25(1)** Any party to a proceeding before the Appeal Committee may appeal from the findings of the Appeal Committee on any ground of appeal that involves a question of law alone to The Court of Queen's Bench of New Brunswick within thirty days of the date on which notice of the Appeal Committee's decision is mailed to the last known address of such party, or within such further time as may be allowed by the Court.

**25(2)** The notice of appeal shall set forth the grounds of appeal and the relief sought and shall be served upon the Registrar, the clerk of The Court of Queen's Bench of New Brunswick for the judicial district in which the deliberations of the Appeal Committee were held and upon any other party to the proceedings before the Appeal Committee.

**26** The record on appeal to The Court of Queen's Bench of New Brunswick shall be

- (a) the record on appeal presented to the Appeal Committee,
- (b) a transcript of any new testimony presented to the Appeal Committee,
- (c) any other new evidence or exhibits presented to the Appeal Committee, and
- (d) a copy of the decision of the Appeal Committee.

**27(1)** The Court of Queen's Bench of New Brunswick may make any order that the Appeal Committee may make under section 24 and may make such order as to costs as may be just.

**27(2)** Notwithstanding that an appeal to the Appeal Committee or to the Court may have been instituted in respect of a decision, that decision shall continue to be valid and binding and no stay of proceedings may be granted prior to the hearing of the appeal.

### **PART XIII.1**

1996, c.82, s.8.

### **INVESTIGATIONS**

1996, c.82, s.8.

**27.1** The Registrar may appoint one or more investigators to investigate whether a member has committed an act of professional misconduct or is incompetent or is an incapacitated member if

(a) the Complaints Committee has received a complaint about the member and has requested the Registrar to appoint an investigator, or

(b) the Registrar has reason to believe that the member has committed an act of professional misconduct or is incompetent or is an incapacitated member and the Council approves of the appointment.

1996, c.82, s.8.

**27.2(1)** An investigator appointed by the Registrar may at any reasonable time, and upon producing proof of his or her appointment, enter and inspect the business premises of a member and examine anything found there that the investigator has reason to believe will provide evidence in respect of the matter being investigated.

**27.2(2)** Subsection (1) applies notwithstanding any provision in any Act relating to the confidentiality of health records.

**27.2(3)** No person shall, without reasonable excuse, obstruct or cause to be obstructed an investigator while the investigator is performing his or her duties under this Act.

**27.2(4)** No person shall withhold, conceal or destroy, or cause to be withheld, concealed or destroyed, anything that is relevant to an investigation under this Act.

1996, c.82, s.8.

**27.3(1)** Upon the *ex parte* application of an investigator, a judge of The Court of Queen's Bench of New Brunswick who is satisfied on information by oath or solemn affirmation that the investigator has been properly appointed and that there are reasonable grounds for believing that

(a) the conduct or actions of the member constitutes professional misconduct or incompetence or that the member is an incapacitated member, and

(b) there is in a building, receptacle or place anything that will provide evidence in respect of the matter being investigated,

may issue a warrant authorizing the investigator to enter the building, receptacle or place and search for and examine or remove anything described in the warrant.

**27.3(2)** An investigator entering and searching a place under the authority of a warrant issued under subsection (1) may be assisted by other persons and may enter a place by force.

**27.3(3)** An investigator entering and searching a place under the authority of a warrant issued under subsection (1) shall produce his or her identification and a copy of the warrant, upon request, to any person at that place.

**27.3(4)** A person conducting an entry or search under the authority of a warrant issued under subsection (1) who finds anything not described in the warrant that the person believes on reasonable grounds will provide evidence in respect of the matter being investigated may seize and remove that thing.

1996, c.82, s.8.

**27.4(1)** An investigator may copy, at the expense of the Association, a document that the investigator may examine under subsection 27.2(1) or under the authority of a warrant issued under subsection 27.3(1).

**27.4(2)** An investigator may remove a document referred to in subsection (1) if it is not practicable to copy it in the place where it is examined or a copy is not sufficient for the purposes of the investigation and may remove any object that is relevant to the investigation and shall provide the person in whose possession it was with a receipt for the document or object.

**27.4(3)** An investigator, where a copy can be made, shall return a document removed under subsection (2) as soon as possible after the copy has been made.

**27.4(4)** A copy of a document certified by an investigator to be a true copy shall be received in evidence in any proceeding to the same extent and shall have the same evidentiary value as the document itself.

