

**CHARTERED PROFESSIONAL
ACCOUNTANTS OF ONTARIO**

REGULATION 16-1

CAPACITY

Adopted by the Council under the *Chartered Professional Accountants of Ontario Act, 2017* and the By-law on September 21, 2018, effective as of November 19, 2018 and as amended to March 6, 2020.

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**REGULATION 16-1
CAPACITY**

Application

This Regulation governs the process by which the Capacity Committee determines that a Member is Incapacitated, and the steps to be taken when the Capacity Committee determines that a Member is Incapacitated. This Regulation applies to Members and Firms.

Definitions

1. In this Regulation, words have the same meaning as they do in the Act and the By-law, and for the purposes of this Regulation:
 - 1.1 “Panel” means a panel of the Capacity Committee constituted under section 18;
 - 1.2 “Potential Capacity Application” means a matter where there are reasonable grounds to believe a Member may be Incapacitated; and
 - 1.3 “Professional Conduct Committee” includes the Vice President, Standards Enforcement exercising the powers delegated to the Vice President, Standards Enforcement in the By-law and Regulation 15-1.

Registrar

2. The Registrar shall investigate any matter referred by the Professional Conduct Committee, the Discipline Committee, the Admission and Registration Committee, the Practice Inspection Committee, or the Appeal Committee as a Potential Capacity Application.
3. The Registrar shall refer any application made by a Member under section 7.9.2 of the By-law to the Capacity Committee and may, before the referral, investigate the matter.
4. The Registrar may take notice of any information, whether published or not, that comes to the Registrar’s attention and may consider the information as a Potential Capacity Application to be investigated.

Referrals to the Registrar

5. All referrals under section 2, shall be in writing and shall include:
 - 5.1 a description of why the matter was referred to the Registrar as a Potential Capacity Application; and

- 5.2 all information, documents, and materials in the possession of the referring Committee that the referring Committee considers relevant to the Potential Capacity Application.
6. In the case of a referral under section 2, the Registrar may request any additional information and documents that the Registrar believes is relevant to the Potential Capacity Application from the referring Committee.

Investigation

7. The Registrar may appoint an Investigator to investigate a Potential Capacity Application.
8. An Investigator:
- 8.1 need not be a Member;
 - 8.2 shall be provided with, and produce on request, written confirmation of the appointment;
 - 8.3 shall have all the powers of an investigator under the Act;
 - 8.4 shall have the authority to investigate all matters relevant to the Potential Capacity Application;
 - 8.5 shall have the authority to require any person subject to the authority of CPA Ontario to provide information in writing, produce documents and materials, and, upon reasonable notice, meet in person with the Investigator to answer questions and produce documents and materials at a location and upon such terms, including that any interview may be recorded, as determined by the Investigator; and
 - 8.6 shall report as instructed by the Registrar at the conclusion of the investigation, and on an interim basis, the results, findings and factual determinations in support of the investigation.
9. The Member being investigated shall be notified in writing of the investigation at the commencement of the investigation. The notice shall include:
- 9.1 a description of the matter being investigated;
 - 9.2 the identity of the Investigator;
 - 9.3 a reminder of the Member's professional responsibility to cooperate in the investigation; and
 - 9.4 a reminder of the possibility that some client documents in the Member's possession may be subject to legal privilege.

10. If the Registrar considers it to be necessary to protect the public interest, the Registrar may provide the Member's Firm, if the Member is associated with a Firm, with the notice referred to in section 9.

Determination

11. Subject to section 3, the Registrar shall consider any report made by the investigator under section 8.6, and all relevant information and documents that have been provided to the Registrar, and may, if satisfied the investigation is complete:
 - 11.1 take no further action;
 - 11.2 deal with the matter as a matter within the Registrar's jurisdiction;
 - 11.3 refer the matter elsewhere in CPA Ontario as a matter within its jurisdiction; or
 - 11.4 apply to the Capacity Committee to determine if the Member is Incapacitated.
12. The Registrar shall provide a written explanation of any determination made under section 11.1, 11.2, 11.3, or section 23, within ten Days of the determination being made:
 - 12.1 to the Member,
 - 12.2 if the Member's Firm was provided with notice under section 10, to the Member's Firm; and
 - 12.3 if the matter was referred to the Registrar under section 2, and if the referring Committee requested notification at the time the referral was made, to the referring Committee.

The Capacity Committee

Jurisdiction

13. The Capacity Committee is established under the Act and the By-law and has the powers of a statutory tribunal under the *Statutory Powers Procedure Act*.
14. The Capacity Committee shall:
 - 14.1 hear every application brought before it by the Registrar under this Regulation and every application brought by a Member under section 7.9.2 of the By-law; and
 - 14.2 regulate the processes and procedures for the hearings before the Capacity Committee.

