

RULES OF PRACTICE BEFORE THE DISCIPLINE COMMITTEE AND THE APPEALS COMMITTEE

PURPOSE

The principle objective of the *Motor Vehicle Dealers Act, 2002* (“MVDA”) discipline process is to regulate the practices of motor vehicle dealers and salespersons in accordance with the Code of Ethics (O. Reg. 332/08, ss. 3-9) and legislation in order to ensure a fair marketplace. Regulation of the industry will ensure consumer protection and high ethical standards for motor vehicle dealers and salespersons.

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 Discipline Committee and Appeals Committee in fulfilling their mandates.

RULES OF PRACTICE

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RULE 1 - INTERPRETATION AND APPLICATION

DEFINITIONS

1.01 In these Rules, unless the context requires otherwise, words that are not defined below have the meaning defined in the *Motor Vehicle Dealers Act, 2002* or the *Statutory Powers and Procedures Act*:

“Act” means the *Motor Vehicle Dealers Act, 2002* and any successor legislation;

“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;

“Appeals Panel” means a panel of the Appeals Committee appointed under the Act;

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

“Business Day” means a day that is not a Saturday, Sunday or Ontario statutory holiday;

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

“Chair” means the chairperson of either the Discipline Committee or the Appeals Committee, depending on the context, who is appointed under the Act;

“H. O.” means Hearings Officer 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 H.O. ;

“Director” means the director appointed pursuant to the Act;

“Discipline Panel” means a panel of the Discipline Committee appointed under the Act;

“Discipline Panel Chair” means a chairperson of a Discipline Panel appointed under the Act;

“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 including an electronic device;

“Electronic Hearing” means a hearing held by conference telephone or similar form of electronic technology allowing persons to communicate with and hear one another simultaneously;

“File” means effective delivery of Documents to the H.O.;

“Hearing” means Proceedings before a Panel in which the Panel receives evidence and/or submissions regarding the merits of the proceeding, rather than simply an interim or procedural step in the Proceedings;

“Holiday” means Saturday, Sunday, or any Ontario statutory holiday;

“Legal Practitioner” means a lawyer or paralegal for a participant in a Proceeding;

“Member” means a member of the Appeals Committee or the Discipline Committee appointed under subsection 17(3) of the Act;

“Motion” means a written or oral request made to the Panel by a Party, or person seeking an order from the Panel, in a Proceeding before the Panel;

“Notice of Hearing” means notice of hearing before a Panel;

“OMVIC” means the Ontario Motor Vehicle Industry Council;

“Oral Hearing” means a hearing at which the parties or their Representatives attend before the Panel in person;

“Panel” means an Appeals Panel or a Discipline Panel;

“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;

“Party” means a person or corporation recognized by the Panel as having the status to participate in the Proceedings as a Party under sections 15 or 21 of Ontario Regulation 332/08;

“Pre-hearing Conference Chair” is the person appointed by the Chair of the Committee to conduct a pre-hearing conference;

“Proceedings” means a discipline or appeal matter that may be heard before a Panel and includes interim or procedural steps;

“Registrant” means a registrant of OMVIC as defined in the Act who is the subject of a Hearing before a Panel and includes a former registrant;

“Registrar” means the registrar under the Act;

“Regulations” means the regulations made under the Act;

“Representative” means a Legal Practitioner or other person acting on behalf of a participant in the Proceedings who a Panel is satisfied is authorized to represent a Party in Proceedings before the Panel;

“Rules” means these Rules of Practice;

“Service” means the effective delivery of documentation to any person or to the person’s Representative 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; and

“Vulnerable Witness” means a person providing evidence who appears not to be able to withstand normal Hearing procedures because of age, disability, health or similar reason.

GENERAL PRINCIPLES

- 1.02 (1) These Rules shall be liberally construed to secure a just and expeditious determination of the allegations against a Registrant. These Rules should be interpreted fairly and in a way that promotes justice for the Parties while protecting the public interest and interests of witnesses.
- (2) Where matters are not provided for in these Rules or the *Statutory Powers Procedure Act*, the procedure shall be determined by analogy to them.
- (3) The Discipline Committee or Appeals Committee may issue practice directions from time to time to explain or clarify these Rules.

