

Licensed Counselling Therapy Act

WHEREAS the (NBACT) New Brunswick Association of Counselling Therapists Inc., the New Brunswick Professional Counsellors Association Inc./Association des conseillers professionnels du Nouveau-Brunswick Inc., and the Association francophone des conseillers en orientation du Nouveau-Brunswick Inc. pray that it be enacted as hereinafter set forth;

AND WHEREAS it is desirable, in the interests of the public to amalgamate and continue the (NBACT) New Brunswick Association of Counselling Therapists Inc., the New Brunswick Professional Counsellors Association Inc./Association des conseillers professionnels du Nouveau-Brunswick Inc., and the Association francophone des conseillers en orientation du Nouveau-Brunswick Inc. as a body corporate for the purpose of advancing and maintaining the standard of counselling therapy in the Province, for governing and regulating members offering services to the public and providing for the welfare of members of the public and the profession;

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

PART I – INTERPRETATION

1 The following definitions apply in this act, unless the context otherwise requires.

“appraisal and assessment” means selecting, administering, scoring and interpreting instruments, for which the counselling therapist is properly trained and qualified to administer, designed to determine an individual’s personal characteristics such as aptitudes, attitudes, abilities, achievements, interests, and personality, including the use of counselling methods and techniques for understanding and evaluating behaviour in relation to a client’s therapeutic goals, career goals, or in the self-discovery of identity. (*évaluation et testing*)

“associations” means the (NBACT) New Brunswick Association of Counselling Therapists Inc., the New Brunswick Professional Counsellors Association Inc. /Association des conseillers professionnels du Nouveau-Brunswick Inc., and the Association francophone des conseillers en orientation du Nouveau-Brunswick Inc. (*associations*)

“Board” means the board of directors of the College constituted under section 4. (*conseil*)

“client” or “patient” means an individual or a group who is the recipient of counselling therapy. (*client ou patient*)

“College” means the College of Licensed Counselling Therapists of New Brunswick amalgamated and continued under section 3. (*Collège*)

“counselling” and “counselling therapy” mean assisting clients through the counselling relationship, using a combination of appraisal and assessment, mental health and human development principles, methods and techniques to achieve mental, emotional, physical, social, moral, educational, spiritual or career development and adjustment through the client’s lifespan. (*counseling et counseling thérapeutique*)

“counselling education program” means a program leading to a master’s level counselling degree or an equivalent program approved by the Board required to qualify for registration as a licensed counselling therapist. (*programme de formation en orientation ou en counseling*)

“Court” means a Judge of the The Court of Queen's Bench of New Brunswick. (*Cour*)

“Executive Director” means the person holding the office of Executive Director under subsection 9(2). (*directeur général*)

“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 an 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. (*professionnel de la santé*)

“incapacity” means a physical or mental condition, addiction or disorder, suffered by a member, of such nature and extent that it is desirable in the interests of the public, the College or the member, that the member no longer be permitted to practise as a licensed counselling therapist or that the member's practice as a licensed counselling therapist be suspended or subjected to conditions, limitations or restrictions. (*incapacité*)

“incompetence” means acts or omissions on the part of a member, in the member's practice, that demonstrate a lack of knowledge, skill or judgment, or disregard for the interests of a client of such a nature and to such an extent as to render the member unfit to carry on the practice of a licensed counselling therapist or to carry on the practice without conditions, limitations or restrictions. (*incompétence*)

“licence” means a licence to practise counselling therapy issued under this act. (*licence*)

“licensed counselling therapist” means a person whose name appears on the register kept under paragraph 10(1)(a) and who has received a licence under this act. (*conseiller thérapeute agréé*)

“member” means a licensed counselling therapist and a person whose name is entered in the register, temporary register, specialists register or any of the rosters established and maintained pursuant to this act, the by-laws and the rules, and includes for the purposes of applying the provisions of this act, professional corporations and such persons who are permitted by this act, the by-laws or the rules to carry on the practice of a licensed counselling therapist or such aspects thereof as may be prescribed. (*membre*)

“Minister” means the Minister of Health and includes any person designated by the Minister to act on the Minister's behalf. (*ministre*)

“prescribed” means prescribed by the by-laws or the rules made under this act by the Board. (*prescrit*)

“professional corporation” means a corporation the name of which is entered in the professional corporations register. (*corporation professionnelle*)

“professional corporations register” means the register kept under paragraph 10(1)(c). (*registre des corporations professionnelles*)

“professional misconduct” means a serious digression from established or recognized professional standards or rules of practice of the College or the profession, the acts and omissions specified in this act as constituting professional misconduct, a breach of the standards of professional ethics and conduct, and includes:

- (a) a member having plead guilty to or been found guilty of an offence that, in the opinion of the Discipline Committee or Fitness to Practise Committee, is relevant to the member's suitability to practise;
- (b) the governing body of a health profession in a jurisdiction other than New Brunswick having found that a member committed an act that would, in the opinion of the Discipline Committee or Fitness to Practise Committee, constitute professional misconduct under this act, the by-laws or the rules;
- (c) an act of professional misconduct as defined in the by-laws;
- (d) violation or failure to comply with this act, the by-laws or the rules;
- (e) violation or failure to comply with a term, condition, limitation, or restriction imposed on the member's licence or registration;
- (f) failure to submit to an examination, inspection, or audit, or to deliver records and documents ordered by the Complaints Committee, Discipline Committee or Fitness to Practise Committee;
- (g) sexual abuse of a client; or
- (h) failure to file a report pursuant to section 40. (*inconduite professionnelle*)

“register” means the register kept pursuant to paragraph 10(1)(a). (*registre*)

“Registrar” means the Registrar of the College appointed under subsection 9(1). (*registraire*)

“registration” means the entry of the name of a person in a register. (*immatriculation*)

“roster” means one of the rosters kept pursuant to paragraph 10(1)(e). (*tableau*)

“specialist” means a licensed counselling therapist whose name is entered in the specialists register and who is the holder of a specialists licence issued pursuant to this act, the by-laws or the rules. (*spécialiste*)

“specialists register” means the register kept pursuant to paragraph 10(1)(d). (*registre des spécialistes*)

“student” means a person who is enrolled under the by-laws and the rules in a counselling education program. (*étudiant*)

“temporary register” means the register kept pursuant to paragraph 10(1)(b). (*registre temporaire*)

2 The words, initials or expressions “licensed counselling therapist”, “licensed career counsellor”, “registered counselling therapist”, “registered career counsellor”, “LCT”, “LCC”, “RCT”,

“RCC”, “Lic. C.T.”, “Lic. C.C.”, “Reg. C.T.” or “Reg. C.C.” or any like words, initials or expressions used alone or in combination with other words or expressions connoting a person recognized by law as a licensed counselling therapist or person entitled to carry on the practice of counselling therapy or connoting a member of the College, when used in any provision of an act of the legislature or any regulation, rule, order or by-law made under an act or used in any public document, shall be read as including a person whose name is entered in the register, temporary register, professional corporations register or specialists register.

PART II – THE COLLEGE

3 The (NBACT) New Brunswick Association of Counselling Therapists Inc., a body corporate incorporated by letters patent dated January 28, 2009, the New Brunswick Professional Counsellors Association Inc./Association des conseillers professionnels du Nouveau-Brunswick Inc., a body corporate incorporated by letters patent dated October 4, 1996, and the Association francophone des conseillers en orientation du Nouveau-Brunswick Inc., a body corporate incorporated by letters patent dated December 28, 1984 pursuant to the *Companies Act*, chapter C-13 of the Revised Statutes, 1973, are hereby amalgamated and continued as a body corporate and politic without share capital under the name “College of Licensed Counselling Therapists of New Brunswick” which subject to this act has the capacity, rights, powers and privileges of a natural person.

BOARD OF THE COLLEGE

4(1) A Board of directors of the College consisting of not less than three and not more than fifteen directors shall be responsible for the administration of this act and shall control, govern and manage, or supervise the control, government and management of the business and affairs of the College and all aspects of the practice of counselling therapy.

4(2) The number of directors, their respective terms of office, the manner of their appointment or election and their qualifications shall be established and governed by the by-laws of the College and such by-laws may provide for alternate directors, for the filling of vacancies and for the appointment of additional directors.