Composition

15. The Capacity Committee shall usually consist of 10 to 15 members, including a Chair and a Deputy Chair, and public representatives. The Capacity Committee members shall generally be representative of CPA Ontario's membership by occupation and geographic location, and should include persons with expertise in the area of mental or physical health or addiction. The Head, Adjudicative Tribunals is an *ex officio* member of the Capacity Committee, and is exempt from the provisions of section 16.
16. The Capacity Committee members shall be appointed for an initial one-year term, and shall be eligible for reappointment for a maximum of three additional three-year terms. The Council may extend the maximum term of a Committee member in extraordinary circumstances.
17. The Chair and Deputy Chair of the Capacity Committee shall be appointed from among the Capacity Committee members for a two-year term, and shall be eligible for reappointment for a maximum of three additional two-year terms. The Council may extend the maximum term of the Chair or a Deputy Chair in extraordinary circumstances.

Panels and Quorum

18. All hearings before the Capacity Committee shall be heard by a Panel constituted as follows:
 - 18.1 each Panel shall include at least three Capacity Committee members and should include a public representative;
 - 18.2 each Panel shall usually be chaired by the Capacity Committee Chair or a Deputy Chair, but may be chaired by another Capacity Committee member in exceptional circumstances, at the discretion and direction of the Capacity Committee Chair; and
 - 18.3 the Head, Adjudicative Tribunals shall not sit on a Panel considering the merits of a hearing.
19. The Chair and Deputy Chair of the Capacity Committee and the Head, Adjudicative Tribunals are empowered to decide all matters referred to in section 14.2, including the adoption of Rules.

Hearings

20. All hearings before the Capacity Committee shall be conducted in accordance with the Rules.
21. The hearings before the Capacity Committee shall not be open to the public.
22. The parties to hearings before the Capacity Committee shall be the Registrar and the Member who is the subject of the capacity application.

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23. The Registrar may, at any time before the Capacity Committee makes a finding, on receiving credible information indicating the Member is not Incapacitated, withdraw an application brought by the Registrar from consideration by the Panel, and afterwards shall only withdraw the matter with the consent of all parties and with leave of the Panel hearing the application.
24. The Panel may order the Member to undergo a medical or psychological examination if it determines it is necessary to obtain the opinion of a physician or psychologist to assist in deciding whether the Member is Incapacitated.
25. The Panel may suspend a Member who fails to comply with an order made under section 24, until such time as the Member complies.
26. The report of a physician or psychologist, or their testimony, made under an order under section 24 is admissible in evidence in a proceeding to determine capacity, including any appeals, but not for any other purpose, and shall be sealed by the Panel.
27. A Panel may, at any time, seek the advice of independent counsel. The Head, Adjudicative Tribunals may act as independent counsel. Any advice from independent counsel on an issue before the Panel during the course of a hearing shall be given on the record. All parties shall have the opportunity to make submissions on that advice. The Panel is not bound by the advice.
28. A Panel shall consider the evidence and determine if, on the evidence, the Member is Incapacitated. On applications:
 - 28.1 arising under section 2 or section 4, the Registrar bears the onus of establishing that the Member is Incapacitated; and
 - 28.2 arising under section 3, the Member referring the application bears the onus of establishing that the Member is not Incapacitated,on a balance of probabilities.
29. Only Panel members hearing an application shall participate in deliberations and make any decision and order on the matter.

Reconsiderations

30. The Capacity Committee may reconsider a decision or order made by a Panel of the Capacity Committee:
 - 30.1 at any time after the fifth anniversary of the decision or order becoming final, if:
 - 30.1.1 there has been a material change in circumstances that makes the decision or order, or a part of the decision or order, unnecessary;

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- 30.1.2 there has been a material change in circumstances that obstructs or impedes the purpose and intent of the decision or order, or a part of the decision or order;
 - 30.1.3 there has been a material change in circumstances that makes the decision or order, or a part of the decision or order, incapable of being reasonably complied with or fulfilled; or
 - 30.1.4 the decision or order, or a part of the decision or order, is no longer legally valid or enforceable; and
- 30.2 at any time, if:
- 30.2.1 one or more of the conditions set out in sections 30.1.2, 30.1.3, or 30.1.4 exist; and
 - 30.2.2 the decision or order, or a part of the decision or order, will result in a miscarriage of justice that may be prevented by the reconsideration.
31. The Panel hearing a motion for reconsideration may include Panel members who did not participate in the decision or order being reconsidered.
32. The responding party to a motion under section 30 shall be the Registrar.
33. The party bringing the motion under section 30 bears the onus of establishing, on a balance of probabilities, that the reconsideration should be granted.
34. After hearing the motion for reconsideration, the Panel may:
- 34.1 confirm the decision or order in whole or in part;
 - 34.2 strike the decision or order in whole or in part; or
 - 34.3 vary the decision or order in whole or in part, on terms and conditions and with such restrictions as the Panel considers appropriate.
35. A party may appeal the Panel's decision under section 34 to the Appeal Committee.

