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## C.C.S.M. c. O5

# The Occupational Therapists Act

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Regulations

(Assented to July 25, 2002)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

## PART 1

### DEFINITIONS

#### Definitions

1 In this Act,

"**by-laws**" means the by-laws of the college made under section 51; (« règlements administratifs »)

"**college**" means the College of Occupational Therapists of Manitoba; (« Ordre »)

"**council**" means the council of the college; (« Conseil »)

"**court**" means the Court of Queen's Bench; (« tribunal »)

"**member**" means a person whose name is entered in a register; (« membre »)

"**minister**" means the minister appointed by the Lieutenant Governor in Council to administer this Act; (« ministre »)

"**occupational performance**" means the ability of a person to safely and effectively perform the everyday activities necessary for self-care, productivity and leisure; (« rendement professionnel »)

"**occupational therapist**" means a person who is registered as an occupational therapist under this Act; (« ergothérapeute »)

"**public representative**" means a person named in the roster established under subsection 6(4) who is appointed as a public representative under this Act; (« représentant du public »)

"**register**" means a register established under this Act; (« registre »)

"**registrar**" means the registrar of the college appointed under subsection 6(7); (« registraire »)

"**regulations**" means the regulations made under section 50. (« règlements »)

## PART 2

### PRACTICE OF OCCUPATIONAL THERAPY

#### Practice of occupational therapy

2 The practice of occupational therapy is the application of occupational therapy knowledge, skills and judgment in the

- (a) promotion of health and optimal occupational performance;
- (b) prevention of disability; and
- (c) assessment and resolution of occupational performance issues.

#### Representation as an occupational therapist

3(1) No person except an occupational therapist shall

- (a) represent or hold out, expressly or by implication, that he or she is an occupational therapist or is entitled to engage in the practice of occupational therapy as an occupational therapist; or
- (b) use any sign, display, title or advertisement implying that he or she is an occupational therapist.

**Use of titles**

3(2) No person except an occupational therapist shall use the title "occupational therapist", a variation or abbreviation of that title, or an equivalent in another language.

**PART 3****COLLEGE OF OCCUPATIONAL****THERAPISTS OF MANITOBA****College established**

4(1) The Association of Occupational Therapists of Manitoba is continued as a body corporate under the name College of Occupational Therapists of Manitoba.

**Duty to serve the public interest**

4(2) The college must carry out its activities and govern its members in a manner that serves and protects the public interest.

**Powers**

4(3) The college has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

**Membership**

4(4) The membership of the college consists of the persons whose names are on a register and who have paid the fees provided for in the by-laws.

**Meetings**

4(5) A general meeting of the college must be held at least once a year and special general meetings of the college must be held when the council considers it advisable. On receiving a written request signed by at least 5% of the members of the college entitled to vote, the council shall convene a special general meeting for the purpose specified in the request.

**Notice of meetings**

4(6) Notice of the time and place of each meeting referred to in subsection (5) must be given to the members in accordance with the by-laws.

**Public meetings**

- 4(7) The college shall
- (a) permit members of the public to attend meetings of the college and the council, except where it considers that a private meeting is necessary in order to consider matters of a confidential nature or of a personal nature concerning an individual;
  - (b) make its by-laws available to the public; and
  - (c) hold public meetings, at the discretion of the council, to explain the role of the college and to invite public comment.

**Council**

5(1) There is hereby established a governing body of the college called the council.

**Council to manage affairs**

- 5(2) The council shall
- (a) manage and conduct the business and affairs of the college; and
  - (b) exercise the rights, powers and privileges of the college in the name and on behalf of the college.

**Composition of council**

6(1) The council is to consist of at least 12 persons who are either members of the college or public representatives.

#### **Public representatives**

6(2) At least 1/3 of the members of the council must be public representatives.

#### **By-laws for election and appointment of members**

6(3) Members of the council are to be appointed or elected in accordance with the by-laws.

#### **Roster of public representatives**

6(4) The minister shall appoint a roster of persons who are not registered under this Act, and who are not and have never been occupational therapists, who may be appointed as public representatives of the council, the investigation committee under section 17 and the inquiry committee under section 31.

#### **Officers**

6(5) The members of the council shall elect from among themselves the officers of the college specified in the by-laws, in the manner and for the terms specified in the by-laws.

#### **Remuneration**

6(6) The members of the council and officers of the college are to be paid such remuneration and expenses as the council may determine by by-law.

#### **Registrar and staff**

6(7) The council shall appoint a registrar from among the members of the college and may appoint any other officers, practice auditors, investigators or staff that it considers necessary to perform the work of the college.

#### **Committees**

6(8) The council shall establish any committee that the council considers necessary.

## **PART 4**

### **REGISTRATION**

#### **REGISTERS**

#### **Registers**

7(1) Subject to the direction of the council, the registrar shall maintain the following registers:

- (a) a register of occupational therapists;
- (b) any other registers that are provided for in the regulations.

#### **Register of occupational therapists**

7(2) The register of occupational therapists must contain

- (a) every occupational therapist's name, business address and business telephone number;
- (b) the conditions imposed on every certificate of registration;
- (c) a notation of every cancellation and suspension of a certificate of registration;
- (d) the result of every disciplinary proceeding in which a panel has made a finding under section 41; and
- (e) information that the regulations specify as information to be kept in the register.

#### **Access to information**

7(3) During normal business hours, a person may obtain the following information contained in the register of occupational therapists:

- (a) the information described in clauses (2)(a) and (b);
- (b) the information described in clause (2)(c) relating to a suspension that is in effect;
- (c) the results of every disciplinary proceeding completed within six years before the register was prepared or last updated

- (i) in which an occupational therapist's certificate of registration was cancelled or suspended or had conditions imposed on it, or
  - (ii) in which an occupational therapist was required to pay a fine or attend to be censured;
- (d) information designated as public in the regulations.

## APPLICATIONS FOR REGISTRATION

### Board of assessors

**8** In accordance with the by-laws, the council shall appoint a board of assessors to consider and decide on applications for registration under section 9.