4(3) One director, when the total number of directors does not exceed eight, or two directors, when the total number of directors exceeds eight, shall be appointed by the Board to represent the public and no such director may be a member of the College.

BY-LAWS

5(1) Unless this act or the by-laws otherwise provide, the Board may by resolution make, amend or repeal by-laws regulating the business or affairs of the College and the practice of counselling therapy by its members and without restricting the generality of the foregoing,

(a) governing and regulating

(i) the admission, suspension, expulsion, removal, discipline and reinstatement of members, the conditions precedent to registration or membership in the College, the conditions for continued registration or membership in the College,

(ii) the registration, licensing and renewal, suspension, cancellation, and reinstatement of registration and licensing of counselling therapists and professional corporations, including the

imposition of conditions, limitations or restrictions on any membership, licence or registration issued or granted under this act, and

(iii) the registration of persons having significant experience but not having educational qualifications usually required for registration;

(b) developing, establishing, defining, maintaining and administering standards

(i) for continuing professional development and education and the participation therein of members,

(ii) for the practice of counselling therapy,

(iii) of professional ethics and conduct for members, and

(iv) of education and experience for the general or specialized practice of counselling therapy, including standards for specialty courses leading to qualifications as a specialist;

(c) creating one or more categories of membership and prescribing the rights, privileges and obligations of the members of each category;

(d) respecting and regulating professional liability insurance for members including requirements of such insurance for all or certain categories of members or areas of practice, requiring any member to have as a condition of registration professional liability insurance and prescribing the amounts of such insurance, whether such insurance is provided by or through the College or otherwise;

(e) approving schools, persons, organizations or institutions authorized to offer courses, courses of study, education programs, or counselling education programs, leading to registration or membership in the College and establishing terms and conditions for approval or continued approval of such schools, persons, organizations or institutions, including basic standards of curricula;

(f) developing, establishing, prescribing, maintaining, administering and regulating

(i) the education and other qualifications and standards required of students,

(ii) standards for students and the duties, tasks, services and functions that may be performed by students and the conditions under which they may be performed,

(iii) if considered necessary by the Board, methods of and requirements for the membership and discipline of students and for the suspension, restriction or cancellation of membership of students, including methods for setting fees or dues payable to the College by students and providing for the collection thereof, and

(iv) the duties, tasks, services and functions that the students are prohibited from performing;

(g) defining classes of specialists in the various branches of counselling therapy and

(i) dividing the specialists register into parts representing the classes of specialists as defined by by-law,

- (ii) prescribing the qualifications required for registration in the specialists register and for the issuance of a specialist registration or licence,
- (iii) providing for the renewal, cancellation, suspension, revocation and reinstatement of any registration in the specialists register and the imposition of conditions, limitations and restrictions on any specialist's registration,
- (iv) providing for the regulation and prohibition of the use of terms, titles or designations indicating specialization in any branch or field of counselling therapy, and
- (v) prescribing the duration of registrations in the specialists register;
- (h) fixing the method of setting annual and other fees, including without limiting the foregoing fees for admission, membership, registration, licensing, insurance and testing or examination, and providing for the collection thereof;
- (i) establishing the time for, and manner of, the election or appointment and the number of the directors of the Board;
- (j) fixing and regulating the quorum time, place, calling and conduct of annual and special general meetings of the members of the College, the Board and committees of the College or the Board, establishing the method of voting, including voting by mail, proxy voting, delegate voting, electronic voting or other means and establishing the qualifications of persons entitled to vote;
- (k) providing for the organization of regional or other divisions of the College;
- (l) prescribing the terms of office of directors of the Board and the manner in which the vacancies on the Board may be filled;
- (m) governing the acquisition, management, disposal, and conduct of the property and affairs of the College;
- (n) providing for the appointment, removal, functions, duties and remuneration of agents, directors and employees for the College, and the security, if any, to be given by them to the College;
- (o) establishing and regulating such committees as the Board may deem necessary to carry out the business of the College;
- (p) delegating to directors, officials, employees or committees any of the duties, powers and privileges of the Board, except the power to make, amend or repeal by-laws;
- (q) generally, facilitating all such matters as may be deemed by the Board to be necessary or desirable for the practice of counselling therapy by its members and the administration of the College or to advance or protect the interests of the public, the members or the College;
- (r) promoting the professional welfare of the members of the College;
- (s) respecting and governing the management and disposition of trust, charitable or benevolent funds committed to the care of the College; and

(t) setting the fiscal year of the College and determining the place where the head office of the College shall be located and the place or places where other offices of the College shall be located.

5(2) By-laws relating to admission of members and the conditions precedent of membership in the College described in subparagraphs 5(1)(a)(i) and (ii) shall not be effective or be acted upon until confirmed by the Minister.

5(3) The Board shall at least thirty days before the next meeting of the members of the College submit all by-laws or amendments or repeal of any by-law made under subsection (1) to the members of the College and the members may, at that meeting by ordinary resolution, confirm, reject or amend the by-laws, amendment or repeal thereof.

5(4) A by-law, or an amendment or a repeal of a by-law made by the Board is effective from the date of the resolution of the Board until it is confirmed, confirmed as amended or rejected by the members under subsection (3) or until it ceases to be effective under subsection (5) and, where the by-law is confirmed or confirmed as amended, it continues in effect in the form in which it was so confirmed.

5(5) Where a by-law or an amendment or a repeal thereof is rejected by the members or where the Board does not submit the by-law, amendment or repeal to the members as required under subsection (3), the by-law, amendment or repeal ceases to be effective and no subsequent resolution by the Board to make, amend or repeal a by-law having substantially the same purpose or effect is effective until it is confirmed or confirmed as amended by the members.

5(6) No act done, or right acquired, under any by-law to which subsection (4) applies is prejudicially affected by the subsequent rejection or variation of that by-law at a general meeting of the College.

5(7) A member entitled to vote at an annual meeting of the College may make a proposal to make, amend or repeal a by-law.

5(8) A member making a proposal pursuant to subsection (7) shall send the written proposal to the Board at least sixty days before the date of the next annual meeting.

5(9) Upon receiving the proposal from a member to make, amend or repeal a by-law, the Board shall cause the proposal to be published in the agenda for the next general meeting of the College which agenda shall be distributed to the members in accordance with the by-laws of the College, but where there is not sufficient time before the next general meeting of the College to distribute the proposal in accordance with the provisions of the by-laws then the proposal shall be contained in the agenda for the next following general meeting and shall be distributed to the members in accordance with the by-laws prior to such meeting of the College.

5(10) The Board may, from time to time, in such amounts and on such terms as it considers expedient

- (a) borrow money upon the credit of the College;
- (b) issue, reissue, sell or pledge debt obligations of the College;

(c) charge, mortgage, hypothecate, pledge or otherwise create a security interest in all or any currently owned or subsequently acquired, moveable or immovable property of the College, to secure any debt obligation or any money borrowed or other debt or liability of the College; or

(d) give a guarantee on behalf of the College to secure performance of an obligation of another person.

5(11) The Board may from time to time delegate to such one or more of the directors and officers of the College as may be designated by the Board, all or any of the powers conferred on the Board in subsection (10), to such extent and in such manner as the Board shall determine at the time of each such delegation.

RULES

6(1) Unless this act or by-laws otherwise provide, the Board may by resolution make any rules not contrary to the by-laws regulating any of the aspects, subjects or matters of the business or affairs of the College as may be governed by by-law and any such rule shall be valid, binding and effective from the date of the resolution of the Board until amended or repealed by an ordinary resolution at an annual, or special or general meeting of the College called for the purpose of considering the same.

6(2) Any amendment or repeal of a rule by the Board shall be made by a rule.

7 No act or thing done in reliance on, or right acquired under or pursuant to, a by-law or rule that is subsequently repealed or amended shall be prejudicially affected by such repeal or amendment.

PUBLIC ACCESS TO BY-LAWS AND RULES

8 The *Regulations Act*, R.S.N.B. 2011, c. 218 does not apply to the College or any by-law, rule, or resolution made by the College or the Board but all the by-laws and the rules of the College or the Board shall be available for inspection by any person at the head office of the College at all reasonable times during business hours, free of charge.

