

A Guide to OMVIC's Discipline Process

This guide is designed to provide an overview of information with respect to OMVIC's Discipline and Appeals process. It is not intended to be a substitute for the Rules of Practice and nothing contained, expressed or implied is intended as, or should be taken or understood as, legal advice.

As part of its mandate to protect the rights of consumers and promote industry professionalism, OMVIC may refer matters related to alleged breaches of the [Code of Ethics](#) to the Discipline Committee for a hearing. A hearing is a formal proceeding, much like a trial in a court of law, conducted by a panel of three members of the Discipline Committee. The panel will hear evidence, consider whether the facts prove the allegations and determine if the registrant(s) failed to comply with the Code of Ethics. Unlike a hearing before the Licence Appeal Tribunal, the Discipline Committee cannot revoke the licence of a registrant, nor can it require terms and conditions of registration.

What is a Notice of Complaint?

A Notice of Complaint contains allegations of breaches of the Code of Ethics which applies to all dealers and salespeople registered under the Motor Vehicle Dealers Act 2002 ('MVDA').

OMVIC is the applicant, and the dealership along with any individuals named in the Notice of Complaint are the respondent(s), collectively referred to as the parties.

What happens after I get a Notice of Complaint?

The first thing a registrant should consider is whether or not to retain legal counsel. Should the matter proceed to a hearing, OMVIC will be represented by a lawyer. Registrants found in breach of the Code of Ethics face a fine up to \$25,000.00 and may be required to complete further educational courses. All discipline decisions will be made public (a requirement of the MVDA). OMVIC recognizes that for some registrants, retaining legal representation may be financially out of reach. To find out more about the legal resources available, please visit [Law Society Referral Service](#).

Following a careful review of the allegations contained in the Notice of Complaint, the registrant is expected to respond in writing to the allegations within 15 days and attach any relevant supporting documents. The majority of Notices of Complaint are resolved by way of an Agreed Statement of Facts without the need for a formal hearing. A key factor in determining whether a Notice of Complaint can be resolved without a formal hearing is the registrant's written response. It is therefore important a recipient of a Notice of Complaint review all of the allegations and respond to each one, attaching relevant supporting documents if available.



Following OMVIC's review of the registrant's response:

- the matter may be resolved and withdrawn;
- there may be further discussions with respect to resolving the matter by way of an Agreed Statement of Facts and Joint Submission on Penalty taking into consideration the registrant's written response and steps, if any, taken to resolve the issue(s) which may have an effect on the terms of settlement; or
- the matter may be referred to the Discipline Committee for the purposes of scheduling a hearing before a panel where the allegations can be contested.

How does a hearing get scheduled?

When the parties are unable to reach terms of settlement, the Discipline Committee will send a questionnaire to both parties seeking information to assist with the scheduling of the hearing. A Notice of Hearing will follow advising of the date, time and location of the hearing.

Who sits on the panel?

The Chair of the [Discipline Committee](#) will appoint an independent impartial panel of three members to consider the allegations contained in the Notice of Complaint. The Panel will consist of two registered motor vehicle dealers/salespeople and one member of the public. The panel will also have its own lawyer commonly referred to as Independent Legal Counsel. This lawyer does not work for OMVIC and is not a member of the panel; s/he may be called upon from time to time to provide legal advice or assist the panel with procedural matters.

What is a hearing?

A hearing is a formal proceeding (sometimes referred to as a contested hearing) before an independent panel comprised of members of the industry and the public. The responsibility of proving the allegations rests with OMVIC who is first to present its case.

The Rules of Practice require each party deliver, a minimum of 15 days in advance of the date of the hearing, all documents and things they intend to rely on at the hearing. This is fundamental to procedural fairness which includes the opportunity to review all materials or evidence the opposing party intends to rely on at a contested hearing. Each party is required to bring five (5) copies of all documents to distribute at the hearing.

Following opening statements of each party's general position regarding the allegations, the panel will hear evidence. Evidence may be in the form of documents or in the form of oral testimony given by witnesses. For example, the inspector who conducted a related inspection of a dealership or a customer complainant may be called as a witness. The respondent will be given the opportunity to ask questions of OMVIC's witnesses.



