

New Brunswick Association of Social Workers Act

Preamble

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

AND WHEREAS it is desirable, in the interest of the public and the profession, to continue the New Brunswick Association of Social Workers as a body corporate for the purpose of advancing and maintaining the professional standard of social work carried on in New Brunswick;

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

DEFINITIONS AND INTERPRETATION

1 The following definitions apply in this Act.

“Association” means the New Brunswick Association of Social Workers. (*Association*)

“Board” means the governing body of the Association under section 5. (*Conseil*)

“by-law” means a by-law of the Association. (*règlement administratif*)

“complaint” means any complaint, report, or allegation in writing and signed by the complainant regarding a member, or a former member. (*plainte*)

“Court” means The Court of ~~Queen’s~~King’s Bench of New Brunswick. (*Cour*)

“Director” means a director or officer of the Board. (*administrateur*)

“Executive Director” means the person holding the office of Executive Director under subsection 6(1). (*directeur général*)

“health professional” means a person who is regulated under a private Act, including a Social worker and a social work technician, who provides services 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. (*professionnel de la santé*)

“Licence” means a document issued to the member upon being entered into the Register.

“member” means a person registered with the Association as a Social worker or as a Social work technician. to the practise of either social work or Social work techniciansocial work in New Brunswick. (*membre*)

“Minister” means the Minister of Health. (*ministre*)

“panel” as referenced in sections 17 and 18 refers to a subset of the Complaints Committee or Discipline Committee, as the case may be, which is appointed to address a specific complaint. (*Sous-comité*)

“practice of social work” means the assessment, diagnosis and prevention of social problems, and the enhancement and rehabilitation of social functioning of individuals, families, groups and communities by means of:

(a) the provision of direct counselling services within an established relationship between a Ssocial worker and a client or in collaboration with health and other professionals;

(b) the development, promotion and delivery of human service programs, including that done in collaboration with health and other professionals;

(c) the development and promotion of social policies aimed at improving social conditions and promoting social equality; and

(d) any other activities consistent with the objects of the Association.

“practice as a Social work technician” means the paraprofessional support to the assessment, prevention of social problems, and the enhancement of social functioning and the rehabilitation of individuals, families, groups, and communities. (*Activité à titre de technicien ou technicienne en travail social*)

“Professions” means the practice of social work or the paraprofessional practice as a of Social work technicians as regulated under the provisions of this Act. (*professions*)

“professional corporation” means a corporation having a permit in good standing pursuant to the provisions of this Act for the practice of social work. (*corporation professionnelle*)

“public representative” means a person who is not a member and is appointed by the Minister from a panel of not less than three persons nominated by the Board. (*représentant du public*)

"Registrar" means the person holding the office of Registrar under subsection 6(2). (*registraire*)

“Social worker” means a member registered to practise social work. (*Travailleuse ou travailleur social*)

“Social work technician” means a member limited to the practice as a social work technician. (*Technicien ou technicienne en travail social*)

THE ASSOCIATION

2(1) All members shall constitute the Association.

2(2) The Association, incorporated by *An Act to Incorporate the New Brunswick Association of Social Workers*, chapter 84 of the Acts of New Brunswick, 1965, continued by *An Act to Incorporate the New Brunswick Association of Social Workers*, chapter 78 of the Acts of New Brunswick, 1988, is hereby further continued as a body politic and corporate with perpetual succession and a common seal and, subject to this Act, shall have the capacity, rights, powers, and privileges of a natural person.

OFFICIAL LANGUAGES

3 English and French are the official languages of the Association.

OBJECTS

4 The objects of the Association are to:

(a) provide for the regulation, discipline, governance, control and honour of the persons practising the Professions of social work, including the determination of the standards of knowledge, skill and efficiency, and standards of qualification, standards of professional conduct and ethics;

(b) promote public awareness of the role of the Association and the Professions, and to communicate and co-operate with other professional organizations for the advancement of the best interests of the Association, including the publication of books, papers, and journals;

(c) advocate for social justice and social change within the practice of social work Professions;

(d) encourage studies in social work and provide assistance and facilities for special studies and research.

BOARD

5(1) The responsibility for administration of this Act and the management of the Association shall be vested in a Board which shall consist of not less than 13 members, including a President, who must be a Social worker and other officers provided for in by-law.

5(2) The Board shall ~~also~~ be comprised of one public representative.

5(3) The Board may be comprised of up to one third (1/3) of Social work technicians.

5(~~4~~3) The number of Directors, their respective terms of office, the manner of their appointment or election, and their respective qualifications shall be established and governed by the by-laws and such by-law may provide for additional Directors who are not members, alternative Directors, for the filling of vacancies and for the appointment of additional public representatives.

OFFICERS TO THE BOARD

- 6(1) The Board shall appoint an Executive Director of the Association.
- 6(2) The Board shall appoint a Registrar of the Association.
- 6(3) The offices of the Executive Director and Registrar may be held by one person at the same time and the Board may determine that the Registrar reports to the Executive Director.