EXECUTIVE DIRECTOR/REGISTRAR/EXECUTIVE COMMITTEE

9(1) The Board shall appoint a Registrar of the College who shall hold office during the pleasure of the Board.

9(2) The Board may appoint an Executive Director who shall hold office during the pleasure of the Board.

9(3) The Executive Director shall at all times be subject to the directions of the Board.

9(4) The offices of Registrar and Executive Director may both be held by one person at the same time.

9(5) There may be an executive committee of the Board composed of directors of the Board, that, between meetings of the Board or at such other times as may be prescribed, may carry out any of the duties and exercise any of the powers and privileges of the Board and the executive committee shall carry out such other duties as may be assigned to it from time to time by the Board, the by-laws or the rules.

9(6) The number of members of the executive committee, their respective terms of office, the manner of their appointment or election and their qualifications shall be established and governed by the by-laws.

PART III – REGISTRATION AND MEMBERSHIP

10(1) The Registrar shall keep or cause to be kept:

(a) a register in which shall be entered the name and address of every person who has met the qualifications for registration as a licensed counselling therapist pursuant to this act, the by-laws and the rules and is thereby entitled to engage in the practice of licensed counselling therapy;

(b) a temporary register in which shall be entered the name and address of every person who is permitted to carry on the practice of licensed counselling therapy in the province under such circumstances and with such conditions, limitations and restrictions and for such temporary and limited periods of time as are prescribed;

(c) a professional corporations register in which shall be entered the name and address of every professional corporation which offers services in counselling therapy under this act, the by-laws or the rules, and the names and addresses of the officers and directors of such professional corporations;

(d) a specialists register in which shall be entered the name, address, qualifications and specialty of every licensed counselling therapist who is entitled to be registered in the specialists register under this act, the by-laws or the rules; and

(e) 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 the by-laws, other than persons whose names are entered in the register, the temporary register or the specialists registers.

10(2) The register, temporary register, professional corporations register, specialists register and rosters may be divided into such parts as may be prescribed in which shall be entered the names of persons qualified pursuant to the by-laws and the rules, for such categories, classifications and levels of registration, membership or practice, and to use such designations as may be prescribed.

10(3) Every person who qualifies for registration under the provisions of the by-laws and the rules may, upon payment of the prescribed fee, have their name entered in the register or the appropriate part thereof upon providing to the Registrar satisfactory evidence of that person's qualifications and experience.

10(4) An applicant who is refused registration by the Registrar may, by written notice, appeal that decision in the manner prescribed in the by-laws and the rules.

10(5) The College when exercising its powers and offering its services under this act shall comply with all provisions of the *Human Rights Act*, chapter 171 of the Revised Statutes of New Brunswick, 2011 and the *Official Languages Act*, chapter O-0.5 of the Acts of New Brunswick, 2002, as amended from time to time, applicable to the College.

11(1) No licensed counselling therapist shall engage in the private practice of counselling therapy without first providing the Registrar with proof of valid professional liability insurance in the minimum amount required by the by-laws and providing proof of renewal of such insurance each year thereafter.

11(2) No person shall practise in the field of licensed counselling therapy or hold themselves out for employment as a licensed counselling therapist unless that person's name is entered in the register or temporary register and persons so registered may practise or hold themselves out as a licensed counselling therapist only to such extent as is authorized by this act, the by-laws and the rules.

11(3) No person shall bring an action in any court to collect fees, compensation or other remuneration, for services performed as a licensed counselling therapist unless registered under this act.

12 The registers shall be open to inspection by any person at the office of the Registrar at all reasonable times during regular business hours free of charge; but any officer or employee of the College may refuse such access to the registers if there is reasonable cause to believe that the person is seeking access merely for commercial purposes.

13(1) Persons whose names are entered in the register or in the temporary register are entitled to practise as licensed counselling therapists in New Brunswick subject to any conditions, limitations or restrictions imposed by the by-laws or the rules, are entitled to hold themselves out as a licensed counselling therapist and to use such titles and designations as are prescribed.

13(2) Persons whose names are not entered in the register or temporary register shall not practise as licensed counselling therapists or hold themselves out as a licensed counselling therapist in the Province, or take or use the designations "licensed counselling therapist", "licensed career counsellor", "registered counselling therapist", or "registered career counsellor" or the initials "LCT", "LCC", "RCT", or "RCC" or the abbreviation "Lic. C.T.", "Lic. C.C.", "Reg. C.T." or "Reg. C.C." or other titles, names, descriptions, initials or designations, either alone or in combination with other words, letters or descriptions that imply they are entitled to practise as a licensed counselling therapist.

14 A statement certified under the hand of an officer of the College respecting the registration status of a person is admissible in evidence as *prima facie* proof of the facts therein specified respecting the registration status of that person under this act and is *prima facie* proof of any conditions, limitations or restrictions set out in the statement, if any, as applicable to that person.

15(1) Nothing herein prohibits the practice of counselling therapy in New Brunswick or the recovery of fees or compensation for professional services rendered as a counselling therapist by a person registered in good standing in another country, state, territory or province and whose engagement requires that person to help a client in New Brunswick during the period of the engagement, if that person does not represent or hold themselves out as a person licensed or registered under the provisions of this act, for such limited period of time and subject to such conditions, limitations and restrictions as may be set out in the by-laws or the rules.

15(2) Any person who was entitled to practise counselling therapy or entitled to use any designation indicating he or she was a member of a counselling therapy association pursuant to the laws governing or concerning the practice of counselling therapy in any other jurisdiction and who has been suspended from or otherwise restricted in or disqualified from practising counselling therapy or using any such designation in another jurisdiction by reason of illness, incapacity, professional misconduct, dishonesty or incompetence shall not be entitled to apply for registration or to be registered under the provisions of this act until such time as the suspension, restriction or disqualification has been removed in the other jurisdiction.

16 Any person who is enrolled as a student in a counselling educational program may perform the tasks, duties and functions constituting part of the student's course of study, subject to such conditions, limitations and restrictions as may be prescribed.

17(1) The Registrar shall cause the name of a member to be removed from the register, temporary register or specialists register:

- (a) at the request or with the written consent of the member;
- (b) where the name has been incorrectly entered;
- (c) where notification is received of the member's death;
- (d) where the registration of the member has been revoked or suspended; or
- (e) when a person no longer meets the requirements for continued registration.

17(2) The Registrar shall remove or cause the removal of the name of any person from the register, the temporary register, the specialists register, or the professional corporations register, who fails to meet or maintain the qualifications and standards for entry in such register.

17(3) The registration of a licensed counselling therapist shall terminate and cease to have effect when the licensed counselling therapist's name is removed from the register in accordance with this act, the by-laws or the rules.

17(4) Where the name of a member is removed from the register, temporary register or specialists register, the Registrar shall forthwith, by ordinary mail addressed to the latest address shown on the register, temporary register or specialists register, notify the member that the member's name has been removed from the register.

17(5) On such grounds and subject to such conditions as may be prescribed, the name of a person removed from the register, temporary register or specialists register may be restored upon payment to the College of:

- (a) all amounts owing by the person to the College; and
- (b) such additional sums as may be prescribed.

17(6) The Registrar shall cause a licence or renewal thereof to be issued annually or at such other times as may be prescribed to every person whose name is entered in the register, temporary register, or specialists register, and to professional corporations entered in the professional corporations register, and the licence shall state the date upon which it expires, the type of licence and any conditions, limitations or restrictions imposed on the person or professional corporation to whom the licence is issued.

EMPLOYER OBLIGATIONS

18 Every person, other than a client or any person acting on behalf of a client without expectation or hope of monetary compensation, who engages a person to act as a licensed counselling therapist and every agency or registry that procures employment or work for a person as a licensed counselling therapist

(a) shall ensure at the time of engagement and at least once each year thereafter if such engagement is continuing, that the person is the holder of a current registration and licence under this act; and

(b) where a person's engagement as a licensed counselling therapist is terminated because of dishonesty, incompetence or incapacity, shall forthwith report the matter to the College and provide a copy of the report to the person whose engagement is terminated.