### Registration of occupational therapists

**9(1)** The board of assessors shall approve an application for registration as an occupational therapist if the applicant

- (a) is a graduate of an occupational therapy education program approved by the council or meets the competency requirements approved by council;
- (b) has passed any examination that the council may require;
- (c) establishes that his or her name has not been removed for cause from the register of persons authorized to engage in the practice of occupational therapy in Canada or elsewhere;
- (d) establishes that he or she has not been suspended as a result of professional misconduct by a regulatory authority governing the practice of occupational therapy in Canada or elsewhere;
- (e) pays the fees provided for in the by-laws; and
- (f) meets any other requirements set out in the regulations.

### Conditions

**9(2)** An approval may be made subject to any conditions that the board of assessors considers advisable and a member whose registration is subject to conditions shall practise only in accordance with those conditions.

### Entry in the register

**9(3)** The registrar shall enter in the register of occupational therapists the name of a person whose application for registration is approved by the board of assessors.

### Certificate of registration

**9(4)** On entering the name of a person in the register of occupational therapists, the registrar shall issue a certificate of registration to the person.

### Registration if emergency

**9.1(1)** Despite anything in this Act or the regulations, the council may waive any requirements for registration under this Act and the regulations to allow a person who is authorized to practise occupational therapy in another jurisdiction in Canada or the United States to practise occupational therapy in the province during an emergency, if the minister gives the council written notice that

- (a) a public health emergency exists in all or part of the province; and
- (b) he or she has determined, after consulting with public health officials and any other persons that the minister considers advisable, that the services of an occupational therapist from outside the province are required to assist in dealing with the emergency.

### Emergency need not be declared

**9.1(2)** The council may exercise its authority under subsection (1) even if no emergency has been declared under an enactment of Manitoba or Canada.

### Certificate of registration

**9.1(3)** If necessary to carry out the intent of this section, the council may authorize the registrar to issue a certificate of registration to a person allowed to practise under subsection (1), on such terms and conditions as the council may determine.

S.M. 2005, c. 39, s. 37.

### Application for registration not approved

10 If the board of assessors does not approve an application for registration or approves an application subject to conditions, it shall give notice to the applicant in writing, with reasons for its decision, and shall advise the applicant of the right to appeal its decision to the council.

## APPEAL

### Appeal to council

11(1) A person whose application for registration as an occupational therapist is not approved by the board of assessors or whose application is approved subject to conditions may appeal the board's decision to the council.

### Notice

11(2) An appeal is to be made by filing a written notice of appeal with the council within 30 days after the person receives notice of the board's decision under section 10. The notice must specify the reasons for the appeal.

### Hearing

11(3) On receiving a notice of appeal, the council shall schedule an appeal hearing, which must be held within 90 days after it receives the notice. The council shall give the applicant a written notice of the date, time and place of the hearing.

### Right to appear

11(4) An applicant who appeals a decision of the board of assessors is entitled to appear with counsel and make representations to the council at the hearing.

### Participation by member of board of assessors

11(5) A member of the board of assessors who is also a member of the council may participate in the hearing but shall not vote on a decision under this section.

### Documentation

11(6) The board of assessors shall provide the council with a copy of the notice sent to the applicant under section 10 and with copies of the documents that the board considered in reaching the decision being appealed.

### Counsel to the council

11(7) The council may retain legal counsel to assist it.

### Decision by council

11(8) The council shall decide the appeal within 90 days after the hearing and may make any decision the board of assessors could have made.

### Notice of decision of appeal

11(9) Within 30 days after deciding the appeal, the council shall give the applicant written notice of its decision.

### Appeal to court

12(1) A person whose application for registration as an occupational therapist is refused by the council, or whose application is approved subject to conditions, may appeal the decision to the court by filing a notice of appeal within 30 days after receiving notice of the council's decision under subsection 11(9).

### Appeal on record

12(2) An appeal shall be founded on the record of the proceedings before the council.

### Copy of documentation

12(3) At the request of the person appealing the council's decision, the registrar shall give the person, at the person's expense, a certified copy of the record of proceedings and any documents that the council considered in making its decision.

### Powers of court on appeal

12(4) On hearing an appeal, the court may

- (a) make any decision that in its opinion should have been made; or

(b) refer the matter back to the council for further consideration in accordance with any direction of the court.

## ANNUAL CERTIFICATE OF REGISTRATION

### Certificate of registration

**13** Each year, the council shall issue a certificate of registration to every person whose name is included in a register and who has paid the fees provided for in the by-laws. The certificate must state the type of registration and the date on which it expires, and must refer to any conditions or limitations imposed.

## CANCELLATION OF REGISTRATION

### Registration may be cancelled if fraud

**14(1)** If the registrar is satisfied on reasonable grounds that a person's registration has been obtained by means of a false or fraudulent representation or declaration, the registrar shall report the matter to the council, and the council may direct the registrar to cancel the person's certificate of registration. The registrar shall then cancel the certificate of registration and give the person and his or her employer, if any, written notice of that fact.

### Registration may be cancelled if conviction

**14(2)** The council may direct the registrar to cancel the certificate of registration of a member who has been convicted of an offence that is relevant to his or her suitability to practise, but it must first notify the member that it intends to do so and give the member an opportunity to make representations. The registrar shall give the member and his or her employer, if any, written notice of any cancellation.

### Appeal

**14(3)** A member whose certificate of registration is cancelled under this section may appeal the cancellation to the court, in which case section 12 applies, with the necessary changes.

## PART 5

### CONTINUING COMPETENCE

#### Continuing competence program

**15** The council shall establish a continuing competence program, in accordance with the regulations, which shall provide for supervision of the practice of occupational therapy by members. The program may provide for, but is not limited to,

- (a) reviewing the professional competence of members;
- (b) conducting practice audits in accordance with this Act; and
- (c) requiring members to participate in programs for ensuring competence.

## PART 6

### COMPLAINTS

#### Definitions

**16** In this Part,

"conduct" includes an act or omission; (« conduite »)

"investigated member" means a member or a former member who is the subject of an investigation or whose conduct is the subject of a hearing under this Part. (« membre faisant l'objet de l'investigation »)

### INVESTIGATION COMMITTEE

#### Investigation committee

**17(1)** The council shall appoint an investigation committee consisting of

- (a) an occupational therapist who is a member of the college, who is to be the chair;

- (b) one or more other members of the college; and
- (c) one or more persons from the roster established under subsection 6(4) who are appointed by the council as public representatives of the committee.

**Public representatives**

17(2) At least 1/3 of the persons appointed to the investigation committee must be public representatives.

**Complaints against members**

18(1) Any person may make a complaint in writing to the registrar about the conduct of a member, and the complaint shall be dealt with in accordance with this Part.