BY-LAWS

- 7(1) The Association may make by-laws not inconsistent with the provisions of this Act for:
- (a) governing and regulating:
 - (i) the admission, suspension, expulsion, removal, discipline and reinstatement of members, and the conditions precedent to membership in the Association, and
 - (ii) the registration, licensing and renewal, suspension, cancellation, and reinstatement of registration in the Register of members, including the imposition of limitations, restrictions, and conditions on members.
 - (b) the establishment of categories of membership in the Association, including the conditions, obligations, and privileges associated with any categories of membership;
 - (c) levying and collecting fees from members, and any penalty or consequence associated with the failure to pay such fees;
 - (d) the location of a Head Office and other offices of the Association;
 - (e) the notice, quorum, location, and time for the Annual Meeting or any other meetings of the members and the rules pertaining to methods of voting at such meetings;
 - (f) the regulation of professional advertising;

- (g) the requirements pertaining to professional liability insurance for members;
- (h) the requirements pertaining to continuing competency for members;
- (i) the requirements pertaining to rules of professional conduct, professional misconduct, and a code of ethics;
- (j) the appointment of auditors; and
- (k) other purposes necessary for the exercise of any of the powers conferred by this Act.

7(2) All by-laws and amendments thereto shall be ratified by a majority of the Board and by two-thirds of the members, in attendance, in good standing, at any Annual Meeting or by two-thirds of the members, in attendance, in good standing, at any Special Meeting duly convened for the purpose of ratifying such amendments.

7(3) No new by-law, or the amendment or repeal of a by-law will come into effect until approved by the Minister when the by-law, amendment or repeal of the by-law provides for

- (a) the admission of members;
- (b) adopting or amending the code of ethics or standards of practice;
- (c) a practice that may endanger public health;
- (d) educational or training credentials; or
- (e) eligibility to be entered on the Register

RULES BY THE BOARD

8(1) The Board may make rules not inconsistent with the provisions of this Act or the by-laws providing for:

- (a) the management of the Association and its property and affairs;
- (b) banking, finance, and borrowing of money;
- (c) the custody and use of the Association seal;
- (d) the execution of documents by the Association;
- (e) the use of Association funds for scholarships and prizes for students of the Professions;
- (f) the Association's fiscal year end;
- (g) the calling, holding, and conducting of meetings of the Board and the duties of Directors;
- (h) the establishment of an Executive Committee of the Board;
- (i) the appointment, revocation and proceedings of meetings of all committees of the Board;
- (j) the manner and proof of personal service of documents and notices required under this Act;
- (k) the assessment of members, for special or extraordinary expenditures that may be deemed necessary or expedient to further the objects of the Association;
- (l) the establishment of chapters within the province and rules for the management of such chapters, known as Chapters By-Laws; and
- (m) the definition of any term used in this Act.

8(2) A rule made under subsection (1) is for the administrative purposes of the Association only, and is not effective until confirmed by an ordinary resolution of the Board and may not be exercised inconsistent with this Act or the by-laws.

AUTHORIZED PRACTICE

9 (1) Only persons who are members ~~of the Association, and registered to practise social work with the Association,~~ as provided in this Act or by-laws, shall be entitled to:

(a) take and use the title or designation "Registered Social Worker", "Social Worker" or the initials "R.S.W." or "S.W." in English or "travailleur social immatriculé", "travailleuse sociale immatriculée", "travailleur social", "travailleuse sociale" ~~or the initials "T.S.I." or "T.S."~~ in French ~~or any similar titles or designations; or~~

(b) practise social work in or for application in New Brunswick, either privately or employed by another.

9 (2) Subject to subsection (3), only persons who are members and registered to practise as a Social work technician with the Association, as provided in this Act or by-laws, shall be entitled to:

(a) take and use the title or designation "Registered Social work technician", "Social work technician", ~~the initials "R.S.W.T." or "S.W.T." in English or "technicien en travail social immatriculé", "technicienne en travail social immatriculée", "technicien en travail social", "technicienne en travail social" or the initials "T.T.S.I.", or "T.T.S." in French or any similar titles or designations; or~~

b) practise as a Social work technician in or for application in New Brunswick.

9 (3) A Social worker can perform the practice of a Social work technician, however, a Social work technician cannot perform the practice of social work.

DEEMED PRACTICE

10 A person is deemed to practise or offer to practise one of the Professions within the meaning or intent of this Act who:

(a) by verbal claim, sign, advertisement, letterhead, card, or use of a title, or in any other way, represents or implies to be or performs the services of a Registered Social worker or of a Social work technician;

(b) represents to be a member under this Act; or

(c) holds out the ability to practise, or practises one of the Professions or performs any other service which is recognized as part of the Professions.

COMMITTEE OF EXAMINERS

11(1) There shall be a Committee of Examiners annually appointed by the Board, composed of not fewer than two members, and at least one person who is a public representative and none of the Committee members shall be members of the Board.

11(2) Every person who is approved by the Committee of Examiners for registration may become a member of the Association upon compliance with the provisions of the by-laws.

11(3) The Registrar shall enter into the Register the name of each member entitled to practise the Professions and any license issued shall constitute *prima facie* evidence of registration under this Act.

11(4) The Registrar shall only issue a license authorizing diagnosis as part of the scope of practice to a member that complies with the Association's Advanced Practice by-law.

11(5) Subject to the approval of the Board, the Committee of Examiners may delegate its authority under this Act and by-laws to the Registrar or other appropriate Association staff, as it considers appropriate.

11(6) In carrying out its functions under subsection (2), the Committee of Examiners may determine its own procedure and policies in a manner consistent with the Act and by-laws regarding:

(a) proofs to be furnished as to education, good character, ~~and~~ experience or equivalency of qualifications;

(b) subjects for examination of candidates for membership;

(c) fees to be paid on examinations and registration;

(d) examinations, the duties and functions of examiners, and the place examinations are to be held;

(e) such other matters as the Committee considers necessary or advisable for the more effectual discharge of its functions or exercise of its powers.