PART IV – PROFESSIONAL CORPORATIONS

19(1) No corporation shall be entitled to have its name entered in a register other than the professional corporations register.

19(2) No professional corporation shall be entitled to vote at any meeting of the College.

19(3) All the provisions of this act, the by-laws and the rules applicable to a member apply with all necessary modifications to a professional corporation unless otherwise expressly provided.

19(4) The Board may make by-laws

(a) prescribing the types of names, designations or 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 licensed counselling therapists,

may be known, and

(b) regulating the practice of counselling therapy by professional corporations and requiring the filing of such reports, information and returns the Board considers necessary.

20(1) The articles of incorporation, articles of continuance or other constating documents of each professional corporation shall not prevent the professional corporation from

(a) engaging in every phase and aspect of rendering the same counselling therapy to the public that a licensed counselling therapist is authorized to render; and

(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 counselling therapy 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.

20(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.

20(3) The legal and beneficial ownership of all issued shares of a professional corporation other than those referred to in subsection (2) shall be vested in the persons prescribed.

20(4) 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.

20(5) The practice of counselling therapy on behalf of a professional corporation shall be carried on by licensed counselling therapists.

20(6) For the purposes of subsection (5), the practice of a licensed counselling therapist shall be deemed not to be carried on by clerks, secretaries, assistants and other persons employed by the professional corporation to perform services that are not usually and ordinarily considered by law, custom or practice to be services that may be performed only by a licensed counselling therapist.

20(7) 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), (4) or (5) no longer exist.

20(8) Where a professional corporation ceases to fulfill any condition specified in subsections (2), (3) or (4) by reason only of

- (a) the death of a member of the College,
- (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 or licence of a member,

the professional corporation has one hundred and eighty days or such longer period as the Board may permit, 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 and licence of the professional corporation.

21 A professional corporation may offer counselling therapy in its own name, subject to any conditions, limitations or restrictions as may be prescribed or as set out in its registration or licence.

22 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 of the provisions of this act, the by-laws or the rules to the member.

23 Nothing contained in this act, the by-laws or the rules respecting professional corporations shall affect, modify or limit any ethical obligation of a licensed counselling therapist.

PART V – OFFENCES AND ENFORCEMENT

24(1) Except as provided in this act, the by-laws or the rules, no person other than a person whose name is entered in the register or the temporary register shall

(a) publicly or privately, whether or not for hire, gain or hope of reward hold themselves out in any way as being a licensed counselling therapist or as being entitled to practise as a licensed counselling therapist; or

(b) assume or use any title, name, designation, initials or description, including those referred to in this act, that could lead the public to believe that person is a member of the College or a licensed counselling therapist.

24(2) Any person authorized to practise as a licensed counselling therapist or hold themselves out as a licensed counselling therapist or specialist under the provisions of this act who practises as a licensed counselling therapist in violation of any condition, limitation or restriction imposed upon that person's registration or membership or who fails to inform that person's employer of any such condition, limitation or restriction commits an offence.

25 Any professional corporation that breaches or permits the breach of any condition, limitation or restriction imposed upon its licence or registration commits an offence and an officer, director, agent or shareholder who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and liable to the punishment provided for the offence, whether or not the professional corporation has been prosecuted or convicted.

26 Any person who knowingly furnishes false or misleading information in or in respect of any application made under this act, the by-laws or the rules or in any statement or return required to be furnished under this act, the by-laws or the rules, commits an offence.

27(1) A person who violates any provision of this act commits an offence and is liable on summary conviction to a fine not less than

(a) \$1,000 for a first offence;

(b) \$5,000 for a second offence; or

(c) \$10,000 for a third or subsequent offence

or to imprisonment for a term not exceeding six months, or both; and upon failure to pay a fine imposed under paragraphs (a), (b) or (c), to imprisonment for a term of not more than six months.

27(2) All fees, fines and penalties payable under this act shall be paid to the College and belong to the College.

27(3) Any information to be laid under this act may be laid by the Registrar or any member of the College authorized by the Board.

27(4) The Board may institute and carry on or authorize any person to institute or carry on the prosecution of any offence under this act.

28 Where a member or former member or an applicant for registration does or attempts to do anything contrary to the provisions of this act, the by-laws or the rules, the doing of such thing may be restrained by an injunction of the Court at the instance of the Board acting in the name of the College.

29 Where any person other than a person described in section 28 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 at the instance of the Board acting in the name of the College.

30(1) No prosecution for an offence under this act shall be commenced after the expiration of one year from the date of the last act that is part of the alleged offence.

30(2) Where a violation of any provision of this act continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues.

30(3) For the purposes of this act, proof of the performance of one act in the practice of counselling therapy on one occasion is sufficient to establish that a person has engaged in the practice of counselling therapy.

31(1) The provisions of this act do not prevent any person from giving necessary counselling therapy in case of urgent need.

31(2) Nothing in this act applies to, prohibits or prevents:

(a) the practice of medicine by a person authorized to carry on such practice under the *Medical Act*;

(b) the practice of nursing or the practice of a nurse practitioner by a person authorized to carry on such practice under the *Nurses Act*;

(c) the practice of psychology by a person authorized to carry on such a practice under the *Psychologists Act*;

(d) the practice of social work by a person authorized to practise under the *New Brunswick Association of Social Workers Act, 1988*;

(e) the practice of school or guidance counselling by a teacher authorized under the *Education Act*;

(f) the practice of counselling therapy by any person if that person does not represent or hold out to the public that the person is registered or licensed under this act or a member of the College and provided such person does not assume or use the titles, names, designations, initials or descriptions referred to in this act; or

(g) the carrying on of any profession by a person authorized to carry on such profession by any public or private act of the Legislature.

PART VI – COMPLAINTS, DISCIPLINE AND FITNESS TO PRACTISE

COMPLAINT

32(1) In this Part “complaint” means any complaint, report or allegation in writing and signed by the complainant regarding the conduct, actions, competence, character, fitness, capacity, health or ability of a member and includes a request referred to in subsection (2) and “member” includes former member, and any person whose name is or was entered in any register of the College.

32(2) In the absence of a complaint, if the Registrar has reason to believe that the conduct or actions of a member may constitute professional misconduct, incompetence, incapacity or other conduct referred to in subsection 34(1), the Registrar may request the Complaints Committee to investigate the conduct, competence or capacity of the member as a complaint.

32(3) Upon receiving a complaint referred by the Registrar or a request from the Registrar, the Complaints Committee shall investigate the matter raised by the complaint or in the request.

33 For all purposes under this act the complaint referred to in and to be dealt with in accordance with the Discipline and Fitness to Practise provisions of this act, the by-laws and the rules is the original complaint defined in subsection 32(1) or the request under subsection 32(2) and there shall be no requirement that any person prepare any summary of the complaint or any charges with respect to such complaint.

REGISTRAR AND REVIEW OF COMPLAINTS RECEIVED

34(1) Subject to subsection (3), the Registrar shall refer all complaints received to the Complaints Committee if the complaint in substance alleges that:

- (a) a member’s conduct constitutes:
 - (i) professional misconduct;
 - (ii) conduct unbecoming a member including any conduct that might adversely affect the standing or good name of the profession or the College;
 - (iii) incompetence;
 - (iv) any conduct in breach of the provisions of this act, the by-laws or the rules;
 - (v) dishonesty; or
 - (vi) any conduct rendering the member unfit or incapable or demonstrating that the member is unfit or incapable of continuing to practise as a licensed counselling therapist; or
- (b) the member is suffering from any ailment, condition or incapacity rendering the member unfit or incapable of continuing to practise as a licensed counselling therapist.

34(2) A copy of all complaints against a member referred to the Complaints Committee shall immediately be forwarded to the member.

34(3) The Registrar, upon receipt of a complaint, shall make such enquiries and obtain such information as the Registrar deems necessary in order to determine if the complaint meets the requirements of this act and in substance warrants further consideration in respect of the conduct, actions or capacity of the member and, in making such decision, shall consider:

- (a) if the complaint is frivolous or vexatious;
- (b) if there is insufficient evidence of the conduct, actions or incapacity of the member who is the subject of the complaint to be considered; and
- (c) if the complaint is primarily concerned with the fees and financial charges of the member;

and if the Registrar determines any of the above circumstances apply, the Registrar may dismiss the complaint and so advise the member and the complainant of the Registrar's decision.