**27.4(5)** In this section, "document" means a record of information in any form and includes any part of it.  
1996, c.82, s.8.

**27.5(1)** An investigator shall report the results of an investigation to the Registrar in writing.

**27.5(2)** The Registrar shall report the results of the investigation to

(a) the Complaints Committee if the investigator was appointed under paragraph 27.1(a), or

(b) the Council if the investigator was appointed under paragraph 27.1(b).

1996, c.82, s.8.

#### **PART XIV**

#### **GENERAL**

**28** Every person employed in the administration of this Act, including any person making an inquiry under section 21 and any member of the Council or a Committee, shall be personally bound to secrecy with respect to all matters that come to knowledge in the course of duties or employment, except where disclosure of such matters is required by this Act or any other Act, or is consented to by the person to whom the information relates, or is required for the purposes of instructing counsel.

**29** Words importing the masculine gender shall include the feminine gender and vice-versa wherever the context of this Act so requires.

**29.1** The Registrar shall give public notice of the suspension or revocation of a member's registration as a result of proceedings before the Discipline Committee.

1996, c.82, s.8.

**29.2(1)** The Registrar shall forthwith enter into the records of the Association

(a) the result of every proceeding before the Discipline Committee that

(i) resulted in the suspension or revocation of a registration, or

(ii) resulted in a direction under paragraph 19(7)(i.1) or section 21.1, and

(b) where the findings or decision of the Discipline Committee that resulted in the suspension or revocation of a registration or the direction are appealed, a notation that they are under appeal.

**29.2(2)** Where an appeal of the findings or decision of the Discipline Committee is finally disposed of, the notation referred to in paragraph (1)(b) shall be removed and the records adjusted accordingly.

**29.2(3)** For the purpose of paragraph (1)(a), "result", when used in reference to a proceeding before the Discipline Committee means the committee's findings and the penalty imposed and in the case of a finding of professional misconduct, a brief description of the nature of the misconduct.

**29.2(4)** The Registrar shall provide, either verbally or by permitting access to the records, the information contained in the records referred to in subsection (1) to any person who inquires about a member or former member

(a) for an indefinite period if the member or former member was found to have sexually abused a client, and

(b) for a period of five years following the conclusion of the proceedings referred to in subsection (1) in all other cases.

**29.2(5)** The Registrar, upon payment of a reasonable fee, shall provide a copy of the information contained in the records referred to in subsection (1) that pertains to a member or former member to a person who requests a copy.

**29.2(6)** Notwithstanding subsection (5), the Registrar may provide, at the Association's expense, a written statement of the information contained in the records in place of a copy.

1996, c.82, s.8.

**29.3(1)** The Association shall undertake measures for prevention of the sexual abuse of clients by its members.

**29.3(2)** Such measures referred to in subsection (1) shall include

- (a) education of members about sexual abuse,
- (b) guidelines for the conduct of members with clients,
- (c) providing information to the public respecting such guidelines, and
- (d) informing the public as to the complaint procedures under this Act.

**29.3(3)** Measures referred to in subsection (2) may, where appropriate, be taken jointly with other organizations or associations of health professionals.

1996, c.82, s.8.

**29.4(1)** The Association shall report to the Minister of Health and Community Services within two years after the commencement of this section, and within thirty days at any time thereafter on the request of the Minister, respecting the measures the Association is taking and has taken to prevent and deal with the sexual abuse of clients by its members.

**29.4(2)** The Association shall report annually to the Minister of Health and Community Services respecting any complaints received during the calendar year respecting sexual abuse of clients by members or former members of the Association.

**29.4(3)** A report under subsection (2) shall be made within two months after the end of each calendar year and shall contain the following information:

- (a) the number of complaints received during the calendar year for which the report is made and the date each complaint was received;
- (b) with respect to each complaint received during the calendar year for which the report is made
  - (i) a description of the complaint in general non-identifying terms,
  - (ii) the decision of the Complaints Committee with respect to the complaint and the date of the decision,
  - (iii) if allegations are referred to the Discipline Committee, the decision of the committee and the penalty imposed, if any, and the date of the decision, and
  - (iv) whether an appeal was made from the decision of the Discipline Committee or the Appeal Committee and the date and outcome of the appeal; and
- (c) with respect to each complaint reported in a previous calendar year, a report on the status of the complaint in accordance with paragraph (b) if the proceedings initiated as a result of the complaint were not finally determined in the calendar year in which the complaint was first received.