**Complaints against former members**

- 18(2) If, after a member's registration is cancelled, suspended or not renewed under this Act,
- (a) a complaint, or a referral under clause 19(b) is made about the former member; and
  - (b) the complaint or referral relates to conduct occurring before the cancellation, suspension or non-renewal;

the complaint or referral may, notwithstanding the cancellation, suspension or non-renewal, be dealt with within five years after the date of the cancellation, suspension or non-renewal as if the former member's registration were still in effect.

**Referral to investigation committee**

- 19 The registrar shall refer to the investigation committee
- (a) a complaint made under section 18; and
  - (b) any other matter that the registrar considers appropriate.

**Informal resolution**

20(1) On referral of a complaint or other matter to the investigation committee, the investigation committee may attempt to resolve it informally if the committee considers informal resolution to be appropriate.

**Investigation**

20(2) If informal resolution of a complaint has been attempted and the complaint is not resolved to the complainant's satisfaction, the investigation committee shall direct that an investigation into the conduct of the member be held and shall appoint an investigator to conduct the investigation. The committee may also direct an investigation and appoint an investigator in respect of any complaint or other matter that is referred to it if the committee considers it appropriate to do so.

**Legal counsel and experts**

20(3) An investigator may engage legal counsel and employ any other experts that the investigator considers necessary.

**Records and information**

- 20(4) An investigator appointed under subsection (2) may
- (a) require the investigated member or any other member to produce to the investigator any records, documents and things in his or her possession or under his or her control that may be relevant to the investigation;
  - (b) require the investigated member or any other member to be interviewed for the purpose of the investigation; and
  - (c) direct an inspection or audit of the practice of the investigated member.

**Failure to produce records**

- 20(5) The college may apply to the court for an order
- (a) directing any member to produce to the investigator any records, documents and things in his or her possession or under his or her control, if it is shown that the member failed to produce them when required to do so by the investigator; or
  - (b) directing any person to produce to the investigator any records, documents and things in his or her possession or under his or her control that are or may be relevant to the complaint being investigated.

**Investigation of other matters**

**20(6)** The investigator may investigate any other matter related to the professional conduct or the skill in practice of the member that arises in the course of the investigation.

**Report to investigation committee**

**20(7)** On concluding the investigation, the investigator shall report his or her findings to the investigation committee.

**DECISION OF INVESTIGATION COMMITTEE****Decision of investigation committee**

**21(1)** The investigation committee may, after review or investigation,

- (a) direct that the matter be referred, in whole or in part, to the inquiry committee;
- (b) direct that the matter not be referred to the inquiry committee;
- (c) accept the voluntary surrender of the member's registration;
- (d) censure the member if
  - (i) at least one member of the committee has met with the member and the member has agreed to accept the censure, and
  - (ii) the committee has determined that no action is to be taken against the member other than the censure;
- (e) refer the matter to mediation if the committee determines that the complaint is strictly a matter of concern to the complainant and the member and both parties agree to mediation;
- (f) enter into an agreement with the member that provides for one or more of the following:
  - (i) assessing the member's capacity or fitness to practise occupational therapy,
  - (ii) counselling or treatment of the member,
  - (iii) monitoring or supervising the member's practice of occupational therapy,
  - (iv) the member's completing a specified course of studies by way of remedial training,
  - (v) placing conditions on the member's right to practise occupational therapy; or
- (g) take any other action that it considers appropriate in the circumstances and that is not inconsistent with or contrary to this Act or the regulations or by-laws.

**Matter not resolved by mediation**

**21(2)** If a matter referred for mediation under clause (1)(e) cannot be resolved, it must be referred back to the investigation committee, which may make any other decision under subsection (1) that it considers appropriate.

**Decision served on member and complainant**

**21(3)** The investigation committee shall serve on the member and the complainant a written notice setting out its decision and the reasons for the decision.

**Hearing not required**

**21(4)** The investigation committee is not required to hold a hearing or give any person an opportunity to appear or to make formal submissions before making a decision under this section.

**Counsel to the investigation committee**

**21(5)** The investigation committee may retain legal counsel to assist it.

**Conditions on right to practise**

**22(1)** If the investigation committee enters into an agreement with a member for conditions on the member's right to practise occupational therapy under subclause 21(1)(f)(v), those conditions may include the conditions referred to in section 25.

**Costs**

**22(2)** The investigation committee may order the member to pay all or part of the costs incurred by the college in monitoring compliance with conditions imposed on a member's right to practise occupational therapy under an agreement entered into under subclause 21(1)(f)(v). It may also order the member to pay all or part of the costs of the investigation.

## CENSURE

### Personal appearance

**23(1)** The investigation committee may require a member who is censured under clause 21(1)(d) to appear personally to be censured before the committee.

### Publication of censure

**23(2)** The investigation committee may publish the fact that a member has been censured, and publication may include the member's name and a description of the circumstances that led to the censure.

### Order for costs

**23(3)** The investigation committee may order a member who is censured to pay all or part of the costs of the investigation.

## VOLUNTARY SURRENDER OF REGISTRATION

### Voluntary surrender of registration

**24(1)** If the investigation committee accepts a voluntary surrender of a member's registration under clause 21(1)(c), it may direct the member to do one or more of the following to the satisfaction of any person or committee that the investigation committee may determine, before the member's right to practise occupational therapy may be reinstated:

- (a) obtain counselling or treatment;
- (b) complete a specified course of studies;
- (c) obtain supervised experience.

### Order for costs

**24(2)** The investigation committee may direct the member to pay any costs incurred by the college in monitoring compliance with a direction given under subsection (1) and to pay all or part of the costs of the investigation up to the time that the voluntary surrender takes effect.

### Publication of voluntary surrender

**24(3)** The investigation committee may publish the fact that a member has voluntarily surrendered his or her registration, and publication may include the member's name and a description of the circumstances that led to the voluntary surrender of registration.

### Conditions on reinstatement

**25** A voluntary surrender remains in effect until the investigation committee is satisfied that the conduct or complaint that was the subject of the investigation has been resolved, at which time the committee may impose conditions on the member's entitlement to practise occupational therapy, including conditions that the member do one or more of the following:

- (a) limit his or her practice;
- (b) practise under supervision;
- (c) not engage in sole practice;
- (d) permit periodic audits of his or her practice;
- (e) permit periodic audits of records;
- (f) report to the committee or the registrar on specific matters;
- (g) comply with any other conditions that the committee considers appropriate in the circumstances;

and may order the member to pay all or any part of the costs incurred by the college in monitoring compliance with those conditions.