COMPLAINANT'S RIGHT OF REVIEW OF REGISTRAR'S DECISION

34(4) A complainant who is dissatisfied with the decision of the Registrar in disposing of the complaint may request in writing a review by the Complaints Committee.

34(5) Upon receipt of a request under subsection (4) the Complaints Committee may confirm the decision of the Registrar to dismiss the complaint or process the complaint in accordance with this act, the by-laws and the rules.

34(6) The Registrar or the Complaints Committee shall advise the complainant and the member in writing of the disposition of a complaint under subsection (5), and shall give a summary of its reasons.

COMPLAINTS COMMITTEE

34(7) The Board shall maintain a standing committee known as the Complaints Committee, which in this section and section 35 is referred to as the "Committee".

34(8) The Committee shall be composed of licensed counselling therapists and at least one person who is not a member shall be appointed to represent the public by the Board and none of the Committee members shall be a director of the College or a member of the Discipline Committee or the Fitness to Practise Committee.

34(9) The quorum, number of Committee members, their terms of office, qualifications and the manner of their appointment shall be established and governed by the by-laws and the by-laws may regulate the procedures, functions and operations of the Committee and may permit the establishment of panels of the Committee to act for and to carry out and exercise all the duties and powers of the Committee.

34(10) The Board shall appoint one of the members of the Committee who shall be a licensed counselling therapist to be the chairperson of the Committee.

34(11) The Committee shall

- (a) consider and investigate all complaints delivered to it, and

(b) perform such other duties as may be assigned to it by the Board, the by-laws or the rules.

34(12) The Committee shall consider only written evidence and in this section the term “evidence” includes any document which may be presented to the Committee.

34(13) The Committee may engage such persons it considers necessary including legal counsel to assist it in the consideration and investigation of complaints and shall, subject to the by-laws and the rules, determine its own rules of procedure, and in no case is the Committee bound to follow the rules of evidence or procedure applicable in judicial proceedings.

34(14) The Committee may, at any time following the receipt of a complaint, subject to such restrictions and procedures as may be prescribed, attempt to informally mediate and resolve a complaint.

34(15) Any member against whom a complaint has been made shall be entitled to

(a) prompt notice that a complaint has been received by the Committee or that the Board has caused an investigation to be commenced by the Committee and a copy of the complaint;

(b) copies of all reports, documents and evidence presented to the Committee in writing concerning the complaint, other than privileged documents; and

(c) at least fourteen days' notice of the first meeting of the Committee called to consider the complaint, which notice shall be accompanied by copies of all reports, documents and evidence in writing concerning the complaint, other than privileged documents, then in the possession of the Committee, and the opportunity after such notice to submit to the Committee in writing any explanation, evidence, documents or representation the member may wish to make concerning the complaint or investigation.

34(16) Where the Committee has reasonable grounds to believe that a member who is the subject of an investigation is incapacitated, the Committee may require the member to submit to physical or mental examinations or both by one or more qualified persons selected by the Committee and, subject to subsection (19), may make an order directing the Registrar to suspend the member's registration and licence until the member submits to the examinations.

34(17) Where the Committee has reasonable grounds to believe that a member who is the subject of an investigation is incompetent, the Committee may require the member to submit to such examinations as the Committee may require in order to determine whether the member has adequate skill and knowledge to practise counselling therapy and, subject to subsection (19), may make an order directing the Registrar to suspend the member's registration and licence until the member submits to the examinations.

34(18) Subject to the by-laws, if the Committee in its absolute discretion at any time after the receipt of a complaint considers it necessary or advisable, it may without hearing require any member or professional corporation to submit to an examination, inspection or audit of its practice, business, books and records by such person or persons as the Committee may designate and if the member or professional corporation fails to submit to such examination, inspection or audit the Committee may without further notice suspend the member's or professional corporation's registration and licence until the member or the professional corporation does so.

34(19) No order shall be made by the Committee under subsections (16), (17) or (18) with respect to a member unless the member has been given

- (a) notice of the intention of the Committee to make the order, and
- (b) at least fourteen days to make written submissions to the Committee after receiving the notice.

34(20) Any person who conducts an examination under this section shall prepare and sign an examination report containing the examination findings and the facts on which they are based and shall deliver the report to the Committee.

34(21) The Committee shall forthwith deliver a copy of the examination report to the member who is the subject of the investigation.

34(22) A report prepared and signed by a person referred to in subsection (20) is admissible as evidence at a hearing without proof of its making or of the person's signature if the party introducing the report gives the other party a copy of the report at least ten days before the hearing.

34(23) The Committee, at any time after requiring a member to submit to examinations under this section, may refer the matter of the member's alleged incapacity or incompetence to the Discipline Committee or Fitness to Practise Committee.

34(24) A member who fails to submit to an examination under subsections (16) or (17) commits an act of professional misconduct.

34(25) After the completion of any investigation of a complaint and after considering the submission of the member and considering or making a reasonable attempt to consider all documents and information it considers relevant to the matter, the Committee may

- (a) direct that no further action be taken if, in the opinion of the Committee, the complaint is frivolous or vexatious or there is insufficient evidence of professional misconduct, incompetence or incapacity,
- (b) refer allegations referred to in subsection (1) to the Discipline Committee or Fitness to Practise Committee,
- (c) caution or reprimand the member,
- (d) take such other action as it considers appropriate in the circumstances that is not inconsistent with this act or the by-laws, or
- (e) without hearing, suspend the registration, licence or membership of a member if the Complaints Committee has reasonable and probable grounds for believing that the member in question has been convicted of any criminal or other offence of such kind or type that the Complaints Committee is of the opinion that the continued registration, licensing or membership of the member in question would affect the good name of the College or the profession or would be contrary to the interests of the public or the member's clients and upon the Complaints Committee ordering the suspension the Committee shall immediately refer the matter to the Discipline Committee as a complaint.

34(26) The Committee shall prepare a summary of its findings and its decision in writing and shall send a copy to the member and the complainant, if any, by ordinary mail.

34(27) Nothing in this section requires that examinations ordered under subsections (16), (17) or (18) be carried out before the Committee acts under subsection (25).

34(28) Notwithstanding any other provision in this act, if at any time the Committee deems it appropriate that a complaint be resolved by an alternate dispute resolution process, and the member is in agreement with the referral of the complaint to such process, the Committee may enter into an agreement with the member providing for the resolution of the complaint by an alternate dispute resolution process set out in the agreement which may provide that any order, finding or decision that may be made under this act may be made as part of the dispute resolution.

ACTION BY COMPLAINTS COMMITTEE TO PROTECT THE PUBLIC

35(1) Where the Committee refers a complaint to the Discipline Committee or Fitness to Practise Committee or where the Committee considers the action necessary to protect the public pending the conduct and completion of proceedings before the Committee in respect of a member, the Committee may, subject to subsection (2), make an interim order

- (a) imposing specified conditions, limitations and restrictions upon the member's registration or licence, or
- (b) suspending the member's registration or licence.

35(2) No order shall be made by the Committee under subsection (1) unless the member has been given

- (a) notice of the Committee's intention to make the order, and
- (b) at least fourteen days to make written representations to the Committee in respect of the matter after receiving the notice.

35(3) Where the Committee takes action under subsection (1), the Committee shall notify the member of its decision and the reasons for the decision in writing.

35(4) An order under subsection (1) continues in force until the matter is disposed of by the Discipline Committee or the Fitness to Practise Committee, unless the order is stayed pursuant to an application under subsection (5).

35(5) A member against whom action is taken under subsection (1) may apply to the Court for an order staying the action of the Committee.

35(6) If an order is made under subsection (1) by the Committee in relation to a complaint referred to the Discipline Committee or the Fitness to Practise Committee, the College and the Discipline Committee or the Fitness to Practise Committee shall act expeditiously in relation to the complaint.