11(7) In carrying out its functions under subsection (2), the Committee of Examiners may:

(a) determine educational requirements for entry to the Professions;

(b) determine what educational activities are equivalent to meeting

- established educational requirements;
(c) determine the minimum standards of entrance into educational programs leading to registration of the professions; and
(d) recognize institutions of learning and establish terms and conditions for recognizing ~~recognition~~ such institutions.

11(8) The Committee of Examiners, in consultation with the Board, shall have the power, conjointly with the council or appropriate governing body of any association in any other province or territory of Canada, having objects similar to those of the Association, to establish a central examining board and to delegate to such central examining board all or any of the powers possessed by the Association or the Board respecting the examination of candidates for admission to practise the Professions.

11(98) Any by-law passed pursuant to paragraph (6)(b) or agreement pursuant to subsection (87) will be submitted by the Board to the Minister for final approval.

11(910) The Committee shall approve any person who is, at the time, a duly registered member of an regulatory body~~Association~~ of social work of some other province or territory of Canada, with an act of incorporation or constitution similar to that of the Association, as a member upon application and payment of requisite fees and upon provision of satisfactory evidence to the Committee of registration in good standing in the other Association.

11(11) The Committee shall approve any person who is registered as a Social work technician or equivalent of a regulatory body professional association of some other province or territory of Canada that has an act of incorporation or constitution similar to that of the Association, as a member upon application and payment of requisite fees and upon provision of satisfactory evidence to the Committee of registration in good standing in the other association.

11(120) If the Committee refuses to approve a person for registration that person may appeal to the Board in writing within 30 days of receipt of notification of the decision of the Committee.

11(134) In the event of an appeal pursuant to subsection (102), after considering all relevant factors, the Board may:

- (a) direct that the person be registered;
- (b) refer the matter back to the Committee of Examiners for reconsideration with such directions as the Board considers necessary; or
- (c) refuse the appeal and uphold the decision of the Committee of Examiners.

REGISTRATION RECORDS

12(1) The Registrar shall maintain in accordance with the by-laws a Register of all persons authorized to practise social work or to practise as a Social work technician under this Act.

12(2) No name shall be entered in the Register other than as authorized by this Act or the by-laws, and unless the Registrar is satisfied by proper evidence that the person is entitled to be registered.

12(3) Any person affected by a decision of the Registrar with respect to registration may appeal to the Board in the same manner contemplated under subsection 11(10) and the Board shall have the same powers as contemplated under subsection 11(11) as applicable.

12(4) The Registrar shall maintain and publish a list for each profession for inspection by any person at the Association's Office, free of charge, an alphabetical list, together with the address, of all persons authorized to practise the Professions.

12(5) The Registrar shall forthwith enter into the Register of the Association:

(a) the result of every proceeding before the Discipline Committee that resulted in the suspension or revocation of a member's right to practise ~~social work~~one of the Professions; and

(b) where the findings or order of the Discipline Committee that resulted in the suspension or revocation of a member's right to practise ~~social work~~one of the Professions are appealed, a notation that they are under appeal.

12(6) Where an appeal of the findings or order of the Discipline Committee is finally disposed of, the notation referred to in paragraph (5)(b) shall be removed and the records adjusted accordingly.

12(7) For the purpose of paragraph (5)(a), "result", when used in reference to a proceeding before the Discipline Committee, means the Committee's findings and the penalty imposed and in the case of a finding of professional misconduct, a brief description of the nature of the professional misconduct.

12(8) The Registrar shall provide the information contained in the records referred to in subsection (5) to any person who inquires about a member or former member:

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

(b) for a period of five years following the conclusion of the proceedings referred to in subsection (5) in all other cases.

12(9) The Registrar, upon payment of a reasonable fee, shall provide a copy of the information contained in the records referred to in subsection (5) that pertain to a member or former member to a person who requests a copy.

12(10) Notwithstanding subsection (9), the Registrar may provide, at the Association's expense, a written statement of the information contained in the records in place of a copy.

PROFESSIONAL CORPORATIONS

13(1) No corporation shall be entitled to have its name entered in a register other than the professional corporations register.

13(2) All the provisions of this Act, the by-laws and the rules applicable to a member registered as a Social worker apply with all necessary modifications to a professional corporation unless otherwise expressly provided.

13(3) No professional corporation shall be entitled to vote at any meeting of the Association.

13(4) The Board may make by-laws:

(a) prescribing the types of names, designations or titles by which a professional corporation, a partnership of two or more professional corporations, or a partnership of one or more professional corporations and one or more Ssocial workers, may be known, and

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

14(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 social work services to the public that a Ssocial worker 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 social work services including without restricting the foregoing, the power to:

- (i) 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) 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) enter into partnership, consolidate or merge with or purchase the assets of another corporation or member or former member rendering the same type of professional services.

14(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 registered as a Social worker and shall entitle such member or members to elect all of the directors of the professional corporation.

14(3) No member registered as a Social worker 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 which is not a member the authority to exercise the voting rights attached to any or all of the member's shares, and every member who does so commits an offence.

14(4) The practice of social work on behalf of a professional corporation shall be carried on by Ssocial workers.

14(5) For the purpose of subsection (4), the practice of a Ssocial worker shall be deemed not to be carried on by Social work technicians, -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 Ssocial worker.

14(6) The registration of a professional corporation may be revoked, or its renewal withheld, by the Registrar when any of the conditions for its entrance in the Register no longer exist.

