

**CHARTERED PROFESSIONAL
ACCOUNTANTS OF ONTARIO**

**REGULATION 8-2
CAPACITY**

**Adopted by the Council pursuant to the *Chartered Professional Accountants
of Ontario Act, 2017*, and the Bylaws on June 22, 2017.**

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**REGULATION 8-2
CAPACITY**

Adopted by the Council pursuant to the *Chartered Professional Accountants of Ontario Act, 2017*, and the Bylaws on June 22, 2017.

Purpose

1. The purpose of this regulation is to set out the process for determining whether a Member is Incapacitated and, if so, the steps to be taken.
2. The object of every action taken, and every decision, finding, and order made under this regulation is to promote and protect the public interest.
3. Subject to section 2 and any other specific provision of this regulation, all reasonable efforts shall be made to preserve the confidential nature of any documents and information, and the dignity of the Member.

Definitions

4. In this regulation, words have the same meaning as they do in the Act and bylaws; and
 - 4.1 “potential capacity application” means a matter where there are reasonable grounds to believe a Member may be incapacitated within the meaning of the Act, section 43.

Registrar

5. The Registrar shall investigate any matter referred by the Director, Standards Enforcement or the Professional Conduct Committee as a potential capacity application.
6. The Registrar shall refer any application made by a Member pursuant to Regulation 4-3, section 5 to the Capacity Committee and may, prior to such referral, investigate the matter.
7. The Registrar may take notice of any information, whether published or not, that comes to his or her attention and may, but is not required to, consider such information as a potential capacity application to be investigated.

Professional Conduct Committee

8. Any referral as referenced in section 5 shall be in writing and shall include all information and documents relevant to the matter, but shall not be made unless and until there is substantiation the matter is a potential capacity application.

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9. The Professional Conduct Committee shall provide any further information and documents as requested by the Registrar forthwith.
10. A matter referred to the Professional Conduct Committee by the Registrar pursuant to section 16 shall not thereafter be referred to the Registrar as a potential capacity application, except at the discretion of the Registrar on fresh evidence.

Investigation

11. The Registrar may appoint an investigator to investigate a potential capacity application.
12. An investigator appointed by the Registrar under section 11:
 - 12.1 need not be a Member;
 - 12.2 shall be provided with, and produce on request, written confirmation of the appointment;
 - 12.3 shall have all the powers of an investigator under the Act;
 - 12.4 shall have the authority to investigate all matters relevant to the potential capacity application;
 - 12.5 shall have the authority to require any person subject to the authority of CPA Ontario to provide information in writing, produce documents, and attend in person, upon reasonable notice, with the investigator to answer questions and produce documents; and
 - 12.6 shall report as instructed by the Registrar at the conclusion of the investigation, and on an interim basis, the results, findings and factual determinations in support of the investigation.
13. The Member and his or her firm, if applicable, shall be notified in writing of the investigation. Such notice shall include a reminder of their professional responsibility to cooperate and of the possibility that some client documents in their possession might be subject to legal privilege.

Suspension by Registrar

14. Should the Registrar believe, on reasonable grounds, at any time during the investigation of a potential capacity application, that the Member may be Incapacitated and that there are grounds to believe there is a significant risk of harm to members of the public or to the public interest, a suspension would likely reduce that risk, and the

risk cannot be reasonably ameliorated by another available means, the Registrar may suspend the membership of that Member.

15. A suspension imposed pursuant to section 14 of this regulation may terminate on a specified date or upon the occurrence of a named event, and may be extended or renewed should the grounds set out in section 14 remain or recur, but no such suspension shall extend past the date of the Capacity Committee's order disposing of the matter, or for a total of 90 days of suspension by the Registrar under section 14 of this regulation, whichever comes first.

Determination

16. The Registrar shall consider any report made by the investigator, and all available relevant information and documents, and shall, if satisfied the investigation is complete, subject to section 6:
 - 16.1 take no further action;
 - 16.2 apply to the Capacity Committee for determination whether the Member is Incapacitated; or
 - 16.3 refer the matter back to the Professional Conduct Committee for consideration as a matter of professional misconduct.
17. The Registrar shall provide, in writing, the person referring, if the matter was referred as referenced in section 5, the Member, and, if applicable, the Member's firm, his or her determination and an explanation of any determination made pursuant to subsection 16.1 or 16.3, or to section 19, within ten (10) days of the determination being made.

Applications

18. A tribunal of the Capacity Committee shall hear every application brought before it by the Registrar under this regulation and every application brought by a Member under Regulation 4-3, section 5.
19. The Registrar may, at any time prior to the Capacity Committee making a finding as to incapacity, on receiving credible information indicating the Member is not Incapacitated, withdraw an application brought by the Registrar from the tribunal. Otherwise, the matter may only be withdrawn with the consent of all parties and leave of the tribunal.
20. If the Registrar withdraws an application from the Capacity Committee pursuant to section 19, the Registrar shall refer the matter to the Professional Conduct Committee for consideration as a matter of professional misconduct.