DISCIPLINE AND FITNESS TO PRACTISE COMMITTEES

36(1) The Board shall maintain two standing committees known as the Discipline Committee and the Fitness to Practise Committee, which in this section and sections 37 and 38 shall be referred to as the “Committee.”

36(2) The Committee shall be composed of licensed counselling therapists and at least one person who is not a member shall be appointed to represent the public by the Board and none of the Committee members shall be a director of the College.

36(3) The quorum, number of Committee members, their terms of office, qualifications and the manner of their appointment shall be established and governed by the by-laws and the by-laws may regulate the powers, procedures, functions and operations of the Committee, may permit the establishment of panels of the Committee to act for and to carry out and exercise all the duties and powers of the Committee and may provide that members of each Committee may be members of both Committees.

36(4) The Board shall appoint one of the members of each Committee who shall be a licensed counselling therapist to be the chairperson of the Committee.

36(5) The College may engage legal counsel in respect of a complaint and shall have the right to appear and participate in any proceedings of the Committee or in any appeal.

36(6) The Committee shall conduct its proceedings in accordance with its own rules of procedure and may do all things and engage such persons including legal counsel it deems necessary to provide for the hearing and consideration of any complaint and in no case is the Committee bound to follow the technical rules of evidence or procedure applicable in judicial proceedings.

36(7) The Committee shall

- (a) hold a hearing respecting the allegations against the member that have been referred to it by the Complaints Committee;
- (b) where the Committee, in its discretion considers it appropriate, attempt to informally mediate and resolve a complaint; and
- (c) perform such other duties as may be assigned to it by the Board, the by-laws or the rules.

36(8) The Committee shall

- (a) where a hearing is conducted, consider the complaint, hear the evidence, ascertain the facts and make a decision with respect to the merits of each complaint as to whether the allegations respecting a matter described in paragraph 34(1)(a) have been established, or whether the member is suffering from an ailment, condition or incapacity described in paragraph 34(1)(b), in such manner as it deems fit;
- (b) if the Committee in its absolute discretion at any time after the receipt of a complaint considers it necessary or advisable, require the member in respect of whom a complaint is made to submit to physical or mental health examinations by such qualified person or persons as the Committee may designate and if the member fails to submit to any such examination the Committee

may without further notice suspend the member's registration, licence and membership until the member does so;

(c) if the Committee in its absolute discretion at any time after the receipt of a complaint considers it necessary or advisable, require the member in respect of whom a complaint is made to undergo such clinical or other examinations as the Committee may designate in order to determine whether the member has adequate skill and knowledge to practise counselling therapy and if the member fails to undergo any such examination the Committee may without further notice suspend the member's registration, licence and membership until the member does so; and

(d) if the Committee in its absolute discretion at any time after the receipt of a complaint considers it necessary or advisable, require any member to produce records and documents in the member's possession or custody or under the member's control or in the possession or custody or control of any corporation of which the member is a director, officer or shareholder, and if the member fails to produce such records and documents the Committee may suspend the member's registration, licence and membership until the member does so, unless the member is prohibited by law from producing such records and documents.

36(9) Any person who conducts an examination under this section shall prepare and sign an examination report containing the findings of the examination and the facts on which they are based and shall deliver the report to the Committee, a copy of which shall be forthwith delivered to the member who is the subject of the complaint, and such report is admissible as evidence at a hearing without proof of its making or of the person's signature if the party introducing the report gives the other party a copy of the report at least ten days before the hearing.

36(10) No order shall be made by the Committee under paragraphs (8)(b), (c) or (d) unless the member has been given

(a) notice of the Committee's intention to make the order, and

(b) at least fourteen days to make written representations to the Committee in respect of the matter after receiving the notice.

36(11) Where the Committee takes action under paragraphs (8)(b), (c) or (d), the Committee shall notify the member of its decision in writing and of the brief reasons for the decision, and an order under paragraphs (8)(b), (c) or (d) continues in force until the matter is disposed of by the Committee unless the order is stayed pursuant to an application under subsection (12).

36(12) A member against whom action is taken under paragraphs (8)(b), (c) or (d) may, within ten days after receiving notice of the order made by the Committee, apply to the Court for an order staying the action of the Committee.

36(13) After reviewing all of the evidence presented to it the Committee may as part of its decision with respect to the merits of any complaint

(a) order that the member's registration, licence or membership is suspended for a specific period of time during which the member's name shall be removed from any register in which the member's name may be entered;

- (b) order that the member's registration, licence or membership is suspended for such time and pending the satisfaction and completion of such conditions as may be ordered by the Committee;
- (c) order that the member's registration, licence or membership is revoked and the member's name be removed from any register in which the member's name may be entered;
- (d) where a member's registration is revoked, specify a period of time before which the former member may not apply for reinstatement;
- (e) order that conditions, limitations or restrictions are imposed on the member's practice, registration, licence or membership and so inform the member's employer, if any;
- (f) issue a reprimand;
- (g) dismiss the complaint;
- (h) impose such fine as the Committee considers appropriate, not exceeding \$10,000 to be paid by the member to the College for the use of the College and such fine may be recovered by the College by civil action for debt;
- (i) order that the imposition of any penalty be suspended or postponed for such period of time and upon such terms and conditions as the Committee deems appropriate;
- (j) make any one or more of the orders it may make under paragraphs (a) to (i) against any professional corporation of which the member is a director, officer or shareholder;
- (k) order that the costs of any investigation, proceeding or hearing be paid by the member to the College; or
- (l) make such other order as it deems just, including without limitation, an order combining two or more of the orders set out in paragraphs (a) to (k).

36(14) Where the Committee makes an order under subsection (13), the Committee may, by order, do one or more of the following:

- (a) direct the Registrar to give public notice of any order by the Committee that the Registrar is not otherwise required to give under this act; or
- (b) direct the Registrar to enter into the records of the College the result of the proceeding before the Committee and such result shall be available to the public.

36(15) Notwithstanding any other provision in this act, if at any time a member admits in writing any allegation in a complaint alleging a matter set out in subsection 34(1), and the member waives in writing the right to any other or further hearing or proceedings pursuant to this Part, the Committee may agree to cancel all hearings or proceedings and may

- (a) agree to accept the member's resignation on such terms and conditions as the Committee may specify, or
- (b) make any order, finding or decision that may be made pursuant to sections 36 or 44.

36(16) Subject to subsections (17) and (18), a hearing is open to the public.

36(17) The Committee may make an order that the public, in whole or in part, be excluded from a hearing or any part of it if the Committee is satisfied that

(a) financial, personal or other matters may be disclosed at the hearing of such a nature that the harm created by disclosure would outweigh the desirability of adhering to the principle that hearings be open to the public,

(b) a person involved in a criminal proceeding or in a civil suit or proceeding may be prejudiced, or

(c) the safety of a person may be jeopardized.

36(18) Where it thinks fit, the Committee may make orders it considers necessary to prevent the public disclosure of matters disclosed at a hearing, including orders prohibiting publication or broadcasting of those matters.

36(19) No order shall be made under subsections (17) or (18) that prevents the publication of anything that is contained in the register and available to the public.

36(20) The Committee may make an order that the public be excluded from the part of the hearing dealing with a motion for an order under subsections (17) or (18).

36(21) The Committee may make any order necessary to prevent the public disclosure of matters disclosed in the submission relating to any motion described in subsection (20), including prohibiting the publication or broadcasting of those matters.

36(22) The Committee shall state, at the hearing, its reasons for any order made under subsections (17) or (18) and any such order and the reasons for it shall be made available to the public in writing.

36(23) Where the Committee makes an order under subsections (17) or (18), wholly or partly, because of the desirability of avoiding disclosure of matters in the interest of a person affected, the Committee

(a) shall allow the parties, the complainant and their legal and personal representatives to attend the hearing, and

(b) may allow such other persons as the panel considers appropriate to attend the hearing.

37(1) Upon the application of

(a) any party to a hearing by the Committee,

(b) the chairperson of the Committee, or

(c) legal counsel for the College or the Committee,

and on payment of any fees prescribed, the Registrar may sign and issue writs of *subpoena ad testificandum* or *subpoena duces tecum* in prescribed form for the purpose of procuring and compelling

the attendance and evidence of witnesses and the production of things relating to matters in question before the Committee.