APPLICATION OF RULES

- 1.03 (1) These Rules are made pursuant to s. 25.1 of the *Statutory Powers Procedures Act*.
- (2) These Rules apply to all Proceedings before Panels of the OMVIC Discipline Committee and Appeals Committee.

CONFLICTS

- 1.04 Where any of these Rules is in conflict with the Act, Regulations or By-laws, the Act, Regulations or By-laws shall prevail.

GENERAL RULES OF PRACTICE FOR PROCEEDINGS BEFORE THE DISCIPLINE PANEL OR APPEALS PANEL

- 1.05 (1) A Panel may exercise any of its powers under these Rules on its own initiative or at the request of a Party.
- (2) A Panel may issue general or specific procedural directions at any time.
- (a) A Panel may waive compliance with any of these Rules at any time.
- (b) It is sufficient if there is substantial compliance with a form or notice required by or under these Rules.
- (3) No Proceedings is invalid by reason only of a defect or other irregularity of form.
- (4) If a Party seeks a remedy or order that a Panel cannot fairly grant without submissions from other Parties, the Party seeking the order shall first seek the consent of the other Parties and advise the Panel whether consent was obtained.
- (5) If the Parties consent, the Proceedings may be disposed of by a decision or order of the Panel given without a Hearing.
- (6) All communications with a Panel in the absence of other Parties shall be made through the H.O.

- (7) Where a Party is represented by a Representative, the H.O. may communicate with the Party, through the Party's Representative.
- (8) Where a Party is to attend before a Panel and fails to do so and the Panel under these Rules decides to proceed without that Party's participation, the Panel must recess the Proceedings for at least fifteen (15) minutes before continuing in the absence of that Party.
- (9) A Panel may at any time correct a typographical error, error of calculation, or other similar error made in its decision or order without prior notice to the Parties.
- (10) A Panel may make such orders or give such directions in Proceedings before it, as it considers proper, to prevent abuse of its processes.

COMPUTING TIME

- 1.06 (1) Subject to sub-rule 1.06 (2), in computing time periods under these Rules (or an order of a Panel),
- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;
 - (b) Service of a Document made after 4:00 p.m. or at any time on a Holiday shall be deemed to have been made on the next day that is not a Holiday;
 - (c) where a period of less than seven (7) days is required, Holidays shall not be counted;
 - (d) 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
 - (e) where under these Rules, a Document would be deemed to be received or Service would be deemed to be effective on a day that is a Holiday, it shall be deemed to be received or effective on the next day which is not a Holiday.
- (2) A Panel may, at any time and on such conditions as it considers appropriate, lengthen or shorten the time required for the performance of any obligation under these Rules.

DISPOSITION WITHOUT A HEARING - CONSENT

- 1.07 (1) Where the Parties consent to the disposition of all or part of a matter without a Hearing, the Parties shall Deliver the proposed disposition in writing and a written waiver of the requirement for a Hearing (under section 4.1 of the *Statutory Powers Procedure Act*) and a full Panel (under section 4.2.1 of the *Statutory Powers Procedure Act*) with any written submissions to the Chair, care of the H.O.
- (2) Where the proposed disposition appears to be in the public interest, the Chair may accept and sign the proposed disposition and provide an order.
- (3) Where the Chair has concerns as to whether the proposed disposition is in the public interest, the Chair shall assign a Panel to consider it along with any written submissions of the Parties.
- (4) The Chair or a Panel shall not alter or amend a disposition without a Hearing unless the Parties consent.
- (5) Nothing in this Rule prevents a Panel from accepting a joint submission from the Parties at a Hearing.

DISPOSITION WITHOUT A HEARING – FRIVOLOUS AND VEXATIOUS

- 1.08 (1) A Panel may also dismiss a Proceeding if the Panel concludes that:
- (a) the Proceedings is frivolous, vexatious or is commenced in bad faith;
or
- (b) the Proceedings relates to matters that are outside the jurisdiction of the Discipline Committee or Appeals Committee.
- (2) A Panel shall not dismiss a Proceeding under sub-rule (1) unless notice has been given to the Parties in accordance with subsection 4.6(2) of the *Statutory Powers Procedure Act* and the Parties given notice are provided with at least fifteen (15) days to make submissions in writing.