1996, c.82, s.8.

**29.5(1)** Sexual abuse of a client by a member means

- (a) sexual intercourse or other forms of physical sexual relations between the member and the client,
- (b) touching, of a sexual nature, of the client by the member, or
- (c) behaviour or remarks of a sexual nature by the member towards the client.

**29.5(2)** For the purposes of subsection (1), "sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

1996, c.82, s.8.

**29.6(1)** A member who, in the course of practising the profession, has reasonable grounds to believe that another health professional has sexually abused a patient or client and who fails to file a report in writing in accordance with subsection (4) with the governing body of the health professional within twenty-one days after the circumstances occur that give rise to the reasonable grounds for the belief commits an act of professional misconduct.

**29.6(2)** A member is not required to file a report pursuant to subsection (1) if the member does not know the name of the health professional who would be the subject of the report.

**29.6(3)** If the reasonable grounds for filing a report pursuant to subsection (1) have been obtained from one of the member's clients, the member shall use his or her best efforts to advise the client that the member is filing the report before doing so.

**29.6(4)** A report filed pursuant to subsection (1) shall contain the following information:

- (a) the name of the member filing the report;
- (b) the name of the health professional who is the subject of the report;
- (c) the information the member has of the alleged sexual abuse; and
- (d) subject to subsection (5), if the grounds of the member filing the report are related to a particular patient or client of the health professional who is the subject of the report, the name of the patient or client.

**29.6(5)** The name of a patient or client who may have been sexually abused shall not be included in a report unless the patient or client or, if the patient or client is incapable, the patient's or client's representative, consents in writing to the inclusion of the patient's or client's name.

**29.6(6)** Section 29.5 applies with the necessary modifications to sexual abuse of a patient or client by another health professional.

**29.6(7)** No action or other proceeding shall be instituted against a member for filing a report in good faith pursuant to subsection (1).

1996, c.82, s.8.

## **PART XV ENFORCEMENT**

**30** No action shall be brought against a member or former member for negligence or breach of contract or otherwise by reason of services requested, given or rendered, except within

- (a) two years from the day when, in the matter complained of, such services terminated;
- (b) two years after the person commencing the action knew or ought to have known the facts upon which he alleges negligence or breach of contract; or

(c) where the person entitled to bring an action is, at the time the cause of action arises, an infant, a mental incompetent, or a person of unsound mind, one year from the date when such person becomes of full age, or of sound mind, or as the case may be,

whichever is longer.

**31(1)** Where a former member, a member or an applicant for registration does or attempts to do anything contrary to the provisions of this Act or any by-law or regulation made under the authority of this Act, the doing of such thing may be restrained by an injunction of The Court of Queen's Bench of New Brunswick at the instance of the Council in the name of the Association.

**31(2)** Where any person does or attempts to do anything contrary to the provisions of this Act, the doing of such thing may be restrained by an injunction of The Court of Queen's Bench of New Brunswick at the instance of the Council in the name of the Association.

**31(3)** Any person authorized to practice occupational therapy or holds oneself out as an occupational therapist pursuant to the provisions of this Act, who practises occupational therapy in violation of any term, condition or limitation imposed upon the registration of such person or who fails to inform the employer of any such term, condition or limitation commits an offence.

**32** Except as provided in this Act, the by-laws or the regulations, no person other than a person whose name is entered in the register or corporations register shall

(a) publically or privately, whether or not for hire, gain or hope of reward, practise or offer to practise occupational therapy;

(b) hold oneself out in any way as being entitled to practise occupational therapy; or

(c) assume any title or description, including those referred to in this Act that does or could mislead the public to believe that the person is entitled to practise occupational therapy.

**33** A person who violates any provision of this Act commits an offence and is liable on summary conviction to a fine not less than two thousand dollars for a first offence; to a fine not less than five thousand dollars for a second offence; and to a fine not less than ten thousand dollars for a third offence or subsequent offence.

#### **PART XVI**

#### **REPEAL**

**34** *The Occupational Therapy Act, chapter 58 of the 1977 Acts of New Brunswick, is repealed.*

#### **PART XVII**

#### **PROCLAMATION**

**35** *This Act comes into force on February 1, 1989.*

**N.B.** This Act is consolidated to December 19, 2000.