37(2) The proceedings and penalties in the case of disobedience to any writ of subpoena issued hereunder shall be the same as in the case of disobedience of a Summons to Witness in civil cases in the Court.

37(3) The testimony of witnesses shall be taken under oath or solemn affirmation which any member of the Committee is authorized to administer.

37(4) For the purposes of a hearing, the members of the Committee are conferred with the powers of a commissioner of oaths under the *Commissioners for Taking Affidavits Act*, R.S.N.B. 2011, c. 127.

37(5) The Committee may provide that oral evidence presented at a hearing is recorded and if so, copies of the transcript of the hearing shall be made available to a party at the party's request and at that party's expense.

37(6) No member of a Committee shall communicate outside the hearing, in relation to the subject matter of the hearing, with a party or the party's representative unless the other party has been given notice of the subject matter of the communication and an opportunity to be present during the communication.

37(7) The burden of proof in all proceedings before the Committee shall be the balance of probabilities.

38(1) In all proceedings before the Committee, the member against whom a complaint has been made and the complainant

- (a) may make a written or oral submission to the Committee before the calling of evidence and after the completion of evidence;
- (b) shall receive a notice to the member against whom the allegations have been made describing the subject matter of the hearing and advise the member that the Committee may proceed with the hearing in the member's absence;
- (c) may present evidence or make representations in either English or French;
- (d) may be represented by legal counsel, at their expense;
- (e) shall be entitled to a full right to examine, cross-examine and re-examine witnesses in accordance with the rules of procedure established by the Committee;
- (f) shall be entitled to receive copies of all documents presented to the Committee in connection with the complaint unless such documents are privileged by law;
- (g) shall be entitled to at least fourteen days' written notice of the date of the first hearing of the Committee; and

(h) shall be entitled to receive a copy of the decision, the reasons for the decision and the penalty imposed, if any, in writing and a statement of the rights of the parties to appeal the decision to the Court.

38(2) Before the hearing is completed, the Committee may, upon such terms as are just, permit further allegations to be brought or amendments to existing allegations in the complaint to be made with respect to the member.

38(3) Subsection 30(1) does not apply to any proceeding under Part VI or Part VII of this act.

38(4) Any person whose right to practise, registration, licence or membership is revoked, suspended, subjected to conditions, limitations or restrictions shall without demand forthwith deliver to the Registrar any licence, registration, certificate or validation seals issued under this act to such person.

38(5) Members of the Complaints Committee, Discipline Committee, Fitness to Practise Committee or the Board are not compellable as witnesses to testify in relation to the basis on which a decision was reached, any aspect of the decision or the decision-making process.

SEXUAL ABUSE OF A CLIENT

39(1) A member who sexually abuses a client commits an act of professional misconduct.

39(2) 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.

39(3) For the purposes of subsection (2), “sexual nature” does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

REPORTING SEXUAL ABUSE

40(1) A member who, in the course of practising the profession, has reasonable grounds to believe that another health professional has sexually abused a client and who fails to file a report in writing in accordance with subsection (4) with the governing body of the health professional twenty-one days after the circumstances occur that give rise to the reasonable grounds for the belief, commits an act of professional misconduct.

40(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.

40(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 best efforts to advise the client that the member is filing the report before doing so.

40(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 client of the health professional who is the subject of the report, the name of the client.

40(5) The name of a client who may have been sexually abused shall not be included in a report unless the client or, if the client is incapable, the client's representative, consents in writing to the inclusion of the client's name.

40(6) Subsections 39(2) and 39(3) apply with the necessary modifications to sexual abuse of a client by another health professional.

40(7) No action or other proceeding shall be taken against a member who in good faith files a report pursuant to subsection (1).

PART VII – APPEALS

41(1) If,

- (a) a complainant is dissatisfied with a decision of the Discipline Committee or Fitness to Practise Committee, or
- (b) a member against whom a complaint has been made is dissatisfied with a decision of the Discipline Committee or Fitness to Practise Committee, or
- (c) an applicant for registration or reinstatement of registration is dissatisfied with a decision made by the person or body empowered by by-law to make such decision with respect to the application,

such person may appeal from the decision by a written notice of appeal to the Court within thirty days of the date on which notice of the decision is mailed to the last known address of such party, or within such further time not exceeding sixty days as may be allowed by the Court.

41(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 Committee, person or body were held and upon any other party to the proceedings before the Committee, person or body.

42(1) In any appeal under this act the Registrar shall obtain a transcript or such other record as exists of the evidence presented to the Committee, person or body from whom the appeal is taken and shall prepare and present to the Court a record on appeal consisting of the transcript or such other record as exists, all exhibits and the order or other document evidencing the decision being appealed.

42(2) The Registrar shall provide the appellant and any other person entitled by the by-laws to participate in the appeal with a copy of the record on appeal upon payment by the appellant or such other person of the costs and disbursements of producing such copy.

43(1) On appeal the Court may

- (a) adjourn the proceedings or reserve the determination of the matters before it, and
- (b) upon granting special leave, and only where it is shown that such evidence was not previously available, receive further evidence.

43(2) After reviewing the record on appeal and hearing the evidence or argument presented the Court may

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

43(3) The Rules of Court governing civil appeals to The Court of Appeal of New Brunswick which are not inconsistent with this act shall apply with such changes as are necessary to appeals to the Court under this Part and the College shall have standing to appear and participate in any appeals to the Court.

43(4) Notwithstanding that an appeal to the Court may have been instituted in respect of a decision or order, that decision or order shall continue to be valid and binding and no stay of proceedings may be granted prior to the hearing of the appeal.

43(5) There shall be no appeal from any decision, order or finding of the College, the Registrar, the Board or any committee, officer, employee, or agent of the College or the Board or any other person, committee or body authorized to make decisions, orders or findings under this act, the by-laws or the rules, as the case may be, except appeals authorized or mentioned in section 41.

43(6) An appeal under this act shall be on any ground of appeal that involves a question of law alone or a question of mixed fact and law.

PART VIII – GENERAL

44(1) The Discipline Committee, the Fitness to Practise Committee or, on appeal, the Court, may order that the costs of any investigation, proceeding, hearing or appeal under this act be paid, in whole or in part

- (a) by the member against whom the complaint was made, except where the complaint is dismissed without any other decision or order adverse to that member; or
- (b) by the complainant where the committee or Court is of the opinion that the complaint or investigation was unwarranted;

and may make it a condition of the registration of any member or professional corporation that such costs be paid forthwith.

44(2) The costs payable under subsection (1), the amount of a fine under paragraph 36(13)(h) and the costs of conducting an inspection, examination, investigation or review of the practice of a member or professional corporation payable by a member or professional corporation may be certified by the Registrar as between solicitor and client, and upon filing the Registrar's certificate with the Clerk of The Court of Queen's Bench of New Brunswick in the judicial district in which the head office of the College is located and upon payment of any required fees, judgment shall be entered by The Court of Queen's Bench of New Brunswick for such amounts so certified in Form A of this act with necessary modifications.

44(3) Before hearing an appeal the Court may order that security for costs be paid to the College by the appellant in such amount and upon such terms as the Court may consider just.

COSTS DEFINED

44(4) For the purposes of this act, "costs" includes

(a) all legal and other costs, expenses and disbursements of any kind incurred by the College, the Complaints Committee, the Discipline Committee, the Fitness to Practise Committee, the Registrar or the Board in relation to an investigation, examination, proceeding, hearing or appeal;

(b) honoraria and expenses paid to members of the Complaints Committee, the Discipline Committee, or the Fitness to Practise Committee in relation to an investigation, proceeding, hearing or appeal; and

(c) the legal costs, expenses and disbursements incurred by any party to an investigation, proceeding, hearing or appeal.

MEETINGS

45(1) The Board and any committee of the Board or of the College may conduct meetings by telephone or other communication facilities in the manner and on the terms and conditions prescribed and persons participating in a meeting by such means shall be deemed to be present in person at that meeting.