RULE 2 - NOTICE OF HEARING

HEARING NOTICES

- 2.01 (1) A matter that is directed to proceed by way of a Hearing before a Discipline Panel shall be commenced by a Notice of Discipline issued by the Registrar and shall include Particulars of the conduct at issue.
- (2) The H.O. shall notify the Parties to a Hearing by Serving upon the Parties, at the last address for Service appearing on the records of the Registrar, a Notice of Hearing, at least thirty (30) days prior to the Hearing.
- (3) Notice of Hearing generally shall include:
- (a) a reference to the statutory authority under which the Hearing is to be held;
 - (b) information required by the *Statutory Powers Procedure Act* to be included in the Notice of Hearing including any information required for holding all or part of the Proceedings electronically or in writing; and
 - (c) a statement of the purpose of the Hearing.
- (4) A Panel may include in a Notice of Hearing any other information or directions it considers necessary for the proper conduct of the Hearing.
- (5) All Hearings are to be held at OMVIC's offices, unless otherwise ordered by the Panel.
- (6) All Hearings shall be conducted orally unless the Chair or a Panel concludes that an Electronic or Written Hearing is appropriate in the particular circumstances.

ORAL HEARING

- 2.02 For an Oral Hearing, in addition to the requirements of Rule 2.01, the Notice of Hearing shall include:
- (a) a statement of the date, time, and place of the Hearing; and

- (b) a statement that if a Party does not attend at the Hearing, the Panel may proceed in the Party's absence and the Party will not be entitled to any further notice of the Proceedings.

WRITTEN HEARING

2.03 For a Written Hearing, in addition to the requirements of Rule 2.01, the Notice of Hearing shall include:

- (a) a statement of the date and time of the Hearing, which is provided by setting out the time periods during which Parties are to Serve and File Documents for the Written Hearing;
- (b) a statement that Parties will be required to exchange Documents with other Parties and will have an opportunity to make submissions;
- (c) a statement that the Party may object to the Hearing being held as a Written Hearing by filing an objection within ten (10) days after receiving Notice of Hearing, and a statement that where an objection is filed, the Panel will hold an Oral or Electronic Hearing, and will supply directions as to the holding of that Hearing;
- (d) a statement that if the Party neither objects to the Hearing being a Written Hearing, in the manner set out in clause (c), nor participates in the Hearing in accordance with the Notice of Hearing, the Panel may proceed without the Party's participation and the Party will not be entitled to any further notice of the Proceedings; and
- (e) a statement that the Parties will be obliged to provide with their final submissions a list of the Documents that they are relying on to support their positions and copies of those Documents if the Panel does not already have them.

ELECTRONIC HEARING

2.04 (1) For an Electronic Hearing, in addition to the requirements of Rule 2.01, the Notice of Hearing shall include:

- (a) a statement of the time of the Hearing, and details about the manner in which the Hearing will be held;
- (b) a statement that the only purpose of the Hearing is to deal with procedural matters, if that is the case;

- (c) if clause (b) does not apply, a statement that the Party may, by satisfying a Panel that holding the Hearing as an Electronic Hearing is likely to cause the Party significant prejudice, require a Panel to hold the Hearing as an Oral Hearing, and an indication of the procedure to be followed for that purpose; and
 - (d) a statement that if the Party neither follows the procedure set out in clause (c) for objections to an Electronic Hearing, if applicable, nor participates in the Hearing in accordance with the Notice of Hearing, the Panel may proceed without the Party's participation and the Party will not be entitled to any further notice of the Proceedings.
- (2) At least forty-eight (48) hours before an Electronic Hearing is scheduled to commence, every person participating in the Electronic Hearing shall give notice to the H.O. of the telephone number, location and other coordinates, if applicable, where he/she can be reached for the Electronic Hearing.
 - (3) Every person participating in the Electronic Hearing shall ensure that he or she can be reached at the telephone number or other coordinates provided to the H.O. at least fifteen (15) minutes before the Electronic Hearing is scheduled to commence.
 - (4) Unless otherwise provided in these Rules, every person participating in the Electronic Hearing shall Deliver every Document, in sequentially numbered pages, that he or she intends to rely upon at least 3 days before the Electronic Hearing.