Once OMVIC has presented its evidence, it is the respondents turn to introduce documents and to call witnesses to testify on your behalf. Each party is responsible for ensuring its witnesses attend. Similarly, OMVIC will have an opportunity to ask questions of the respondents witnesses.

Should the respondent require a person to give evidence that is relevant to the allegations and he or she is not willing to attend the hearing, the respondent may contact discipline@omvic.on.ca who will provide you with a Summons Form 12A. It is the respondent's responsibility to compensate all his or her witnesses as set out in the fees/allowances section under Tariff A, Part II (Disbursements) of the Rules of Civil Procedure under the *Courts of Justice Act*.

Once each party has completed presenting all of their evidence, each party will be given an opportunity to summarize their arguments concerning whether or not there was a failure to comply with the Code of Ethics. The Panel will also ask each party for their views on what an appropriate penalty (fine, education or costs) should be in the event the panel determines there was a failure to comply with the Code of Ethics. Decisions are not given at the hearing but sent to each party within a reasonable amount of time after the conclusion of the hearing.

What are the possible penalties?

If the Discipline Committee determines that a dealer or salesperson has failed to comply with the Code of Ethics, it may order any of the following:

- Require the dealer or salesperson to take educational courses
- Require the dealer to fund educational courses for their salespeople
- Impose a fine to a maximum of \$25,000
- Fix and impose costs

How can I talk about the allegations at a pre-hearing conference?

A party may make a request to the Discipline Coordinator to participate in a pre-hearing conference which is an informal and unrecorded discussion with one member of the Discipline Committee. All discussions at a pre-hearing conference are conducted on a without prejudice basis, meaning that nothing said will be disclosed at a contested hearing. The member of the Discipline Committee facilitating the pre-hearing will not sit on the panel at the contested hearing.

The purpose of the pre-hearing is to reach a settlement of the matter, identify and narrow issues, seek agreement on certain facts or evidence, determine time requirements and facilitate the exchange of information. All pre-hearings are closed to the public.



Why are witnesses asked to sit outside the hearing?

With the exception of the parties, all witnesses are to remain outside until called to testify, this is commonly referred to as an Order Excluding Witnesses. This is done to prevent a witness from being influenced by another person's testimony.

Is the decision published?

Section 27 of the Motor Vehicle Dealers Act 2002 requires OMVIC to publish the contents of an Order made by the Discipline Committee.

Are Hearings open to public?

Discipline hearings are open to the public unless a panel determines it should be closed pursuant to the *Statutory Powers and Procedures Act*.

How do I file a motion?

A motion is a request to the Discipline Committee to obtain a ruling or decision on a specific matter relevant to the case. Parties must notify the Discipline Committee of any intention to file a motion and seek a date from the Discipline Committee. The party bringing the motion must serve and file a copy of the written motion (see Form 9A) on each party and with the Discipline Committee a minimum of 5 business days prior to the date of the motion hearing. A party who wishes to respond to the motion must serve and file their written reply to each party and a copy to the Discipline Committee a minimum of two days before the motion hearing.

How do I file an appeal?

The decision of the panel is final, unless written notice setting out the grounds for appeal is delivered to OMVIC and to the attention of the Chair of the Appeals Committee within 30 days upon receipt of the discipline panel's decision (see Form 14A).

A party who chooses to appeal is required to provide five (5) copies of the transcripts of the hearing to the Appeals Committee and one (1) copy to OMVIC's legal department. The party appealing will need to contact a certified court reporter to produce the transcripts of the proceeding. The Discipline Committee will send the recording of the hearing directly to the court reporter selected. Arrangement for the cost and delivery of the transcripts is the responsibility of the party appealing.



How does the decision on Appeal get made?

Following receipt of the grounds for appeal and necessary copies of the transcripts, the parties will be given an opportunity to appear before the Appeals Committee and make submissions concerning the grounds for appeal. The Appeals Panel may overturn, affirm or modify the Order of the Discipline Committee.