14(7) The professional corporation has one hundred and eighty days or such longer period as the Board may permit, to amend articles of incorporation, articles of continuance or other constating documents in the event of :

- (a) the death of a ~~member~~Social worker,

(b) the striking off or other removal from the register of the name of a Social worker, or

(c) the suspension or revocation of the licence of a Social worker~~member~~.

14(8) A professional corporation may offer social work services in its own name, subject to any conditions, limitations or restrictions as may be prescribed or as set out in its licence.

14(9) The name of each professional corporation shall contain the words “Professional Corporation” or “Corporation professionnelle”.

15 (1) The relationship of an individual ~~member~~Social worker to a professional corporation, whether as a shareholder, director, officer or employee, does not affect, modify or diminish the application to the individual ~~member~~Social worker of the provisions of this Act, the by-laws or the rules.

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

16(1) Nothing contained in this Act shall affect, modify or limit any law applicable to the confidential or ethical relationships between a Ssocial worker and a client.

16(2) The relationship between a professional corporation carrying on the practice of social work and a person receiving the professional services of the professional corporation is subject to all applicable laws relating to the confidential and ethical relationship between a Ssocial worker and the client.

16(3) All rights and obligations pertaining to communications made to, or information received by, a Ssocial worker apply to the shareholders, directors, officers and employees of a professional corporation.

COMPLAINTS COMMITTEE

17(1) There shall be a Complaints Committee, appointed by the Board, composed of not fewer than two members, and at least one person who is a public representative and none of the Committee members shall be members of the Board.

17(2) The quorum, number of Complaints 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 Complaints Committee and may permit the establishment of panels of the Complaints Committee to act for and to carry out and exercise all the duties and powers of the Complaints Committee provided that each panel shall include at least one person who is a public representative.

17(3) The Board shall name one member of the Complaints Committee to be chairperson.

17(4) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

17(5) A complaint will be referred to the Complaints Committee when it is received by the Association and it alleges:

(a) a violation of any provision of this Act, by-laws, or rules;

(b) sexual abuse of a client;

(c) failure to file a report as required in this Act;

(d) professional misconduct, including negligence in the practice of one of the Professions;

(e) incompetence in the practice of one of the Professions;

(f) a conviction of a criminal or quasi-criminal offence in Canada, or any other jurisdiction;

(g) the obtaining of registration as a member in the Association by reason of misrepresentation or any improper means;

(h) an investigation by another regulatory body in New Brunswick or any other jurisdiction with respect to professional misconduct or incompetence, or imposed professional discipline as a result of a concluded investigation with respect to professional misconduct or incompetence; or

(i) other conduct of such a nature as the Board considers should be investigated.

17(6) The Complaints Committee shall consider and investigate complaints referred to it, but no action shall be taken by the Committee under subsection (10) before it has:

(a) notified the respondent of the complaint and the respondent is given at least two weeks to submit in writing to the Committee any explanations or representations the respondent may wish to make concerning the matter; and

(b) examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

17(7) Notwithstanding subsection (89), the Complaints Committee is not required to hold a hearing or to give the complainant or the respondent an opportunity for a hearing, or an opportunity to make oral submissions, before making a decision or giving directions under this section.

17(8) A respondent may be requested to appear before the Complaints Committee to respond to the complaint and, if the respondent fails to appear, the Committee may proceed to deal with the complaint in accordance with subsection (10).

17(9) The Complaints Committee may engage such persons as it deems necessary including legal counsel to assist it in the consideration and investigation of complaints and shall determine its own rules of procedure.

17(10) The Complaints Committee, in accordance with the information it has received, may:

(a) direct that the matter be referred, in whole or in part, to the Discipline Committee;

(b) direct that the matter not be referred under paragraph (a); or

(c) take such action as it considers appropriate in the circumstances to resolve the complaint with the agreement of the complainant and the respondent, as long as such resolution is not inconsistent with this Act, by-laws, or rules.

17(11) The Complaints Committee shall give its decision, together with reasons, in writing to the Registrar who shall notify the complainant and respondent.

17(12) A complainant who is not satisfied with the disposition of the complaint by the Complaints Committee may apply to the Board for a review of the treatment of the complaint, which the Board may refer to the Discipline Committee under subsection 18(3).

17(13) In circumstances where the Complaints Committee makes a referral under paragraph (10)(a), the Committee may suspend or place conditions on the member, by

order, pending completion of the proceedings before the Discipline Committee if it is of the opinion that a danger to the public could result from not suspending or placing conditions on the member.

17(14) No order under subsection (13) shall be made unless the member has been given five days notice of the Committee's intention and the opportunity to make representations.

17(15) An order of the Complaints Committee under subsection (13) shall be in writing.

17(16) An order under subsection (13) continues in force until the matter is disposed of by the Discipline Committee, unless the order is stayed pursuant to an application under subsection (17).

17(17) A member against whom action is taken under subsection (13) may apply to the Court for an order staying the decision.

17(18) When an order under paragraph (13) is made, the Association shall act expeditiously with respect to the hearing of the matter by the Discipline Committee.

17(19) The Complaints Committee 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.

DISCIPLINE COMMITTEE

18(1) There shall be a Discipline Committee appointed by the Board, composed of not fewer than two members, and one person who is a public representative and none of the Committee members shall be members of the Board.

18(2) The quorum, number of Discipline 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 provided that each panel shall include at least one person who is a public representative.