## APPEAL BY COMPLAINANT

### Appeal by complainant to council

**26(1)** When the investigation committee makes a decision under clause 21(1)(b), (c) or (f), the complainant may appeal the decision to the council.

### Notice

**26(2)** An appeal is to be made by mailing a written notice of appeal, including reasons for the appeal, to the registrar within 30 days after the date the complainant is notified of the investigation committee's decision under subsection 21(3).

#### **Power on appeal**

**26(3)** On an appeal under this section, the council shall do one or more of the following:

- (a) make any decision that in its opinion ought to have been made by the investigation committee;
- (b) quash, vary or confirm the decision of the investigation committee;
- (c) refer the matter back to the investigation committee for further consideration in accordance with any direction that the council may make.

#### **Notice of decision**

**26(4)** The council shall give the member and the complainant a written notice setting out its decision and the reasons for the decision.

#### **Hearing not required**

**26(5)** The council is not required to hold a hearing or to give any person an opportunity to appear or to make oral submissions before making a decision under this section, but it shall give the investigated member and the complainant an opportunity to make written submissions.

### **SUSPENSION OF REGISTRATION PENDING DECISION**

#### **Suspension of registration pending decision**

**27(1)** Notwithstanding anything in this Act, the investigation committee may, when there is a question that a member's conduct exposes or is likely to expose the public to serious risk, direct the registrar to suspend the member's certificate of registration or place conditions on his or her practice of occupational therapy pending the outcome of proceedings under this Part.

#### **Notice of suspension or conditions**

**27(2)** On receiving a direction under subsection (1), the registrar shall promptly serve a notice of the suspension or the conditions of practice on the member and, where appropriate, the member's employer.

#### **Application for stay**

**28** The member may, by filing an application with the court and serving a copy on the registrar, apply for an order of the court staying a decision of the investigation committee to suspend the member's certificate of registration or to place conditions under section 27 pending the outcome of proceedings under this Part.

### **MISCELLANEOUS**

#### **Referral to inquiry committee**

**29** Notwithstanding any other action it may have taken, with the exception of a censure, the investigation committee may at any time refer the conduct or complaint that was the subject of the investigation to the inquiry committee.

#### **Disclosure of information to authorities**

**30** Notwithstanding any other provision of this Act, the investigation committee may disclose to a law enforcement authority any information respecting possible criminal activity on the part of a member that is obtained during an investigation into the member's conduct.

### **INQUIRY COMMITTEE**

#### **Inquiry committee**

**31(1)** The council shall appoint an inquiry committee consisting of

- (a) an occupational therapist who is a member of the college, who is to be the chair;
- (b) one or more other members of the college or former members of the college; and
- (c) one or more persons from the roster established under subsection 6(4) who are appointed by the council as public representatives of the committee.

**Public representatives**

31(2) At least 1/3 of the persons appointed to the inquiry committee must be public representatives.

**Selection of panel**

32(1) Within 30 days after a matter is referred to the inquiry committee, the chair shall select a panel from among the members of the inquiry committee to hold a hearing.

**Composition**

32(2) A panel is to be composed of at least three members, one of whom must be a public representative.

**Exclusion from panel**

32(3) No person may be selected for a panel who has taken part in the review or investigation of what is to be the subject matter of the panel's hearing.

**Effect of member being unable to continue**

32(4) If a hearing has begun and a member of the panel is unable to continue to sit as a member, the panel may complete the hearing if at least three members remain and one of them is a public representative.

**HEARINGS****Hearing**

33(1) When a panel is selected, it shall hold a hearing.

**Date of hearing**

33(2) A hearing must begin within 120 days after the date on which the matter is referred to the inquiry committee, unless the investigated member consents in writing to a later date.

**Notice of hearing**

33(3) At least 30 days before the date of the hearing, the registrar shall serve a notice of hearing on the investigated member and the complainant stating the date, time and place of the hearing and identifying in general terms the complaint or matter about which the hearing will be held.

**Public notice of hearing**

33(4) The registrar may issue a public notice of the hearing in any manner he or she considers appropriate, but the notice must not include the name of the investigated member.

**Right to appear and be represented**

34(1) The college and the investigated member may appear and be represented by counsel at a hearing, and the panel may have counsel to assist it.

**Adjournments**

34(2) The chair of the panel may adjourn a hearing from time to time.

**Recording of evidence**

34(3) The oral evidence given at a hearing must be recorded.

**Member may examine documentary evidence**

35(1) Before the day of the hearing, the investigated member must be given opportunity to examine any written or documentary evidence that will be produced and any report the contents of which will be given in evidence at the hearing.

**Member to provide documentary evidence**

35(2) If the member intends to rely on any written or documentary evidence or any report at the hearing, he or she shall provide a copy of that evidence or report to the college before the day of the hearing.

**Evidence of expert without report**

35(3) If either the member or the college intends to call an expert as a witness at the hearing and there is no report from the expert, a summary of the expert's intended evidence, including his or

her findings, opinions and conclusions, must be provided to the other party before the day of the hearing.

**Failure to provide summary**

**35(4)** If the summary is not provided in accordance with subsection (3), the expert may testify at the hearing only with the leave of the panel.

**Investigation of other matters**

**36** The panel may investigate and hear any other matter concerning the conduct of the investigated member that arises in the course of its proceedings. In that event, the panel shall declare its intention to investigate the further matter and permit the member sufficient opportunity to prepare a response.

**Hearings open to public**

**37(1)** A hearing shall be open to the public unless the panel is satisfied that

- (a) matters involving public security may be disclosed;
- (b) financial or personal or other matters may be disclosed at the hearing that are of such a nature that the desirability of avoiding public disclosure of those matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that meetings be open to the public;
- (c) a person involved in a criminal proceeding or a civil suit or proceeding may be prejudiced; or
- (d) the safety of a person may be jeopardized.

**No reporting of identity**

**37(2)** Notwithstanding subsection (1), there shall be no reporting in the media of anything that would identify the investigated member, including the member's name, the business name of the member's practice or partnership, or the location of practice, unless and until the panel makes a finding under section 41.