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21. The tribunal may, on its own or on motion, order the Member to undergo a medical or psychological examination if it determines it is necessary to obtain the opinion of a physician or psychologist to assist in deciding whether the Member is incapacitated.
22. The tribunal may suspend a Member who fails to comply with an order made under section 21 until such time as the Member complies.
23. The report of a physician or psychologist, or their testimony, made pursuant to an order under section 21 is admissible in evidence in a proceeding to determine capacity or custodianship, including any appeals, but not for any other purpose, and shall be sealed by the tribunal.
24. A tribunal may seek the advice of counsel to the tribunal during a hearing, and any advice shall be given on the record, and all parties shall have the opportunity to make submissions on that advice. The tribunal is not bound by the advice of its counsel.
25. A tribunal shall consider the evidence and make a determination whether, on the evidence, the Member is incapacitated.
26. Only members of the tribunal hearing an application shall participate in deliberations and make any decision and order on the matter.

Orders

27. If the tribunal finds the Member is or has been incapacitated, the tribunal may make one or more of the following orders:
 - 27.1 an order suspending the Member:
 - 27.1.1 for a definite period,
 - 27.1.2 until terms and conditions specified by the tribunal are met to the satisfaction of the Registrar, or
 - 27.1.3 for a definite period and, after that, until terms and conditions specified by the tribunal are met to the satisfaction of the Registrar;
 - 27.2 an order that the Member obtain or continue treatment or counselling, including testing and treatment for addiction to or excessive use of alcohol or drugs, or participate in other programs to improve his or her health;
 - 27.3 an order restricting the areas in which the Member may practise or in which he or she may provide services;

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- 27.4 an order restricting the services the Member may provide;
 - 27.5 an order that the Member only practise or provide services:
 - 27.5.1 as an employee of a person approved by the Registrar,
 - 27.5.2 as an employee or partner, and under the supervision, of a Member approved by the Registrar, or
 - 27.5.3 under the supervision of a Member approved by the Registrar;
 - 27.6 an order that the Member report to the Registrar on his or her compliance with any order made under this section and authorize others involved with his or her treatment or supervision to report thereon;
 - 27.7 any other order, other than revoking the Member's membership, the tribunal considers appropriate.
28. Notwithstanding section 27, the tribunal may decline to make a finding of incapacity if, through demonstrated compliance with a continuing course of treatment or the continuing use of an assistive device, the Member is capable of meeting his or her obligations under the Act, unless the Member has demonstrated a marked failure to abide by the treatment or device use, as the case may be.
29. The order may provide for suspension of the Member for non-compliance with the terms of the order.
30. The tribunal of the Capacity Committee shall provide its order and reasons, in writing, to all parties, along with a notice of the right to appeal that order.

Appeals

- 31. A party may appeal a decision or order, including an order or refusal to make an order under section 21, made by the Capacity Committee to the Appeal Committee.
- 32. Appeals are governed by the provisions in the Act, Bylaws, and Regulation 7-3.

Notice

- 33. Notice of the place, date and time of all capacity applications and appeals, and of any suspension imposed pursuant to section 14 of this regulation, shall be posted on CPA Ontario's website, along with the name of the subject Member, and a notice that the application, due to its nature, is not open to the public.

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34. Notice of a finding of incapacity and the order of the tribunal shall be posted on a publicly accessible area of CPA Ontario's website, and shall be provided to all Members of CPA Ontario, and any other person on request, and such posting and production shall disclose the name of the Member, unless ordered otherwise by the tribunal.
35. The tribunal may order that notice of its order, or portions thereof, including the name of the Member, shall be given in a newspaper or newspapers distributed in the geographic area where the Member practised, if applicable, and in any other area ordered by the tribunal, or in any form or media it considers appropriate, and CPA Ontario shall bear the cost of such publication.
36. The tribunal shall only make an order under section 35 if it considers it to be necessary to protect the public interest.

Capacity Committee

37. The Capacity Committee shall normally consist of 12 to 15 members, including a Chair and a Deputy Chair, and public representatives. The Members of the Committee shall generally be representative of CPA Ontario's membership, and should include persons with expertise in the area of mental or physical health.
38. The members of the Capacity Committee shall be appointed initially for a one year term. Members are eligible for reappointment for additional terms of no more than three years each, not exceeding a total of nine years, and, thereafter, on an annual basis.
39. The Chair and Deputy Chair of the Committee shall be appointed from among the members of that Committee for a term of two years. They are each eligible for reappointment, thereafter, on an annual basis.
40. The quorum for the Capacity Committee to hear any application shall be three members.