

RATIONALE CHART
PROPOSED REGULATION: FUNDING FOR THERAPY AND COUNSELLING
(DECEMBER 2016)

Please note: This chart uses “member” instead of “registrant” as this is the language used in the legislation

PROPOSED PROVISIONS	RATIONALE / COMMENTS
Definition	
1. In this Regulation, “member” includes a former member.	The proposed definition of “member” encompasses former members who are no longer registered with the College. This clarification ensures availability of funding for persons who were sexually abused while they were clients of members who have since retired, been suspended, or had their registration revoked. It is in the public interest to ensure that funding cannot be denied simply because the abuser is no longer a member of the College
Eligibility for Funding	
2. The Client Relations Committee shall determine whether a person is eligible for funding under clause 85.7 (4) (a) of the <i>Health Professions Procedural Code</i> or under section 3 of this regulation.	This section confirms the authority granted to the Client Relations Committee to determine the eligibility for funding through the program established by subsection 85.7 of the <i>Health Professions Procedural Code</i> (the “Code”).
Alternative Eligibility	
3. (1) The alternative requirements for a person to be eligible for funding under clause 85.7 (4) (b) of the <i>Health Professions Procedural Code</i> are that, (a) the person submits an application for funding to the Client Relations Committee in the form provided by the Committee which shall include the name of the member whose conduct may entitle the person to funding; (b) the person provides any other information as required by the Client Relations Committee; and (c) any of the circumstances described in subsection (2) exist.	Through the proposed alternative criteria, the College ensures that funding for therapy is effectively available to persons who, while a client, were sexually abused by a member. At the same time, the proposed criteria allows the College to be confident that there is sufficient information and evidence of sexual abuse, thereby ensuring that it is distributing the funds pursuant to its statutory mandate. Subsection 3(1) sets out the procedural requirements that must be met by a person seeking funding for therapy through the regulation’s alternative eligibility criteria. The required information will allow the Client Relations Committee to assess eligibility for funding pursuant to the regulation’s alternative criteria.
(2) The circumstances in which a person may be eligible for funding are as follows: (a) there is a finding by a court that the person, while a client, was sexually assaulted by a member within the meaning of the <i>Criminal Code</i> ;	‘Sexual assault’ in the criminal context is defined more narrowly and is subject to a higher standard of proof than ‘sexual abuse’ in professional misconduct proceedings. Thus, the Client Relations Committee can comfortably rely on a finding of sexual assault to distribute funds for therapy since conduct that would meet the higher standard of proof and narrower Criminal Code definition of sexual assault would reasonably also meet the definition of “sexual abuse” in the Code.

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<p>(b) there is a finding by a court or administrative tribunal that a person, while a client was sexually abused by a member;</p>	<p>The Code (and the funding regulation made under the RHPA) makes funding for therapy available only where the Discipline Committee of a College finds that a client was sexually abused by a member. Clause 2(b) would extend the availability of funding by allowing the Client Relations Committee to rely on a finding of sexual abuse of the client by a member that is made by another administrative tribunal and/or the court. This would allow a client to receive funding without having to endure what would essentially be the duplicative process of a discipline hearing at the College. It is in the public interest to expand the criteria in this way and it would be in a client's interest to not have to go through the stress of a second hearing when a court or another tribunal has already established that the client was sexually abused by the member.</p>
<p>(c) there is an admission made by a member in a statement to the College or in an agreement with the College that he or she sexually abused the person while the person was a client of the member;</p> <p>(d) there is an allegation that the person, while a client, was sexually abused by the member which results in an informal resolution with the member that contemplates funding for therapy or counselling;</p>	<p>Clauses (c) and (d) empower the Client Relations Committee to rely on the member's admission that the sexual abuse occurred, or on the member's agreement to make that funding available even in the absence of a formal finding made by the Discipline Committee. This is in the public interest and in keeping with the principles of zero tolerance and eradication of sexual abuse specifically articulated in section 1 of the Code and in keeping with the principle that agreements should be encouraged wherever reasonable and in the public interest.</p>
<p>(e) the person satisfies the Inquiries, Complaints and Reports Committee that there is a high probability that the person, while a client, was sexually abused by a member but a hearing of the Discipline Committee is not held for one of the following reasons:</p> <ul style="list-style-type: none"> i. the member is deceased or cannot be located; ii. the member is incapacitated; iii. the member has resigned and agreed not to practise again; iv. the member's certificate of registration was revoked for misconduct of a sexual nature toward another client; v. there is a finding by the Discipline Committee that the member sexually abused another person and, in the Committee's opinion, the public interest would not be served by conducting another discipline hearing; vi. the person is unable to testify before the Discipline Committee as result of a physical or mental condition 	<p>Clause (e) lists situations where it is not possible to hold a Discipline Committee hearing with respect to the allegation of sexual abuse against a member. In those scenarios, the Client Relations Committee is empowered to rely on the ICRC's belief that there is a high probability that the sexual abuse of the client occurred. It would not be fair to deny funding eligibility for reasons that are beyond the client's control when the substantive basis for eligibility exists. Again, this is in the public interest and in keeping with the principles of zero tolerance and eradication of sexual abuse specifically articulated in section 1 of the Code.</p>
<p>(f) at a hearing of the Discipline Committee into the conduct of a member, the person testifies that he or she was sexually abused by the member while a client and the Discipline Committee acknowledges in its written reasons that the testimony was credible;</p> <p>(g) there is a finding made by the Discipline Committee that conduct of a sexual nature had occurred between the person, while a client, and a</p>	<p>Clauses (f) through (h) allow the Client Relations Committee to rely on findings of fact or credibility made by the Discipline Committee at a hearing with respect to sexual abuse of a client by a member. This will allow the Client Relations Committee to grant funding when it is clear that sexually inappropriate conduct occurred but for some "technical reason" a finding of sexual abuse may not have been made. It is in the public interest to include these situations, otherwise the funding program risks being seen as</p>