18(3) In addition to a complaint under paragraph 17(10)(a), the Board, by resolution, may direct the Discipline Committee to hold a hearing and determine any allegation under subsection 17(5) on the part of a member or former member.

18(4) The Discipline Committee and the Board when acting pursuant to subsection 17(12), 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 investigation, hearing and consideration of any complaint or appeal and in no case is the Discipline Committee or the Board bound to follow the technical rules of evidence or procedure applicable in judicial proceedings.

18(5) The Discipline Committee on being satisfied with proof of service that the member or former member was notified of a Discipline Committee hearing and the member or former member fails to appear at the hearing, may continue with the hearing, deem the member or former member to have admitted the substance of the complaint, and make whatever decision considered appropriate.

18(6) A member or former member may be found guilty of professional misconduct by the Discipline Committee if:

(a) the member or former member has been found guilty of an offence which, in the opinion of the Committee, is relevant to suitability to practise the Professions;
or

(b) the member or former member has been guilty, in the opinion of the Committee, of conduct relative to the practice of the Professions which constitutes professional misconduct including, but not limited to, that defined in the by-laws.

18(7) The Discipline Committee may find a member or former member incompetent if in its opinion:

(a) the member or former member has displayed a lack of knowledge, skill, or judgment, or the member or former member displayed a disregard for the welfare of the public of a nature or to an extent that demonstrates the member or former member is unfit to carry out the responsibilities of the Professions;

(b) the member or former member has a physical or mental condition or disorder of a similar nature and extent making it desirable in the interests of the public, that the member or former member no longer be permitted to engage in the practice of the Professions; or

(c) the member or former member has a physical or mental condition or disorder of a similar nature and extent making it desirable in the interests of the public, that the member or former member's practice be restricted.

18(8) When the Discipline Committee finds a member or former member guilty of professional misconduct or incompetence it may, by order, do any one or more of the following:

(a) revoke the right to practise the Professions,

(b) suspend the right to practise the Professions^s for a stated period, not exceeding 24 months,

(c) accept the undertaking of the member or former member to limit his or her practice in the Professions^s to the extent specified in the undertaking,

(d) impose terms, conditions or limitations on the member or former member including, but not limited to the successful completion of one or more particular courses of study,

(e) impose specific restrictions on the member or former member, including but not limited to:

(i) requiring the member or former member to engage in the practice of the Professions^s only under the personal supervision and direction of a member,

(ii) requiring the member or former member to not alone engage in the practice of the Professions^s,

(iii) requiring the member or former member to submit to periodic inspections by the Discipline Committee, or its delegate, of documents, records and work in connection with the member or former member's practice of the Professions^s, or

(iv) requiring the member or former member to report to the Registrar or to such committee of the Board as the Discipline Committee may name on such matters with respect to the member or former member's practice of the Professions^s for such period and in such form, as the Committee may specify.

(f) reprimand, admonish or counsel the member or former member, and if considered warranted, direct that the fact of the reprimand, admonishment or counselling be recorded on the Register for a stated or unlimited period of time;

(g) revoke or suspend for a stated period of time any designation of the member or former member in the Practice;

(h) impose such fine as it considers appropriate, to a maximum of \$5,000.00, to be paid by the member or former member;

(i) subject to subsection (9) in respect of orders of revocation or suspension, direct that the finding and the order of the Discipline Committee be published in detail or in summary and either with or without including the name of the member

or former member in the official publication of the Association and in such other manner or medium as it considers appropriate;

(j) fix and impose costs of any investigation or procedures by the Complaints Committee or the Discipline Committee to be paid by the member or former member to the Association;

(k) direct that the imposition of a penalty or order be suspended or postponed for such period, and upon such terms, or for such purpose, including but not limited to:

(i) the successful completion by the member or former member of one or more courses of study, and

(ii) the production to the Discipline Committee of evidence satisfactory to it that the member or former member no longer poses a danger to the public in the practice of the Professions.

18(9) The Discipline Committee shall cause an order of the Committee revoking or suspending a member or former member to be published, with or without the reasons, in the official publication of the Association together with the name of the member or former member.

18(10) Upon the request of a member or former member, the Discipline Committee shall cause the decision of the Committee that an allegation of professional misconduct or incompetence was unfounded to be published in the official publication of the Association.

18(11) Where the Discipline Committee revokes, suspends or restricts the right to practise social work or as a Social work technician on the ground of incompetence or professional misconduct involving the sexual abuse of a client, the decision takes effect immediately notwithstanding that an appeal is taken from the decision unless the Court to which the appeal is taken otherwise orders.

18(12) Where the Discipline Committee revokes, suspends or restricts the right to practise social work or as a Social work technician on a ground other than incompetence or professional misconduct involving the sexual abuse of a client, the decision does not take effect until the time for appeal from the decision has expired, or until an appeal has been disposed of or abandoned, except that when the Committee considers it is necessary for the protection of the public it may otherwise order.

18(13) Where the Discipline Committee finds that a member or former member has committed an act of professional misconduct or is incompetent, a copy of the decision shall be served upon the person complaining in respect of the conduct of the member or former member.

18(14) Where a proceeding is commenced before the Discipline Committee and the term of office of a member on the Committee expires or is terminated, other than for cause, before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if the term of office of the member had not expired or been terminated.

18(15) In proceedings before the Discipline Committee, the Association and the member or former member are parties.

18(16) An member or former member whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded the right to be heard and to examine, before the hearing, any written or documentary evidence that will be produced, or any report the contents of which will be given in evidence at the hearing.