WHEN TO HOLD A WRITTEN OR ELECTRONIC HEARING

- 2.05 (1) In deciding whether to hold a Written or Electronic Hearing, the Chair or a Panel may consider any relevant factors, including:
- (a) the suitability of a Written or Electronic Hearing format considering the subject matter of the Hearing, including the extent to which the matters are in dispute;
 - (b) whether the nature of evidence is appropriate for a Written or Electronic Hearing, including whether credibility is an issue and the extent to which the facts are in dispute;
 - (c) the extent to which the matters in dispute are questions of law;

- (d) the convenience of the Parties;
 - (e) the cost, efficiency and timeliness of Proceedings;
 - (f) avoidance of unnecessary length or delay;
 - (g) ensuring a fair and understandable process;
 - (h) the desirability or necessity of public participation in or public access to the discipline process; or
 - (i) any other consideration affecting the fulfillment of the Panel's mandate.
- (2) When ordering that a matter proceed by Written or Electronic Hearing, the Chair or a Panel shall do so on terms which are just.
- (3) A Party requesting an Electronic or Written Hearing shall do so by Motion.

SERVING A NOTICE OF HEARING

2.06 Unless otherwise ordered, Notice of Hearing is sufficiently given if Served under Rule 2.01.

NON-ATTENDANCE OR NON-PARTICIPATION

2.07 Where Notice of Hearing has been given to any Party in accordance with these Rules and any applicable legislation, and the Party does not attend at or participate in the Hearing as specified in the Notice of Hearing, a Panel may proceed in their absence or without their participation and that Party is not entitled to any further notice of the Proceedings.

REGISTRAR'S STATEMENT

2.08 A statement in writing purportedly signed by the Registrar indicating the date on which the facts upon which the complaint is based first came to his or her knowledge shall, in the absence of credible evidence to the contrary, be considered proof of that date for the purposes of section 13 of Ontario Regulation 332/08.

RULE 3 - PUBLIC ACCESS

GENERAL RULE

- 3.01 Hearings shall be open to the public except where a Panel is of the opinion that they ought to be closed, pursuant to the Act and the *Statutory Powers Procedure Act*.

NOTICE TO THE PUBLIC

- 3.02 (1) The H.O. shall give public notice of Proceedings that are open to the public including, where practical, posting a notice on the website of OMVIC.
- (3) Despite sub-rule (1), the H.O. shall not give public notice of a pre-hearing conference or other Proceedings that are closed to the public unless directed to do so by a Panel.

ACCESS TO HEARING RECORD BY THE PUBLIC

- 3.03 (1) This Rule applies to Hearings that are open to the public.
- (2) Subject to sub-rule (4), if a member of the public wishes to have access to all or part of the record of the Panel, he or she shall bring a Motion to the Panel upon notice to the Parties, and such Motion shall be made, considered and decided in writing by the Panel or, if the Hearing is completed or the Panel is otherwise unable to deal with the issue expeditiously, the Chair.
- (3) In considering a Motion under this Rule, the Panel or the Chair shall balance the privacy interests of those identified in the record with the interest in public access to the disciplinary process.
- (4) The H.O. shall charge the fee authorized for the provision of access to or copies of the record.

CONDUCT OF OBSERVERS

- 3.04 (1) No person shall:
- (a) take or attempt to take a photograph, motion picture, audio or video recording or other record capable of producing visual or audio representations by any means at a Proceedings, or
 - (b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio or video recording or other record taken in contravention of clause (a).
- (2) Sub-rule (1) does not apply to:
- (a) a person unobtrusively making handwritten or typewritten notes or sketches at a Proceedings; or
 - (b) a disabled person using a device to compensate for a disability.
- (3) No person shall interfere with or disrupt the Proceedings including by making a noise, signaling or the use of gestures or by communicating with any hearing Participant about the Proceedings during the Hearing or during any break in the Hearing.