RESOLUTIONS

45(2) A resolution, report, recommendation, decision, finding or order of the Board or any committee of the Board or of the College in writing signed by all directors or persons entitled to vote on such resolution, report, recommendation, decision, finding or order, or signed counterparts thereof, is as valid as if passed, enacted, determined or made at a meeting of the Board or such committee.

PUBLIC NOTICE

46 The Board may cause a notice of suspension or revocation or reinstatement of registration or membership to be published in any newspaper, with or without stating the reasons for such suspension or revocation or reinstatement, as the Board in its absolute discretion decides.

47(1) The Registrar shall forthwith enter into the records of the College:

(a) the result of every proceeding before the Discipline Committee or Fitness to Practise Committee that

- (i) resulted in the suspension or revocation of registration; or
- (ii) resulted in a direction under paragraph 36(14)(b); and

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

47(2) Where an appeal of the findings or decision of the Discipline Committee or Fitness to Practise Committee is finally disposed of, the notation referred to in paragraph (1)(b) shall be removed and the records adjusted accordingly.

47(3) For the purpose of paragraph (1)(a), “result”, when used in reference to a proceeding before a Discipline Committee or Fitness to Practise 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 professional misconduct.

47(4) The Registrar, upon payment of a reasonable fee, shall provide a copy of 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 conclusions of the proceedings referred to in subsection (1) in all other cases.

47(5) Notwithstanding subsection (4), the Registrar may provide, at the College's expense, a written statement of the information contained in the records in place of a copy.

REGISTRAR’S REPORT

48 The Registrar shall submit a written report annually to the Board containing a summary of the complaints received during the preceding year by source and type of complaint and the disposition of such complaints.

MEASURES TO PREVENT SEXUAL ABUSE

49(1) The College shall undertake measures for prevention of the sexual abuse of clients by its members.

49(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.

49(3) Measures referred to in subsection (2) may, where appropriate, be taken jointly with other organizations or Colleges of health professionals.

REPORT TO MINISTER

49(4) The College shall report to the Minister within two years after the commencement of this act and within thirty days at any time thereafter on the request of the Minister, respecting the measures it is taking and has taken to prevent and deal with the sexual abuse of clients by members of the College.

49(5) The College shall report annually to the Minister respecting any complaints received during the calendar year concerning sexual abuse of clients by members or former members of the College.

49(6) A report under subsection (5) 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 complaints are referred to the Discipline Committee or Fitness to Practise 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 Fitness to Practise 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.

LIABILITY

50 None of the College, the Board, any of the committees of the Board or of the College, or any committee or director, officer, employee or agent of any of the foregoing bodies or appointee of the Registrar shall be liable for any loss or damage of any kind suffered or incurred by any person as a result of anything done or not done, any proceedings taken, or any order made or enforced by it or them in good faith in the administration of or pursuant to this act, the by-laws or the rules.

LIMITATION OF ACTION

51 No action shall be brought against a member or former member or professional corporation 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 the person 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, a minor, a mental incompetent, or a person of unsound mind, two years from the date when such person becomes of full age, or of sound mind, or as the case may be,

whichever is longer.

NOTICE

52(1) Any notice or other document which is to be given to, filed with or served on the College shall be sufficiently given, filed or served if it is delivered personally or sent by prepaid ordinary mail to the Registrar.

52(2) Any notice or other document which is to be given to, sent to or served upon any person other than the College shall be sufficiently given, sent or served if it is delivered personally or if it is sent by prepaid ordinary mail to

- (a) the last address of that person as reported to the Registrar; or
- (b) the address for service endorsed upon the notice of intention to appeal.

53 Service by ordinary mail and receipt of any notice or document so mailed shall be deemed to be effected seven days after the date the notice or other document is deposited in the mail.

DUTY TO REPORT

54(1) Every member who believes a licensed counselling therapist to be suffering from a physical or mental condition or disorder of a nature and extent making it desirable and in the interests of the public that the member no longer be permitted to practise as a licensed counselling therapist or that the member's practice be restricted, shall disclose to the Registrar the name of such counselling therapist together with particulars of the condition or disorder and any failure by a member to comply with this subsection shall be deemed to be professional misconduct.

54(2) Subsection (1) does not apply to information obtained by a member which is confidential by reason of a counselling therapist-client relationship.

54(3) A person disclosing information under subsection (1) is not subject to any liability as a result thereof except where it is proved that such disclosure was made maliciously.

PROTECTION OF INFORMATION

55 Except for the purposes of a prosecution under this act, or in any court proceedings, or for the purpose of the administration and enforcement of this act, the by-laws and the rules, no person acting in an official or other capacity under this act, the by-laws or the rules shall:

- (a) knowingly communicate or allow to be communicated any information obtained in the course of administering this act, the by-laws or the rules; or
- (b) knowingly allow any other person to inspect or have access to, any document, file, correspondence or other record obtained in the course of administering this act, the by-laws or the rules.

PART IX – TRANSITIONAL

MEMBERS

56 *The name and address of every person who at the coming into force of this act is a member in good standing of any of the associations pursuant to the by-laws of the associations shall be entered in the register and such part thereof as may be designated by the Board.*

57 *Every person who at the commencement of this act is self-employed or employed as a counselling therapist in New Brunswick, subject to the requirements for registration prescribed, except the requirement of a master's level counselling degree, at any time within three years preceding that date, is eligible for registration and the name and address of every such person shall, upon application, be entered in the register, or the temporary register and such part or parts thereof as designated by the Board.*

POWERS OF COLLEGE

58(1) *Nothing in this act shall affect the powers and duties, tenure of office or terms of remuneration of any director or officer representing the associations or anything done or suffered, or any right, title or interest acquired before the commencement of this act, or any legal proceedings or remedy in respect of any such thing, right, title or interest.*

58(2) *Until repealed, altered or amended pursuant to this act, any fees prescribed of the associations and in force at the commencement of this act shall notwithstanding any conflict with this act continue in force and have full effect as if made under this act.*

59 *Notwithstanding any other provision of this act, upon this act coming into force the number of directors of the College, their respective terms of office, the manner of their appointment or election and their qualifications shall be in accordance with the following conditions:*

- (a) *there shall be eight directors consisting of four directors appointed by the Association francophone des conseillers en orientation du Nouveau-Brunswick Inc., and four directors appointed by agreement of the other two associations being, the (NBACT) New Brunswick Association of Counselling Therapists Inc. and the New Brunswick Professional Counsellors Association Inc./Association des conseillers professionnels du Nouveau-Brunswick Inc. prior to this act coming into force,*

- (b) there shall also be one director appointed by the Board to represent the public,*
- (c) the President shall be the Chair of the Board and shall be elected from among the directors by the Board for such term not exceeding two years as is determined by the Board,*
- (d) directors shall be appointed to terms not exceeding two years and shall be eligible for one renewal term, and*
- (e) there shall be an executive committee of the Board that shall be composed of at least one director appointed by each of the associations,*

until fifteen months after the coming into force of this act or such further time as may be prescribed, following which date this section shall no longer be of any force or effect.

60 Notwithstanding any other provision of this act, the first Board constituted under section 59 may enact the first by-laws of the College under this act and such by-laws shall be valid, binding and effective from the date enacted by the Board until approved, amended or repealed at the first annual meeting of members, or a special meeting of members called to consider such by-laws, following this act coming into force.

61 This act comes into force on June 1, 2017.

FORM A

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

JUDGMENT

(The Discipline/Fitness to Practise Committee) having on the ____ day of _____, A.D. 20____, ordered that A.B. pay the costs of ____ on an investigation, inspection, examination, proceeding [or hearing of a complaint made by C.D.] [or a fine] (or that C.D. pay the costs of ____ on an investigation, proceeding or hearing of a complaint made by the said C.D.); and

The fine [or costs] having been certified by the Registrar of the College of Licensed Counselling Therapists of New Brunswick on the ____ day of _____, A.D. 20____;

It is this day adjudged that the College of Licensed Counselling Therapists of New Brunswick or A.B. or C.D. or (as the case may be) recover from A.B. or C.D. the sum of \$____.

DATED this ____ day of _____, 20____.

Clerk of The Court of Queen's Bench of New Brunswick