18(17) Members of the Discipline Committee panel shall not have previously participated in any investigation of the subject matter of the hearing, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or the representative of the party except upon notice to and opportunity for all parties to participate.

18(18) The Discipline Committee 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.

PUBLIC HEARINGS

19(1) Subject to subsection (2), Discipline Committee hearings shall be open to the public.

19(2) The Discipline Committee may order that the public, in whole or in part, be excluded from a hearing or any part of a hearing if it is satisfied that:

(a) financial, personal, or other matters that would otherwise be disclosed are of such nature that it is within the public interest that they not be disclosed; or

(b) the safety or security of a person may be jeopardized.

19(3) The Discipline Committee may make whatever order it considers necessary to prevent public disclosure, including orders prohibiting publication, broadcasting, or any other means of communication that the Committee considers may risk disclosure.

19(4) No order shall be made pursuant to subsection (3) that prevents the publication of anything that is otherwise available to the public.

19(5) The Discipline Committee may order that the public be excluded from that part of a hearing dealing with a motion for an order pursuant to subsection (2).

19(6) The Discipline Committee may make any order it considers necessary to prevent public disclosure of matters disclosed in a submission relating to any motion under this section, including any order it could make under subsection (3).

19(7) The Discipline Committee shall state at the hearing the reasons for any order made pursuant to this section.

19(8) Where the Discipline Committee makes an order pursuant to subsection (2), it:

(a) shall allow the parties and their legal or other representatives to attend the hearing, and

(b) may allow such other persons as it considers necessary to attend all or part of the hearing.

19(9) Notwithstanding anything contained in this section, public attendance at a hearing does not constitute authorization to take photographs, record sound, videotape, or otherwise mechanically, electronically, or by any other means record the proceedings, and no such recording is permitted, unless specifically authorized by the Discipline Committee.

19(10) It is professional misconduct for any member or former member to disclose or in any way facilitate the disclosure of matters ordered by the Discipline Committee not to be disclosed.

HEARING PROCEDURE

20(1) The Discipline Committee, or someone designated by it to act on its behalf, may by summons in a form prescribed by rule, require the attendance before it of any person whose evidence may be material to the subject matter of the hearing and may order any person to produce such records, reports or other documents as appear necessary for the purpose of the hearing.

20(2) A person served with a summons shall attend and answer all questions concerning matters being inquired into at the hearing and shall produce to the Discipline Committee all records, reports or other documents as appear necessary for the purpose of the hearing that are in that person's custody or control.

20(3) The testimony of any witness may be taken under oath or affirmation which may be administered by the Chairperson of the Discipline Committee or any person designated to do so on the Chairperson's behalf.

20(4) If a person on whom a summons has been served, either personally or by leaving a copy of the summons with some adult person at that person's last or most usual place of residence or business, fails to appear before the Discipline Committee, or upon appearing refuses to be sworn or refuses without sufficient cause to answer any question relevant to the hearing, the Committee may by application to the Court, cause the person to be cited for contempt under the provisions of the *Rules of Court* in the same manner and to the same extent as if the alleged contempt took place in proceedings before the Court.

20(5) The oral evidence taken before the Discipline Committee shall be recorded and, if requested, copies of the transcript shall be furnished to the parties at their own expense.

20(6) All findings of the Discipline Committee shall be based exclusively on evidence admitted before it.

20(7) No member of the Discipline Committee shall participate in a decision of the Committee unless that member was present throughout the hearing and heard the evidence and argument of the parties.

20(8) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the party who produced them, be returned by the Committee within a reasonable time after the matter in issue has been finally determined.

20(9) A copy of the decision of the Discipline Committee shall be served upon the member or former member and the person who filed the complaint.

APPEALS

21(1) A party to proceedings before the Discipline Committee may appeal within 30 days from the date of the decision or order of the Committee to the Court by way of Notice of Application in accordance with the *Rules of Court*.

21(2) Upon the request of a party desiring to appeal, and upon payment of the fee, the Registrar shall furnish the party with a certified copy of the record of the proceedings, including the documents received in evidence and the decision or order appealed from.

21(3) An appeal under this section may be on questions of law or jurisdiction or both, and the Court may:

- (a) affirm, vary or rescind the decision of the Discipline Committee;
- (b) direct the Discipline Committee to take any action which it has the power to take; or
- (c) refer the matter back to the Discipline Committee for rehearing in whole or in part, in accordance with such directions as the Court considers proper.

21(4) Where the Discipline Committee revokes, suspends or restricts an member or former member on the grounds of incompetence or professional misconduct involving the sexual abuse of a client, the decision takes effect immediately notwithstanding that an appeal is taken from the decision, unless the Court to which the appeal is taken otherwise orders.

21(5) Where the Discipline Committee revokes, suspends or restricts a member or former member on grounds other than for incompetence or professional misconduct involving sexual abuse of a client, the order does not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned, unless the Committee otherwise orders, and, when the Committee considers that it is appropriate for the protection of the public, the Committee may so order.

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INVESTIGATIONS

22(1) The Registrar may appoint one or more investigators to investigate whether a member has committed an act of professional misconduct or is incompetent if the:

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

(b) Registrar has reason to believe that the member has committed an act of professional misconduct.

22(2) An investigator appointed by the Registrar may at any reasonable time, and upon producing proof of his or her appointment, enter and inspect the business premises of a member and examine anything that the investigator has reason to believe will provide evidence in respect of the matter being investigated.

22(3) Subsection (2) applies notwithstanding any provision in any Act relating to the confidentiality of health records.

