

RULES OF PRACTICE BEFORE THE REMEDIAL & DISCIPLINE PANEL

PURPOSE

The principle objective of the Ontario Motor Vehicle Industry Council (“OMVIC”) Discipline Process is to regulate the practices of motor vehicle dealers in accordance with the Code of Ethics, the Standards of Business Practice and the OMVIC by-laws in order to ensure a fair marketplace. Regulation of the industry will ensure consumer protection and high ethical standards for dealers and salespeople.

The purpose of these Rules is to provide a fair, open and accessible process for parties and other interested persons to increase the efficiency and timeliness of proceedings and to assist the Remedial Panel and Discipline Panel in fulfilling their mandate.

RULES OF PRACTICE

DEFINITIONS

In these rules the following words will have the following meanings:

“affidavit” means a document made by a person who states that its contents are true and is confirmed as true by oath, affirmation or such other manner as is recognized under the laws of Ontario.

“Board of Directors” means the Board of Directors of OMVIC.

“By-laws” means any by-law of OMVIC from time to time in force or effect.

“certified form” means a copy of a document which is recognized under the laws of Ontario as a true copy of the original.

“counsel” means a party’s lawyer in the proceedings.

“C.C.C.” means complaint and compliance co-ordination and is one or more individuals who provide administrative assistance and support for the function of the Discipline Process.

“deliver” means to serve a person or corporation with a copy of a document and to file the document and proof of its service with the C.C.C.

“director” is the director appointed pursuant to the Motor Vehicle Dealers Act.

“discipline committee chair” is the chairperson of OMVIC’s Discipline Committee.

“document” includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account, and information recorded or stored by means of any device.

“electronic hearing” means a hearing held by conference telephone or similar form of electronic technology allowing persons to communicate with one another.

“examination in chief” refers to the presentation of evidence by a party and the party’s witnesses prior to cross-examination by opposing parties.

“file” means effective delivery of documents to the C.C.C.

“hearing” means a hearing conducted by the Discipline Panel.

“holiday” means Saturday or Sunday, New Year’s Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, and any special holiday proclaimed by the Governor General or the Lieutenant Governor; and where New Year’s Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays; and where Christmas Day falls on a Friday, the following Monday is a holiday. Holidays are not included in the computation of time if the time limit is five (5) days or less.

“motion” is a written or oral request made to the Discipline Panel by a party, or person seeking status as a party, in a proceeding before the Discipline Panel.

“notice” means notice of Discipline Panel Hearing.

“oral hearing” means a hearing at which the parties or their counsel or agents attend before the Discipline Panel in person.

“OMVIC” means the Ontario Motor Vehicle Industry Council.

“particulars” means facts required to ascertain or clarify the nature of a party’s allegation and on which that party is relying, but does not mean the evidence which that party may use to prove such allegation is true.

“panel member” means an individual appointed as a member of the Remedial Panel or Discipline Panel by the OMVIC Board of Directors.

“party” means a person or corporation recognized by the Discipline Panel as having the status to participate in the proceedings as applicant, or respondent, or party specified by the Discipline Panel as an added party.

“proceedings” means a discipline matter before the Discipline Panel.

“representative” means the counsel or the agent who the Discipline Panel is satisfied is authorized to represent a party in proceedings before the Discipline Panel.

“Rules” means these rules of practice.

“service” means the effective delivery of documentation to any person or to the person’s counsel or agent in a manner prescribed by these rules.

“written hearing” means a hearing held by means of the exchange of documents whether in written form or by electronic means.

RULES OF PRACTICE FOR MEETINGS OF THE REMEDIAL PANEL

Hearings before the Remedial Panel shall be in accordance with practice guidelines issued from time to time by OMVIC.

All hearings before the Remedial Panel shall be conducted in a manner that is consistent with the overall purpose of the Discipline Process.

GENERAL RULES OF PRACTICE FOR HEARINGS BEFORE THE DISCIPLINE PANEL

- These Rules apply to all proceedings before the OMVIC Discipline Panel.
- Where any of these Rules is in conflict with any By-law, the By-law shall apply.
- A Discipline Panel may exercise any of its powers under these Rules on its own initiative or at the request of a Party.
- In any matter not provided for in these Rules, the practice of a Discipline Panel may be determined by analogy to these Rules.
- A Discipline Panel may waive compliance with any of these Rules at any time.
- No proceeding is invalid by reason only of a defect or other irregularity of form.
- If the Parties consent, the proceeding may be disposed of by a decision or order of the Discipline Panel given without a Hearing.
- All communications with a Panel in the absence of other Parties shall be made through the C.C.C.