RULE 4 - SERVICE AND FILING

SERVICE

- 4.01 (1) Service of a Document is deemed to be effective:
- (a) by regular, registered or certified mail on the fifth (5) day following the day of mailing;
 - (b) by courier, including Priority Post, on the second (2) day following the day the Document was given to the courier;
 - (c) by fax or electronic mail on the day following the transmission;
 - (d) by personal service effective the day of Service; or
 - (e) by such other methods as permitted or directed by a Panel;
- at the last address for the Party as shown in the records of the Registrar of OMVIC.

- (2) If it is impractical to give Service in accordance with sub-rule (1), a Panel may give such directions for substituted Service as it considers appropriate or, where necessary, may dispense with Service.

FILING

- 4.02 (1) All Documents required to be Filed in a Proceedings shall be Filed with the H.O., except where such Documents are Filed in the course of a Hearing or where these Rules otherwise provide, by any of the methods of Service provided in this Rule. The date of Filing shall be the same day such Documents are actually received by the H.O.
- (2) A Document exceeding twenty (20) pages, inclusive of the cover sheet, shall be Filed electronically or by fax, only with the prior approval of the H.O.
- (3) A person who Serves or Files a Document shall include with it a statement of the person's address, telephone number and the name of the Proceedings to which the Document relates.

RULE 5 - INTERPRETERS

INTERPRETERS FOR OTHER LANGUAGES

- 5.01 (1) If a Party requires an interpreter in a language other than English or French, the Party shall notify the H.O., and provide an interpreter at their own expense.
- (2) If a witness requires an interpreter in a language other than English or French, the Party calling the witness shall notify the H.O., and provide an interpreter at their own expense.
- (3) An interpreter shall be competent and independent and shall swear or affirm that they will interpret accurately.
- (4) If a Party or a witness for a Party requires an interpreter for the French language, the Party shall notify the H.O. and the Panel will provide an interpreter at its own expense.
- (5) A Party shall make a notification under this Rule as soon as it becomes aware of the need for an interpreter.

RULE 6 - DISCLOSURE

DISCLOSURE OF DOCUMENTS OR THINGS GENERALLY

- 6.01 (1) At least fifteen (15) days before the Hearing, except for the written report of an expert witness to which another Rule herein applies all Parties to a Hearing shall disclose to all other Parties:
- (a) a list of witnesses whom the party may call to give evidence at the hearing and a brief description of each witness' anticipated testimony;
 - (b) the existence of every Document and thing that the Party will refer to or tender as evidence at the Hearing and shall provide a copy of such Documents to the other Parties; and
 - (c) 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.
- (2) A Panel may at any stage of the Proceedings order a Party to disclose to any other Party any relevant Document or thing, other than privileged information, and may impose any conditions it considers appropriate.

DISCLOSURE OF WRITTEN REPORTS OF EXPERT WITNESSES

- 6.02 (1) At least forty (40) 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 Deliver to every other Party and the H.O. a written report, signed by the expert, setting out the following:
- (a) The expert's name, address and area of expertise.
 - (b) The expert's qualifications and employment and educational experiences in his or her area of expertise.
 - (c) The instructions provided to the expert in relation to the proceeding.

- (d) The nature of the opinion being sought and each issue in the proceeding to which the opinion relates.
 - (e) The expert's opinion respecting each issue and, where there is a range of opinions given, a summary of the range and the reasons for the expert's own opinion within that range.
 - (f) The expert's reasons for his or her opinion, including:
 - i. a description of the factual assumptions on which the opinion is based;
 - ii. a description of any research conducted by the expert that led him or her to form the opinion; and
 - iii. a list of every document, if any, relied on by the expert in forming the opinion.
 - (g) An acknowledgement of expert's duty using Form 6A signed by the expert.
- (2) If the other party wishes to call an expert witness in response, that party shall, not less than ten (10) days before the hearing, deliver to the other parties a report signed by the expert and containing the information set out in sub-rule 6.02 (2).
- (3) Notwithstanding sub-rule 6.02 (4), the responding party may bring a motion for additional time to deliver a responding expert report and the Committee may grant such additional time upon such terms and conditions as are just.
- (4) No expert witness may testify, except with leave of the Committee, unless sub-rule 6.02 (2) has been complied with.