**Exclusion of public**

**37(3)** If the panel is satisfied that the hearing is required to be closed, it may make an order that the public be excluded from the hearing or any part of it, and it may make other orders it considers necessary to prevent the public disclosure of matters disclosed at the hearing, including orders banning the publication or broadcasting of those matters.

**Public information may be disclosed**

**37(4)** No order shall be made under subsection (3) that prevents the publication of anything that is contained in the register and available to the public.

**Exclusion of public during certain motions**

**37(5)** The panel may make an order that the public be excluded from the part of a hearing dealing with a motion for an order under subsection (3).

**Orders with respect to matters in submissions**

**37(6)** The panel may make any order necessary to prevent the public disclosure of matters disclosed in the submissions relating to any motion described in subsection (5), including prohibiting the publication or broadcasting of those matters.

**Reasons for excluding the public to be available**

**37(7)** The panel shall ensure that any order it makes under subsection (3) and its reasons are either given orally at the hearing or made available to the public in writing.

**Oral and affidavit evidence**

**38(1)** Evidence may be given at a hearing of a panel either orally or by affidavit or both, but a member's registration cannot be suspended or cancelled on affidavit evidence alone.

**Oral evidence**

**38(2)** The oral evidence of witnesses at a hearing must be taken on oath or affirmation, and the parties shall have the right to cross-examine witnesses and call evidence in defence and reply.

**Power to administer oaths and affirmations**

**38(3)** For the purpose of an investigation or hearing under this Act, the registrar and the chair of the panel have the power to administer oaths and affirmations.

#### **Witnesses**

**39(1)** Any person, other than the investigated member, who in the opinion of the panel has knowledge of the complaint or matter being heard is a compellable witness in any proceeding before the panel.

#### **Notice to attend and produce records**

**39(2)** The attendance of witnesses before the panel and the production of records may be enforced by a notice issued by the registrar requiring the witness to attend and stating the date, time and place at which the witness is to attend and the records, if any, that the witness is required to produce.

#### **Registrar to provide notices**

**39(3)** On the written request of the member or his or her counsel or agent, the registrar shall provide any notices that the member requires for the attendance of witnesses or the production of records.

#### **Witness fees**

**39(4)** A witness, other than the member, who has been served with a notice to attend or a notice for production under this section is entitled to be paid the same fees in the same manner as a witness in an action in the court.

#### **Failure to attend or give evidence**

**39(5)** Proceedings for civil contempt of court may be brought against a witness

- (a) who fails to attend before the panel in compliance with a notice to attend;
- (b) who fails to produce any records in compliance with a notice to produce them; or
- (c) who refuses to be sworn or to affirm or to answer any question he or she is directed to answer by the panel.

#### **Hearing in absence of member**

**40** The panel, on proof of service on the investigated member of the notice of hearing, may

- (a) proceed with the hearing in the absence of the member or his or her agent; and
- (b) act, decide or report on the matter being heard in the same way as if the member were in attendance.

### **DECISION OF PANEL**

#### **Findings of panel**

**41** If, at the conclusion of a hearing, the panel finds that the member

- (a) is guilty of professional misconduct;
- (b) has contravened this Act or the regulations, by-laws or code of ethics of the college;
- (c) has been found guilty of an offence that is relevant to the member's suitability to practise;
- (d) has displayed a lack of knowledge or lack of skill or judgment in the practice of occupational therapy;
- (e) has demonstrated an incapacity or unfitness to practise occupational therapy;
- (f) is suffering from an ailment that might, if the member continues to practise, constitute a danger to the public; or
- (g) is guilty of conduct unbecoming a member;

it shall deal with the member in accordance with this Act.

#### **Orders of panel**

**42(1)** If the panel makes any of the findings described in section 41, it may make one or more of the following orders:

- (a) reprimand the member;
- (b) accept the member's undertaking to limit his or her practice;
- (c) suspend the member's certificate of registration for a stated period;

- (d) suspend the member's certificate of registration until he or she has completed a specified course of studies or supervised practical experience, or both, to the satisfaction of any person or committee that the panel may determine;
- (e) impose conditions on the member's entitlement to practise occupational therapy, including conditions that he or she
  - (i) practise under supervision,
  - (ii) permit periodic inspections of his or her practice,
  - (iii) permit periodic audits of records,
  - (iv) report on specified matters to any person or committee that the panel may determine,
  - (v) not engage in sole practice;
- (f) require the member to satisfy a person or committee that the panel may determine that a condition or addiction can be or has been overcome, and suspend the member's certificate of registration until the person or committee is satisfied;
- (g) require the member to take counselling or treatment;
- (h) direct the member to waive, reduce or repay money paid to the member that, in the opinion of the panel, was unjustified for any reason;
- (i) cancel the member's certificate of registration.

#### **Panel may consider past censure**

**42(2)** To assist the panel in making an order under this section, the panel may be advised of any censure or order previously issued to the member and the circumstances under which it was issued.

#### **Ancillary orders**

**42(3)** The panel may make any ancillary order that is appropriate or required in connection with an order mentioned in subsection (1) or may make any other order that it considers appropriate in the circumstances, including an order that

- (a) a further or new investigation be held into any matter; or
- (b) a panel be convened to hear a complaint without an investigation.

#### **Costs when conditions imposed**

**42(4)** If the panel imposes conditions on a member's entitlement to practise occupational therapy under clause (1)(e), it may also order the member to pay all or any part of the costs incurred by the college in monitoring compliance with those conditions.

#### **Contravention of order**

**42(5)** If the council is satisfied that a member has contravened an order made under subsection (1), it may, without a further hearing, cancel the member's certificate of registration.

#### **Suspension or cancellation of registration**

**42(6)** If a member's certificate of registration is suspended or cancelled by an order under subsection (1), the member shall not practise occupational therapy during the period of suspension or cancellation.

#### **Costs and fines**

**43(1)** The panel may, in addition to or instead of dealing with the member's conduct in accordance with section 42, order that the member pay to the college, within the time set by the order,

- (a) all or part of the costs of the investigation, hearing and panel;
- (b) a fine not exceeding \$10,000.; or
- (c) both the costs under clause (a) and the fine under clause (b).