- Where a Party is represented by a Representative, the C.C.C. may communicate with the Party, through the Party's Representative.
- Where a Party is to attend before a Discipline Panel and fails to do so and the Discipline Panel under these Rules decides to proceed without that Party's participation, the Discipline Panel must recess the proceedings for fifteen (15) minutes before proceeding in the absence of that Party.
- Oral Hearings shall be open to the public unless otherwise provided by the By-laws or by the direction or order of the Discipline Panel.
- The Discipline Panel may at any time correct a typographical error, error of calculation, or other similar error made in its decision without prior notice to the Parties.
- A Discipline Panel may make such orders or give such direction in proceedings before it, as it considers proper, to prevent abuse of its processes.
- The Rules of Natural Justice applies to hearings before the Discipline Panel.

ORIGINATING PROCESS

A matter that is directed to proceed by way of a hearing before the Discipline Panel shall be commenced by a Notice of Complaint issued by the Director and shall include particulars of the conduct at issue.

NOTICE OF HEARING

The C.C.C. shall notify the Parties to a hearing by serving upon the Parties a Notice of Discipline Panel Hearing, at least thirty (30) days prior to the hearing.

The Notice shall include reference to the authority under the By-laws under which the hearing will be held.

Notice of an oral Hearing shall include:

- (a) a statement of the date, time, place and purpose of the Hearing; and
- (b) a statement that if a Party notified does not attend at the Hearing, the Discipline Panel may proceed in the Party's absence and the Party will not be entitled to any further notice of the proceeding.

All hearings shall be conducted orally unless the Discipline Panel deems an electronic or written hearing is appropriate in the particular circumstances.

WRITTEN OR ELECTRONIC HEARING

When to hold a Written or Electronic Hearing

In deciding whether to hold a written or electronic hearing, the Discipline Panel may consider any relevant factors, including:

- (1) the suitability of a written hearing format considering the subject matter of the hearing, including the extent to which the matters are in dispute;
- (2) whether the nature of evidence is appropriate for a written hearing, including whether credibility is an issue and the extent to which the facts are in dispute;
- (3) the extent to which the matters in dispute are questions of law;
- (4) the convenience of the parties;
- (5) the cost, efficiency and timeliness of proceedings;
- (6) avoidance of unnecessary length or delay;
- (7) ensuring a fair and understandable process;
- (8) the desirability or necessity of public participation in or public access to the Discipline process;
- (9) any other consideration affecting the fulfillment of the Discipline Panel's mandate.

When ordering that a matter proceed by written or electronic hearing, the Discipline Panel shall do so on terms that are just.

A party requesting an electronic or written hearing shall do so by motion.

SERVICE AND FILING

For all documents with respect to the Discipline Hearing, the following Rules apply:

Service of a document is deemed to be effective:

- (a) by regular, registered or certified mail or by courier including Priority Post on the fifth day after the day of mailing or the date the document was given to the courier;
- (b) by fax or electronic mail on the day following the transmission;
- (c) by personal service effective the day of delivery;
- (d) by such other methods as directed by the Panel;

at the last address for the Party as shown in the records of OMVIC.

All documents required to be filed in a proceeding shall be filed with the C.C.C. by any of the methods provided in this Rule. The date of filing shall be the day such documents are actually received by the C.C.C., except where such documents are filed in the course of a Hearing or where these Rules otherwise provide.

TIME

In the computation of time under these Rules or in an order of a Discipline Panel, except where a contrary intention appears:

- (1) where there is a reference to a number of days between two events, they should be counted by excluding the day on which the first event happens, and including the day on which the second event happens even if they are described as clear days or the words “at least” are used;
- (2) where a period of five (5) days or less than five (5) days is prescribed, Holidays shall not be counted;
- (3) where the time for doing an act under these Rules expires on a Holiday, the act may be done on the next day that is not a Holiday; and

DISCLOSURE

Character, Conduct or Competence Issues

Where the good character, propriety of conduct or competence of a Party is an issue in the proceedings, the Party is entitled to be furnished prior to the Hearing with reasonable information of any allegations with respect thereto.

Disclosure of Documents or Things Generally

At least fifteen (15) days before the Hearing, except for the written report of an expert witness to which another Rule herein applies or where a document or thing is to be used by a Party solely for the purpose of the cross-examination of another Party or another Party's witness, a Party to a Hearing shall:

- (1) disclose to all other Parties the existence of every document and thing that the Party will refer to or tender as evidence at the Hearing and shall deliver a copy of such documents to the other Parties, and
- (2) disclose and make available for inspection by every other Party all things, other than documents, that the Party will refer to or tender as evidence at the Hearing.