DUTY OF EXPERT

- 6.03 (1) It is the duty of every expert engaged by or on behalf of a party to provide evidence in relation to a Discipline Committee hearing:
- (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and

- (c) to provide such additional assistance as the Discipline Committee may reasonably require to determine a matter in issue.
- (2) The duty in sub-rule 6.03 prevails over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.
- (3) Any expert who gives evidence at a hearing shall certify, either in writing or during oral evidence that he or she acknowledges and understands the duty described in sub-rule 6.03.

DISCLOSURE OF PARTICULARS (ORAL AND ELECTRONIC HEARINGS)

- 6.03 (1) At any time in a Proceedings, a Panel may order any Party to File such Particulars as the Panel considers necessary for a full and satisfactory understanding of the issues in the Proceedings.
- (2) If the good character, propriety of conduct or competence of a Party is an issue in a Proceedings, the Party making such allegations shall provide reasonable Particulars of any allegations prior to the Hearing.
- (3) At any time in a Proceedings, a Panel, after providing Parties with an opportunity to make submissions, may order that Particulars be amended in accordance with the evidence entered at the Hearing.

FAILURE TO DISCLOSE

- 6.04 If a Party fails to comply with the provisions of this Rule, the Party may not refer to the Document or thing or enter the Document or thing in evidence at the Hearing without the consent of a Panel which may be on such conditions as the Panel considers appropriate.

PRODUCTION OF DOCUMENTS FROM A THIRD PARTY

- 6.05 (1) A summons for the production of Documents from a third party that are not in the possession of a Party shall not require the production of any Documents before the commencement of the Hearing.
- (2) A Motion relating to the production of Documents from a third party shall not be heard until the commencement of the Hearing.

- (3) The Notice of a Motion relating to the production of Documents from a third party shall be Served on the person possessing the Documents and on any other person with a significant interest, including a privacy interest, in the Documents.

RULE 7 - PRE-HEARING CONFERENCES

INITIATING PRE-HEARING CONFERENCES

- 7.01 (1) A pre-hearing conference shall be held where the Parties all agree, or the Chair or a Panel so directs.
- (2) Once a pre-hearing conference has been requested or directed, full participation is mandatory for all Parties unless the Chair or a Panel directs otherwise.
 - (3) The Chair shall designate a person who is not a member of the Panel to act as the Pre-hearing Conference Chair.
 - (4) The H.O. shall schedule a date for the pre-hearing conference to be held and shall notify the Parties of the date.
 - (5) The Representatives of the Parties attending a pre-hearing conference shall either have authority to make decisions on the matters to be discussed or shall be readily able to obtain instructions on them.
 - (6) The Pre-hearing Conference Chair may direct a pre-hearing conference to be held electronically.

PROCEDURE AT PRE-HEARING CONFERENCES

- 7.02 (1) At the pre-hearing conference, the Pre-hearing Conference Chair shall discuss the following with the Parties on a without prejudice basis:
- (a) whether any or all of the issues can be settled;
 - (b) whether the issues can be simplified;
 - (c) whether there are any agreed facts; and

- (d) the advisability of attempting other forms of resolution of the matter.
- (2) After the discussion referred to in sub-rule (1), the Pre-hearing Conference Chair shall discuss with the Parties and then may give directions about the following:
- (a) the scheduling of any Motions that can be heard before the Hearing;
 - (b) the content and timing of Delivery of any additional disclosure;
 - (c) the Delivery and form of any additional Documents to be used at the Hearing and whether the Documents can appropriately be reviewed by the Panel before the commencement of the Hearing;
 - (d) the Delivery of written arguments and books of authorities and whether these can appropriately be reviewed by the Panel before the commencement of the Hearing;
 - (e) the scheduling of the Hearing;
 - (f) the scheduling of any Motions;
 - (g) when the witnesses to be called at the Hearing must be available to testify; and
 - (h) any other matter that may assist in the just and most expeditious disposition of the Proceedings.
- (3) If a Party becomes aware of additional circumstances that would materially affect the conduct of the Hearing before the commencement of the Hearing, the Party shall immediately Deliver a written notice of the circumstances and the Pre-hearing Conference Chair may schedule a supplementary pre-hearing conference.
- (4) The provisions of this Rule apply to further or supplementary pre-hearing conferences with necessary modifications.