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<p>member and such conduct resulted in a finding of professional misconduct or incompetence against the member;</p> <p>(h) there is a statement contained in the written reasons of the Discipline Committee given after a hearing which satisfies the Client Relations Committee that the person, while a client, was sexually abused by the member; or</p>	<p>ineffective and unavailable (and as one that serves the interests of members (by reducing the instances when funding will be granted) rather than clients).</p>
<p>(i) there is sufficient evidence presented to the Client Relations Committee to support a reasonable belief that the person, while a client, was sexually abused by a member.</p>	<p>Clause (i) provides the Client Relations Committee with a residual discretion to distribute funds for therapy in situations that do not satisfy the above alternative eligibility criteria but nevertheless have sufficient evidence to establish a reasonable belief that the client was sexually assaulted by a member.</p> <p>This is in the public interest and in keeping with the principles of zero tolerance and eradication of sexual abuse specifically articulated in section 1 of the Code. This will allow the Client Relations Committee to capture all scenarios in which it is clear that sexual abuse occurred but for some “technical” or unanticipated reason, a finding of sexual abuse by a Discipline panel may not have been made.</p>
Eligibility for Funding not a Finding against the Member	
<p>4. A decision by the Client Relations Committee that a person is eligible for funding for therapy or counselling does not constitute a finding against the member and shall not be considered by any other committee of the College dealing with the member.</p>	<p>The process set out in section 3 of this regulation is intended to provide efficient access to funding for therapy to clients who were sexually abused by a member. It is not designed to make a final determination on the civil liability of the member. Accordingly, section 4 clarifies that it is inappropriate for any person or body to rely on the Client Relations Committee’s decision to make funding available as a finding against the member.</p>
Pre- Regulated Health Professions Act, 1991 Abuse	
<p>5. A person who is otherwise eligible for funding for therapy or counselling under section 3 is not eligible for funding if the therapy or counselling for which funding is requested relates to sexual abuse by a member that occurred before December 31, 1993 unless if, in the opinion of the Client Relations Committee, the granting of funding would be just and equitable having regard to the following:</p> <p>(a) whether the need for therapy or counselling results directly or indirectly from the alleged sexual abuse;</p> <p>(b) the availability of other sources of funding; and</p> <p>(c) the College’s resources.</p>	<p>Section 5 addresses the Client Relations Committee ability to distribute funds for sexual abuse which occurred before the <i>RHPA</i> came into force. Generally, funding for therapy is not available to clients who were sexually abused before December 31, 1993, but the Client Relations Committee may extend funding to pre-1993 cases where it would be equitable to do so in light of the relevant factors. This determination is an exercise in balancing the applicable factors, a task which is best carried out by the Client Relations Committee.</p>