#### **Nature of costs**

**43(2)** The costs referred to in subsection (1) may include, but are not limited to,

- (a) all disbursements incurred by the college, including
  - (i) fees and expenses for experts, investigators and auditors whose reports or attendances were reasonably necessary for the investigation or hearing,

- (ii) fees, travel costs and reasonable expenses of any witnesses required to appear at the hearing,
  - (iii) fees for retaining a reporter and preparing transcripts of the proceedings, and
  - (iv) costs of service of documents, long distance telephone and facsimile charges, courier delivery charges and similar miscellaneous expenses;
- (b) payments made to members of the panel or the investigation committee; and
- (c) costs incurred by the college in providing counsel for the college and the panel, whether or not counsel is employed by the college.

**Failure to pay costs and fines by time ordered**

**43(3)** If the member is ordered to pay a fine or costs or both under subsection (1), or costs under subsection 42(4), and fails to pay within the time ordered, the registrar may cancel his or her certificate of registration until payment is made.

**Filing of order**

**43(4)** The college may file an order under subsection (1) in the court, and on the order being filed it may be enforced in the same manner as a judgment of the court.

**Written decision**

**44(1)** Within 90 days after the completion of a hearing, the panel shall make a written decision on the matter consisting of the reasons for its decision and a statement of any order made by it.

**Decision forwarded to registrar**

- 44(2)** The panel shall forward to the registrar
- (a) the decision; and
  - (b) any record of the proceedings and all exhibits and documents.

**Service of decision**

**44(3)** On receiving the decision and record, the registrar shall serve a copy on the member and the complainant.

**Copies of transcript**

**44(4)** The member may examine the record of the proceedings before the panel, and is entitled to receive, on payment of the cost of providing it, a transcript of the oral evidence given before the panel.

**Publication of decision**

**45** Notwithstanding that any proceeding or part of a proceeding under this Part may have been held in private, the college may, after the decision and any order has been served on the member, publish the circumstances relevant to the findings and any order of the panel. If the panel makes an order against the member under section 42 or 43, the college may also publish the member's name.

**APPEAL TO COURT OF APPEAL****Appeal to Court of Appeal**

**46(1)** A member in respect of whom a finding or order is made by the panel under section 41, 42 or 43 may appeal the finding or order to the Court of Appeal.

**Commencement of appeal**

- 46(2)** An appeal must be commenced
- (a) by filing a notice of appeal; and
  - (b) by giving a copy of the notice of appeal to the registrar;
- within 30 days after the date on which the decision of the panel is served on the member.

**Appeal on the record**

**46(3)** An appeal must be founded on the record of the hearing before the panel and the decision of the panel.

**Powers of Court on appeal**

**47** On hearing the appeal, the Court of Appeal may

- (a) make any finding or order that in its opinion ought to have been made;
- (b) quash, vary or confirm the decision of the panel or any part of it; or
- (c) refer the matter back to the panel for further consideration in accordance with any direction of the Court.

**Stay pending appeal**

48 The decision and any order of the panel remains in effect pending an appeal unless the Court of Appeal, on application, stays the decision and any order pending the appeal.

**REINSTATEMENT****Reinstatement**

49 The council may, on application by a person whose registration has been cancelled for reasons other than non-payment of fees, direct the registrar to reinstate the person's name in the register, subject to any conditions that the council may impose, and may order the person to pay any costs arising from the imposition of such conditions.

**PART 7****REGULATIONS, BY-LAWS****AND CODE OF ETHICS****Regulations**

- 50(1) The council may make regulations
- (a) respecting registration under Part 4, including establishing the qualifications, experience and other requirements to be met by applicants for registration and for renewal and reinstatement of registration;
  - (b) respecting the establishment, content and maintenance of registers under section 7 and, for the purpose of clause 7(3)(d), designating information contained in a register that may be made public;
  - (c) respecting the cancellation of a member's registration for non-payment of fees and the reinstatement of a member's registration when outstanding fees are paid;
  - (d) defining by education, experience or otherwise, general or specialized areas of occupational therapy practice;
  - (e) respecting standards for the practice of occupational therapy;
  - (f) controlling the manner in which a member may describe his or her qualifications or occupation and prohibiting the use of any term, title or designation that in the opinion of the council is calculated to mislead the public;
  - (g) respecting continuing competence programs;
  - (h) requiring members to carry professional liability insurance and governing the coverage required to be carried;
  - (i) respecting the conditions under which, in special circumstances, registration under this Act may not be required and fees may not be payable.

**Approval of regulations**

- 50(2) A regulation under subsection (1) does not come into force until it is approved by
- (a) a majority of members of the college voting in accordance with the by-laws; and
  - (b) the Lieutenant Governor in Council.

**By-laws**

- 51(1) The council may make by-laws
- (a) for the government of the college and the management and conduct of its affairs;
  - (b) respecting the calling and conduct of meetings of the college and the council;
  - (c) respecting the nomination, election and number of council members and officers of the college, the filling of vacancies on the council and on any committee or board established by the council, and the appointment of ex officio members of the council and of any committee or board

established by the council, and prescribing the term of office and the duties and functions of those members, officers and ex officio members;

(d) providing for the procedures for the election of members to the council;

(e) providing for the division of the province into districts and prescribing the number of council members to be elected from each district;

(f) establishing classes of members and governing the rights, privileges and obligations of each class;

(g) governing the number of members that constitutes a quorum at meetings of the college and the council;

(h) governing the operation, proceedings and quorum of the investigation committee and the inquiry committee, the appointment of acting members and ex officio members and the procedures for filling vacancies, and prescribing the terms of office, duties and functions of ex officio members;

(i) governing the establishment, operation and proceedings of other committees or boards, the appointment and revocation of members and acting members of those committees or boards and the procedures for filling vacancies on those committees or boards;

(j) setting remuneration, fees and expenses payable to members of the council or of committees or boards established by or under this Act, the regulations or the by-laws for attending to the business of the college;

(k) prescribing the fees payable by members and by applicants for registration or the manner of determining such fees;

(l) respecting the holding of votes on any matter relating to the college, including voting by mail or any other method;

(m) providing for the appointment and remuneration of officers and other employees of the college and prescribing their duties and functions;

(n) providing for the term of office of the registrar and the appointment of an individual as an acting registrar, who has all of the powers, duties and functions of the registrar under this Act and the regulations when the registrar is absent or unable to act or when there is a vacancy in the office of registrar;

(o) respecting the procedures for the approval of regulations by the members.