22(4) No person shall, without reasonable excuse, obstruct or cause to be obstructed, an investigator while the investigator is performing his or her duties under this Act.

22(5) No person shall withhold, conceal or destroy, or cause to be withheld, concealed or destroyed, anything that is relevant to an investigation under this Act.

COURT INTERVENTION

23(1) A judge of the Court upon the *ex parte* application of an investigator, may issue a warrant authorizing the investigator to enter the building, receptacle or place and search for and examine or remove anything described in the warrant, on information by oath or solemn affirmation that the investigator has been properly appointed and that there are reasonable grounds for believing that:

(a) the member being investigated has committed an act of professional misconduct or is incompetent, and

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

23(2) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) may be assisted by other persons and may enter a place by force.

23(3) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) shall produce his or her identification and a copy of the warrant, upon request, to any person at that place.

23(4) A person conducting an entry or search under the authority of a warrant issued under subsection (1) who finds anything not described in the warrant that the person believes on reasonable grounds will provide evidence in respect of the matter being investigated, may seize and remove that thing.

23(5) An investigator may copy, at the expense of the Association and examine anything referred to in subsection (1) or under the authority vested in section 22.

23(6) An investigator may remove a document if it is not practicable to copy it in the place where it is examined or a copy is not sufficient for the purposes of the investigation and may remove any object that is relevant to the investigation and shall provide the person in whose possession it was with a receipt for the document or object.

23(7) An investigator, where a copy can be made, shall return a document removed as soon as possible after the copy has been made.

23(8) A copy of a document certified by an investigator to be a true copy shall be received in evidence in any proceeding to the same extent and shall have the same evidentiary value as the document itself.

23(9) In this section, "document" means a record of information in any form and includes any part of it.

23(10) An investigator shall report the results of the investigation to the Registrar in writing.

23(11) The Registrar shall report the results of the investigation to the Complaints Committee that made the request or take whatever action deemed necessary if the investigation was commenced by the Registrar.

SEXUAL ABUSE

24(1) The Association shall undertake measures for prevention of the sexual abuse of clients by its members.

24(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.

24(3) Measures referred to in subsection (2) may, where appropriate, be taken jointly with other organizations or associations of health professionals.

24(4) The Association shall report to the Minister within thirty days on the request of the Minister, respecting the measures the Association is taking and has taken to prevent and deal with the sexual abuse of clients by its members.

24(5) The Association shall report annually to the Minister respecting any complaints received concerning sexual abuse of clients by members or former members of the Association and the resolution of such complaints.

24(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 allegations are referred to the Discipline Committee, the decision of the Committee, including any penalty imposed, and the date of the decision,
 - (iv) whether an appeal was made from the decision of the Discipline 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.

24(7) 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.

24(8) For the purposes of subsection (7), "sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

REPORTING SEXUAL ABUSE

25(1) A member who, in the course of practicing the Professions, has reasonable grounds to believe that another health professional has sexually abused a patient or client and who fails to file a report in writing in accordance with subsection (4), with the governing body of the health professional within twenty-one days after the circumstances occur that give rise to the reasonable grounds for the belief commits an act of professional misconduct.

25(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.

25(3) If the reasonable grounds for filing a report pursuant to subsection (1) have been obtained from one of the member's clients, the member shall use his or her best efforts to advise the client that the member is filing the report before doing so.

25(4) A report filed pursuant to subsection (1) shall contain the following information:

(a) the name of the member filing the report;

(b) the name of the health professional who is the subject of the report;

(c) the information the member has of the alleged sexual abuse; and

(d) subject to subsection (5), if the grounds of the member filing the report are related to a particular patient or client of the health professional who is the subject of the report, the name of the patient or client.

25(5) The name of a patient or client who may have been sexually abused shall not be included in a report unless the patient or client, or if the patient or client is incapable, the patient's or client's representative, consents in writing to the inclusion of the patient's or client's name.

25(6) Subsections 24(7) and 24(8) apply with the necessary modifications to sexual abuse of a client or patient by another health professional.

25(7) No action or other proceeding shall be instituted against a member for filing a report in good faith pursuant to subsection (1).

MANDATORY REPORT TERMINATION AND SUSPENSION

26(1) A person who terminates or suspends the employment of a member or who imposes restrictions on the practice of a member for reasons of professional misconduct or incompetence shall file with the Registrar within thirty days after the termination, suspension or imposition a written re—port setting out the reasons.

26(2) If a person intended to terminate or suspend the employment of a member or to impose restrictions on the practice of a member for reasons of professional misconduct or incompetence but did not do so because the member resigned, the person shall file with the Registrar within thirty days after the resignation a written report setting out the reasons upon which the person has intended to act.

26(3) This section applies to every person who employs a member, but does not apply to a client.

26(4) No action or other proceeding shall be instituted against a person for filing a report in good faith under this section.

PUBLIC OFFENCES

27(1) any person, other than a member, commits an offence, when he or she:

(a) practises one of the Professions or uses orally or otherwise any title or designation allowed to be used under section 9, or uses any addition to or abbreviation of such titles, or any words, names or designations, with the intent that such use will lead to the belief that the person is a member;

(b) advertises, holds out, or represents in any way or by any means to be a member; or

(c) wilfully procures or attempts to procure registration or licensing under this Act for that person or for another person by making, producing or causing to be made or produced any fraudulent representation or declaration, either verbal or written.

27(2) Any person who knowingly makes a false statement in any application or declaration signed or filed under this Act commits an offence.