Orders

36. If the Panel finds the Member is Incapacitated, the Panel may make one or more of the following orders:
- 36.1 an order suspending the Member:
 - 36.1.1 for a definite period,
 - 36.1.2 until terms, conditions, and/or restrictions specified by the Panel are met to the satisfaction of the Registrar, or

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- 36.1.3 for a definite period and, after that, until terms, conditions, and/or restrictions specified by the Panel are met to the satisfaction of the Registrar;
 - 36.2 an order that the Member obtain or continue treatment or counselling, including testing and treatment for addiction to or excessive use of alcohol or drugs, or participate in other programs to improve the Member's health;
 - 36.3 an order restricting the areas in which the Member may practise or in which the Member may provide services;
 - 36.4 an order restricting the services the Member may provide;
 - 36.5 an order that the Member only practise or provide services:
 - 36.5.1 as an employee of a person approved by the Registrar;
 - 36.5.2 as an employee or partner, and under the supervision, of a Member approved by the Registrar; or
 - 36.5.3 under the supervision of a Member approved by the Registrar;
 - 36.6 an order that the Member report to the Registrar on the Member's compliance with any order made under this section, and that others involved with the Member's treatment or supervision be authorized to report to the Registrar on them;
 - 36.7 an order establishing or varying the notice requirements set out in sections 43 and 45; and
 - 36.8 any other order, other than revoking the Member's membership, the Panel considers necessary to protect the public interest.
37. The order may provide for suspension of the Member for non-compliance with the terms, conditions, and/or restrictions of the order.
38. Despite section 36, the Panel may decline to find a Member is Incapacitated if the Panel concludes that, through demonstrated compliance with a continuing course of treatment or the continuing use of an assistive device, the Member is capable of meeting the Member's obligations under the Act. If the Panel declines to find a Member is Incapacitated under this section, it shall note in its order and reasons:
- 38.1 that the Panel's findings are based on and dependent on the Member's compliance with the continuing course of treatment or continuing use of an assistive device;
 - 38.2 if the Registrar becomes aware of a failure by the Member to abide by the treatment or device use, the Registrar shall investigate the matter under

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section 4 and may suspend the Member for failure to adhere to the terms of the Capacity Committee's order; and

38.3 if the Registrar suspends the Member under section 38.2, the Registrar shall refer the matter to the Capacity Committee under section 11.4, and the Members' suspension shall remain in effect until the matter is considered by the Capacity Committee.

39. The Panel shall provide its order and reasons, in writing to:

39.1 the parties,

39.2 if the Member's Firm was provided with notice under section 12, the Member's Firm; and

39.3 if the matter was referred to the Registrar under section 2, and if the referring Committee requested notification at the time the referral was made, to the referring Committee,

along with notice of the right of the parties to appeal that order.

Appeals

40. A party may appeal a decision or order, including a refusal to make an order under section 36, made by the Capacity Committee to the Appeal Committee.

41. The parties to the appeal shall be the Registrar and the subject of the capacity application.

Notice

42. Notice of the time, date, and place of all capacity applications and appeals shall be posted on CPA Ontario's website, along with a notice that capacity applications are not open to the public.

43. The decision, order, and written reasons of the Capacity Committee on any finding a Member is Incapacitated or decision made under section 38, with the name and other identifying information of the Member removed, shall be posted on a publicly accessible area of CPA Ontario's website, and shall be given to all Members, and any other person on request.

44. Despite section 43, the Panel may order that the full decision, order, and reasons of the Capacity Committee be posted if it considers it to be in the public interest.

45. If a finding a Member is Incapacitated for which notice has been given under section 43 or section 44 is reversed on appeal, CPA Ontario shall give notice of the reversal in the same manner referred to in section 43 or section 44, as the case may be.

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46. If the Panel considers it necessary to protect the public interest, the Panel may order that notice of its order, or portions thereof, including the name of the Member, shall be given in a newspaper or newspapers distributed in the geographic area where the Member practised, if applicable, and in any other area ordered by the Panel, or in any form or media it considers appropriate, and CPA Ontario shall pay for the cost of publication.
47. If the finding a Member is Incapacitated for which notice has been given under section 40 is reversed on appeal, CPA Ontario shall give notice of the reversal in the same manner referred to in section 40.