#### **Amendments and repeal of by-laws**

**51(2)** After notice is given in accordance with the by-laws, a by-law under subsection (1) may be amended or repealed by a majority of the members of the college

(a) present and voting at a general meeting; or

(b) voting in a mail vote or other method of voting conducted in accordance with the by-laws.

#### **Code of ethics**

**52** The college may, by resolution passed at a general meeting, adopt a code of ethics governing the conduct of members.

## **PART 8**

### **GENERAL PROVISIONS**

#### **PRACTICE AUDITORS**

#### **Appointment of practice auditors**

**53(1)** The council may appoint one or more practice auditors for the purposes of this Act and the regulations and by-laws.

#### **Audit of an occupational therapy practice**

**53(2)** The practice auditor may review the operation of an occupational therapy practice and shall report his or her findings to the registrar on the conclusion of each audit.

#### **Entry of premises and inspection of records**

**54(1)** For the purpose of enforcing and administering this Act and the regulations, a practice auditor may at any reasonable time, and when requested, upon presentation of an identification card issued by the council,

- (a) without a warrant, enter a member's place of business and make such inspections as may be reasonably required to determine compliance with this Act and the regulations;
- (b) require the production by the member of any record that the practice auditor reasonably considers necessary for the purpose of enforcing this Act and the regulations;
- (c) inspect and, upon giving a receipt, remove records or things relevant to the inspection for the purpose of making copies or extracts; and
- (d) remove substances and things for examination or test upon giving a receipt.

#### **Admissibility of copies**

**54(2)** A copy of a record made under clause (1)(c) and certified to be a true copy by the practice auditor is, in the absence of evidence to the contrary, admissible in evidence in any proceeding or prosecution as proof of the original record and its contents.

#### **Entry with order**

**54(3)** When a justice is satisfied by information under oath that there are reasonable grounds for believing that it is necessary for a practice auditor to enter a building, vehicle or other place for the enforcement of this Act or the regulations and

- (a) a reasonable, unsuccessful effort to effect entry without the use of force has been made; or
- (b) there are reasonable grounds for believing that entry would be denied without a warrant;

the justice may at any time, and if necessary upon application without notice, issue an order authorizing the practice auditor and such other persons as may be named in the order, with such peace officers as are required to assist, to enter the building, vehicle or other place and to take such action as a practice auditor may take under subsection (1).

#### **Obstruction of practice auditor**

**54(4)** No person shall obstruct a practice auditor or withhold from a practice auditor, or conceal or destroy any records, documents, substances or things relevant to an audit.

### SERVICE OF DOCUMENTS

#### **Service of documents**

**55(1)** A notice, order or other document under this Act or the regulations is sufficiently given or served if it is

- (a) delivered personally; or
- (b) sent by registered mail, or by another service that provides the sender with proof of delivery, to the intended recipient at that person's last address appearing in the records of the college.

#### **Deemed receipt**

**55(2)** A notice, order or other document sent by registered mail is deemed to be given or served five days after the day it was sent.

#### **Proof of service**

**55(3)** Proof of service of a notice, order or other documents under this Act may be by affidavit or statutory declaration.

### REGISTRAR'S CERTIFICATE

#### **Registrar's certificate**

**56** A certificate purporting to be signed by the registrar and stating that a named person was or was not, on a specified day or during a specified period,

- (a) a member of the college; or
- (b) an officer, investigator or practice auditor of the college or a member of the council or of a committee or board established by or under this Act, the regulations or the by-laws;

is, in the absence of evidence to the contrary, admissible in evidence in all courts and tribunals as proof of the facts stated in it without proof of the registrar's appointment or signature.

### PROOF OF CONVICTION

#### **Proof of conviction**

**57** For the purpose of proceedings under this Act, a certified copy under the seal of the court or signed by the convicting judge or the Clerk of The Provincial Court, of the conviction of a person for any crime or offence under the *Criminal Code* (Canada) or under any other Act or regulation is conclusive evidence that the person has committed the crime or offence stated, unless it is shown that the conviction has been quashed or set aside.

## OFFENCES

### Offence

**58(1)** A person who contravenes a provision of this Act or the regulations, other than section 62 of this Act, is guilty of an offence and is liable on summary conviction

- (a) for a first offence, to a fine of not more than \$5,000.; and
- (b) for a subsequent offence, to a fine of not more than \$15,000.

### Offence

**58(2)** A person who contravenes section 62 is guilty of an offence and is liable on summary conviction to a fine of not more than \$50,000.

### Fraudulent representation on application for registration

**58(3)** A person who obtains, or attempts to obtain, registration as a member of the college under this Act by making a false or fraudulent representation or declaration, either orally or in writing, and any person who knowingly assists in making such a representation or declaration, is guilty of an offence and is liable on summary conviction to a fine of not more than \$10,000.

### Offence by employer

**58(4)** If the employer of a member knowingly permits the member to fail to comply with a condition of the member's certificate of registration, the employer is guilty of an offence and is liable on summary conviction to a fine of not more than \$10,000.

### Limitation on prosecution

**58(5)** A prosecution under this Act may be commenced within two years after the commission of the alleged offence, but not afterwards.

### Prosecution of offence

**58(6)** Any person may be a prosecutor or complainant in the prosecution of an offence under this Act, and the government may pay to the prosecutor a portion of any fine recovered, in an amount that it considers appropriate, toward the costs of the prosecution.

### Stay of proceedings

**58(7)** When the college is the prosecutor of an offence under this Act, it may apply for a stay of proceedings in the prosecution, and the court shall grant the stay.

### Single act of unauthorized practice

**59** In any prosecution under this Act it is sufficient to prove that the accused has done or committed a single act of unauthorized practice, or has committed on one occasion any of the acts prohibited by this Act.

## PROTECTION FROM LIABILITY

### Protection from liability

**60** No action lies against the college, the council, the registrar, a person conducting an investigation, a practice auditor, a member of a committee or board established by or under this Act or the regulations or by-laws, or any employee, officer or person acting on the instructions of any of them, for anything done by the person in good faith in the performance or intended exercise of any power under this Act or the regulations or by-laws or for any neglect or default in the performance or exercise in good faith of such a duty or power.

### Limitation period for members

**61** No member is liable in any action for negligence or malpractice by reason of professional services requested or rendered, unless the action is commenced within two years after the date when, in the matter complained of, those professional services terminated.