27(3) Any partnership, association of persons, or corporation, commits an offence when it:

(a) practises the Professions,

(b) uses any name, title, description or designation that will lead to the belief that it is entitled to practise the Professions, or

(c) advertises, holds itself out, or conducts itself in any manner as to lead to the belief it is entitled to practise the Professions.

27(4) Upon conviction of any person for an offence under subsection (1), (2) or (3), the judge convicting the person may in addition prohibit that person from engaging in the practice of the Professions or from doing anything for which the person was convicted.

27(5) Any person who refuses or neglects to perform any of the duties imposed by this Act, or who violates any of the provisions of this Act commits an offence.

27(6) Every person, member, or manager of a partnership or Association of persons, or every shareholder, director, officer or manager of a corporation who commits an offence under this Act is liable:

(a) for the first offence, to a fine of not less than \$240.00 and not more than \$5,200.00; or

(b) for any subsequent offence:

- i) to a fine of not less than \$240 and not more than \$5,200 or, if the person has been sentenced to the maximum fine on a previous conviction, to a fine of not less than \$240 and not more than \$10,200, and
- ii) to a term of imprisonment of not more than thirty days, if no other sentence will deter the person from repeating the offence.

27(7) The prosecution of an offence under this Act shall be conducted by the Board or a person authorized by the Board, unless the Attorney General or an agent of the Attorney General intervenes.

27(8) No proceedings shall be commenced for an offence under this section after two years from the date of commission of the offence.

27(9) Subject to subsection (8), the *Provincial Offences Procedure Act* applies to the prosecution of all offences under this Act.

INJUNCTION

28 The Association may apply to the Court in accordance with the provisions of the *Rules of Court* for an injunction restraining any person from practising or attempting to practise the Professions or from doing or attempting to do anything contrary to the provisions of this Act, or contrary to any by-law passed under the authority of this Act.

FINES

29(1) All fines and penalties imposed under this Act shall be recoverable, by the Association with costs, under the *Provincial Offences Procedure Act*.

29(2) Any information for the recovery of any fine or penalty under subsection (1) may be laid by any person appointed by the Board.

29(3) All fees, fines and penalties payable or recoverable under this Act shall belong to the Association.

EXCLUSIONS

30 Nothing contained in this Act shall be taken or construed or requires any person to become registered under this Act to perform certain functions to prohibit or preclude:

a) the practice of nursing by a person authorized to practise nursing under the provisions of the *Nurses Act*;

(b) the practice of teaching by a person authorized to practise teaching under the provisions of and as defined in section 1 of *An Act to Amend and Revise An Act to Incorporate The New Brunswick Teachers' Federation, The New Brunswick Teachers' Association, and l'Association des enseignants francophones du Nouveau-Brunswick*, chapter 107 of the Acts of New Brunswick 1983;

(c) the practice of any occupation, calling or profession authorized by an Act of the Province of New Brunswick;

(d) the practice of a recognized and established occupation, calling or profession of which the practice of social work or the practice as a Social work technician is a traditional, necessary and integral part;

(e) a person from carrying out functions which may include, in part, the practice of social work or the practice as a Social work technician, provided the person does not perform such functions for remuneration and does not represent to be a Ssocial worker or Social work technician;

(f) a person from carrying out, for remuneration, functions which include, in part, the practice of social work or the practice as a Social work technician, provided

such functions are performed under the supervision of a Ssocial worker and the person does not represent to be a Ssocial worker or a Social work technician; or

(g) a person employed by a recognized volunteer social agency from carrying out functions which include, in part, the practice of social work or practice as a Social work technician, provided such functions are restricted to carrying out the approved and recognized purposes and responsibilities of the agency, and provided the person does not represent to be a Ssocial worker or a Social work technician.

GENERAL

31(1) No action lies against members, officers or Directors of the Association, the Board, or any committees of the Association for anything done in good faith pursuant to the provisions of this Act, or the by-laws, or rules of the Association.

31(2) No member shall be personally liable for any debt of the Association beyond the amount of that member's unpaid dues or subscriptions.

REGULATIONS ACT

32 The *Regulations Act* does not apply to the Association or any by-law, rule or resolution made by the Association, its Committees, or the Board, but all by-laws and rules shall be available for inspection by any person at the head office of the Association at all reasonable times during business hours, free of charge.

TRANSITIONAL

33(1) *An Act to Incorporate the New Brunswick Association of Social Workers, chapter 78 of the Acts of New Brunswick, 1988 is repealed.*

33(2) *All persons who were members under the Act to Incorporate the New Brunswick Association of Social Workers, chapter 78 of the Acts of New Brunswick on the day this Act comes into force shall continue as members under this Act.*

33(3) *To the extent that they are not inconsistent with the provisions of this Act, the by-laws of the Association in existence at the date of coming into force of this Act shall continue in force and effect until, and to the extent they are, superseded.*

33(4) *All applications for admission as a member and all disciplinary proceedings in progress on the day this Act comes into force, shall be continued and disposed of under the Act to Incorporate the New Brunswick Association of Social Workers, chapter 78 of the Acts of New Brunswick.*

33(5) *All complaints concerning matters of discipline or incompetence received after this Act comes into force shall be dealt with under this Act, notwithstanding when the subject matter of the complaint arose.*

33(6) *All persons not members of the Association who practise as Social work technicians or equivalent have twelve months from the date of coming into force of this Act to apply for admission as members of the Association.*

COMMENCEMENT

34 This Act comes into force on Royal Assent.