Disclosure of Written Statement or Report of Expert Witness

At least twenty (20) days before the Hearing, where a Party intends to call an expert witness or rely on or refer to the written statement or report of an expert witness at a Hearing, such Party shall provide to every other Party a copy of the written statement or report signed by the expert and containing the name and qualifications of the expert, and shall file a copy of such written statement or report with the C.C.C. at least five (5) days prior to the Hearing.

Failure to Disclose

If a Party fails to comply with the provisions of these Rules with respect to disclosure or inspection of documents or things, that Party may not refer to the document or thing without the consent of the Discipline Panel which shall be on such terms as are just.

RESTRICTED ACCESS

An oral Hearing shall be open to the public except where the Discipline Panel is of the opinion that,

- (a) matters involving public security may be disclosed; or
- (b) intimate financial or personal matters or other matters may be disclosed at the Hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that Hearings be open to the public,

in which case the Panel may hold the oral Hearing in the absence of the public.

NOTICE OF CONSTITUTIONAL QUESTION

Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or By-law made under legislation, or a rule of common law or to claim a remedy under the Canadian Charter of Rights and Freedoms, notice of a constitutional question shall be served on the other Parties and the Attorneys General of Canada and Ontario, if applicable and filed with the C.C.C. as soon as the circumstances requiring notice become known and in any event, at least fifteen (15) days before the question is to be argued before the Discipline Panel and the Party shall be required to bring a motion on the constitutional issue including the Charter of Rights and Freedoms in accordance with Rule herein.

Where the Attorneys General of Canada and Ontario are entitled to notice of a matter as referred to in these Rules, the Attorneys General of Canada and/or Ontario is entitled to adduce evidence and make submissions to the Discipline Panel regarding the constitutional question.

MOTIONS

Where a Party intends to bring a motion before the Discipline Panel at the Hearing, written notice shall be given to all parties and filed with the C.C.C. five (5) business days before the day the motion is to be heard setting out the grounds for the motion, the evidence to be relied upon and the relief sought.

Except when a motion is to be argued at a scheduled hearing date, the Party bringing the motion shall file a copy of the notice of motion with the C.C.C. and obtain directions as to service and obtain an appointment from the C.C.C. for the hearing of the motion.

ADJOURNMENT

Adjournments may be granted on consent of all parties.

Adjournment requests should be made in a timely manner so as to minimize inconvenience to the parties and the Discipline Panel.

COSTS

The Panel hearing a matter may make an order as to costs payable by one party to another party.

APPEAL PROCESS

1. Any party to a hearing conducted by the OMVIC Discipline Panel may appeal the final determination of the Discipline Panel to the Appeal Tribunal.
2. Any appeal must be made, in writing, delivered to the Complaint and Compliance Co-ordinator of OMVIC within thirty days of the Decision and Reasons for Decision of the Discipline Panel setting out the grounds for the appeal, along with the necessary filing fee as determined by OMVIC, from time to time.
3. The appeal shall proceed solely on the basis of the transcript of the evidence led before the Discipline Hearing Panel and the exhibits filed, and such further evidence as may be admitted in exceptional circumstances.
4. The party appealing is obliged, at its own expense, to provide five copies of the transcript of the proceedings before the Discipline Hearing Panel and an Appeal Record, including the Notice of Appeal and all documents filed as exhibits before the Discipline Hearing Panel.
5. The Complaint and Compliance Co-ordinator shall, upon receipt of the filing fee, the requisite copies of the transcript and the Appeal Record, fix the time and place for hearing of the appeal and give notice thereof to all pa by registered mail to the last known address.
6. Implementation of the decision of the OMVIC Discipline Panel shall be stayed pending determination by the Appeal Tribunal.
7. The parties to the appeal and/or their counsel, shall he given the opportunity to appear before the Appeal Tribunal to make arguments on the matter. The Appeal Tribunal, appointed by the Chairperson of OMVIC's Discipline Committee, shall be comprised of three members of the Discipline Committee, having the characteristics required of members of the Discipline Hearing Panel, on consent of the parties, a quorum of the Appeal Tribunal shall be two such members.
- 8 To the extent applicable and by way of analogy, if necessary, the Rules of Practice Before Remedial & Discipline Panels shall apply to hearings before the Appeal Tribunal. In addition, hearings before the Appeal Tribunal shall be in accordance with practice guidelines issues from time to time by OMVIC.
9. The Appeal Tribunal may give any decision that ought to have been pronounced by the OMVIC Discipline Panel and may award costs in respect of the Appeal.

10. The Appeal Tribunal shall report its decision in writing accompanied by necessary reasons for the decision to the parties within thirty day of the conclusion of the hearing.