## CONFIDENTIALITY OF INFORMATION

### Confidentiality of information

**62** Subject to section 62.1, every person employed, appointed or retained for the purpose of administering this Act, and every member of the council or a committee of the council, shall preserve secrecy about all information that comes to his or her knowledge in the course of his or her duties, and shall not communicate any information to any other person, except

- (a) to the extent the information is available to the public, or is required to be disclosed, under this Act;
- (b) in connection with the administration of this Act, including, but not limited to, the registration of members, complaints about members, allegations of members' incapacity, unfitness, incompetence or acts of professional misconduct, or the governing of the profession;
- (c) to a body that governs the practice of a health profession pursuant to an Act of the Legislature, to the extent the information is required in order for that body to carry out its mandate under the Act; or
- (d) to a body that governs the practice of occupational therapy in a jurisdiction other than Manitoba.

S.M. 2005, c. 39, s. 38.

### Registrar to collect information

**62.1(1)** In addition to any other information maintained in administering this Act, the registrar must collect and record each member's

- (a) date of birth;
- (b) sex; and
- (c) education or training, as required for registration and renewal of registration.

### Member to provide information

**62.1(2)** A member must provide the registrar with the information required under subsection (1), in the form and at the time set by the registrar.

### Minister may require information

**62.1(3)** The minister may request in writing that the registrar provide information on members — including personal information — contained in the register or collected under subsection (1), to establish and maintain an electronic registry of health service providers to be used for the following purposes:

- (a) to validate the identity of a provider seeking access to a patient's personal health information maintained in electronic form;
- (b) to generate information — in non-identifying form — for statistical purposes.

### Registrar to provide information to minister

**62.1(4)** The registrar must provide the minister with the information — including personal information — requested under subsection (3), in the form and at the time set by the minister after consulting with the registrar.

### Minister may disclose information

**62.1(5)** Despite any other provision of this Act or any provision of another Act or a regulation, the minister may

- (a) disclose — in non-identifying form — information provided under subsection (4) to any entity authorized to receive it under subsection (6); and
- (b) impose conditions respecting the use, retention and further disclosure of the information.

An entity must comply with any conditions imposed by the minister.

### Authorized entities

**62.1(6)** The following entities are authorized to receive information — in non-identifying form — under subsection (5):

- (a) a regional health authority established or continued under *The Regional Health Authorities Act*;
- (b) Regional Health Authorities of Manitoba, Inc.;

- (c) CancerCare Manitoba;
- (d) The Manitoba Centre for Health Policy;
- (e) a government or organization with which the Government of Manitoba has entered into an agreement to share information for the purposes stated in subsection (3).

S.M. 2005, c. 39, s. 39.

## INJUNCTION

### Injunction

**63** The court, on application by the council, may grant an injunction enjoining any person from doing any act that contravenes Part 2, notwithstanding any penalty that may be provided by this Act in respect of that contravention.

## DUTY OF MEMBERS TO REPORT

### Duty of members to report

**64(1)** A member who believes that another member is suffering from a physical or mental condition or disorder of a nature or to an extent that the member is unfit to continue to practise or that the member's practice should be restricted, shall inform the registrar of that belief and the reasons for it.

### Exemption from liability for disclosure

**64(2)** A member who discloses information under subsection (1) is not subject to any liability as a result, unless it is established that the disclosure was made maliciously.

## EMPLOYER'S RESPONSIBILITY

### Employer's responsibility to ensure registration

**65(1)** No person shall knowingly employ or continue to employ a person to perform the practice of occupational therapy unless the person is an occupational therapist registered under this Act.

### Annual review

**65(2)** Every person who employs occupational therapists shall review their registration status annually.

### Responsibility to report misconduct

**65(3)** If a person who employs an occupational therapist terminates the occupational therapist's employment for misconduct, incompetence or incapacity, the employer shall promptly report the termination to the council and give the occupational therapist a copy of the report.

### Referral to investigation committee

**65(4)** On receiving a report from an employer, the registrar may refer the matter to the investigation committee.

## ANNUAL REPORT

### Annual report

**66(1)** The college shall submit an annual report to the minister within four months after the end of each fiscal year.

### Contents of report

**66(2)** The report must include the following information for the year for which the report is submitted:

- (a) a description of the structure of the college, including any committees established by the council and their functions;
- (b) the names of the members of the council and committees;
- (c) a copy of the by-laws or amendments to by-laws that were made;
- (d) the number of applications for registration that were received and their disposition;
- (e) the number of complaints that were received and their disposition;

- (f) the number of members disciplined, the reasons for the discipline and the sanctions imposed;
- (g) the number of practice audits conducted and the results of the audits;
- (h) the methods used to assure the continuing competence of members;
- (i) a financial report on the operation of the college;
- (j) any other information the minister requires.

## PART 9

### TRANSITIONAL, REPEAL

### AND COMING INTO FORCE

#### *"Former Act" defined*

**67(1)** In this section, "**former Act**" means **The Occupational Therapists Act, R.S.M. 1987, c. O5.**

#### *Registration continued*

**67(2)** An individual who is a member under the former Act on the day this Act comes into force is deemed to be registered as a member under this Act.

#### *Application for registration continued*

**67(3)** An application for registration made under the former Act but not concluded before the coming into force of this Act shall be dealt with under this Act.

#### *Council continued*

**67(4)** The members of the board and officers of the association under the former Act are deemed to be members of the council and officers of the college under this Act, elected or appointed for the same period and holding the same offices.

#### *Complaints under former Act: inquiry commenced*

**67(5)** If, on the day this Act comes into force, a decision or direction to hold an inquiry about a matter has been made under subsection 34(1) of the former Act, the matter shall be concluded under the former Act as though this Act had not come into force.

#### *Complaints under former Act: no inquiry commenced*

**67(6)** A matter about which no decision or direction to hold an inquiry has been made under subsection 34(1) of the former Act before the coming into force of this Act shall be dealt with under this Act.

#### **Repeal**

**68** **The Occupational Therapists Act, R.S.M. 1987, c. O5, is repealed.**

#### **C.C.S.M. reference**

**69** This Act may be referred to as chapter O5 of the *Continuing Consolidation of the Statutes of Manitoba*.

#### **Coming into force**

**70** This Act comes into force on a day fixed by proclamation.

**NOTE: S.M. 2002, c. 17 was proclaimed in force December 15, 2005.**