RESOLUTIONS AT A PRE-HEARING CONFERENCE

- 7.03 Any resolution as to agreed facts, a determination as to whether a Registrant failed to comply with the Code of Ethics or the terms of a final order does not become final until it is accepted and an order is given by a Panel.

CASE MANAGEMENT ORDERS

- 7.04 If the Pre-hearing Conference Chair is a member of the Committee, he or she may make orders as to the timing and nature of procedural steps that must be taken by the Parties to ensure that the Hearing is fair and expeditious.

MOTIONS AT THE PRE-HEARING CONFERENCE

- 7.05 (1) A Party may bring a Motion to be heard at the pre-hearing conference in accordance with these Rules.
- (2) A Pre-hearing Conference Chair may decline to hear a Motion if the Pre-hearing Conference Chair believes it may be inappropriate for him or her to hear it.

RULE 8 - CONSTITUTIONAL QUESTIONS

NOTICE OF CONSTITUTIONAL QUESTION

- 8.01 (1) Where a Party intends to raise a question about the constitutional validity or constitutional applicability of an Act, a Regulation or By-law made under an Act, or a Rule of common law or to claim a remedy under subsection 24(1) of 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 File with the H.O. 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 Panel and the Party shall be required to bring a Motion on the constitutional question.
- (2) Where the Attorneys General of Canada and Ontario are entitled to notice under this Rule, the Attorneys General of Canada and Ontario are entitled

to adduce evidence and make submissions to the Panel regarding the constitutional question.

- (3) Where the Attorneys General of Canada and Ontario are entitled to notice, they are entitled to notice of any appeal in respect of the constitutional questions.

RULE 9 - MOTIONS

PROCEDURE FOR MOTIONS

- 9.01 (1) Notice is required for any Motion unless the Chair or a Panel directs otherwise.
- (2) A request to have a Motion heard by a Panel composed of members who will not sit on the Panel presiding over the Hearing must be brought to the attention of the H.O. at the time the Party files his or her Notice of Motion.
 - (3) Where a Party intends to bring a Motion before a Panel at the Hearing, written notice shall be given to all Parties and Filed with the H.O. at least fifteen (15) business days before the day the Motion is to be heard.
 - (4) Except when a Motion is to be argued at a scheduled Hearing date, the Party bringing the Motion shall obtain an appointment from the H.O. for the hearing of the Motion.
 - (5) The Chair or a Panel may direct that the Motion will be dealt with in writing or electronically or by any other means and may direct the procedure to be followed and set applicable time limits.
 - (6) The Notice of Motion shall be as set out in Form 9A and shall set out the grounds for the Motion and the relief requested, and shall be accompanied by any evidence, to be in Affidavit form unless the Panel directs otherwise, to be relied upon.
 - (7) The notice shall be delivered to the other Parties to the Proceedings.
 - (8) A Party who wishes to respond to a Motion shall Deliver a response, at least five (5) days before a Panel deals with the Motion, accompanied by any evidence, to be in Affidavit form unless the Panel directs otherwise, to be relied upon.

- (9) Each Party to a Motion shall not exceed one (1) hour, including reply, to make submissions on a motion heard orally or electronically, except with the permission of the Chair or the Panel.
- (10) This Rule applies with necessary modifications to any person who is not a Party who is making or otherwise responding to a Motion.
- (11) The successful Party to a Motion, or the Party directed to do so by the Chair or the Panel, unless the Motion is heard at the Hearing, shall prepare an order in accordance with Form 9B.

LIMITATIONS ON BRINGING A MOTION IN ADVANCE OF THE HEARING

- 9.02 (1) Subject to sub-rule 9.02(2) and to the discretion of the Chair or a Panel, only Motions which are procedural may be brought by a Party in advance of the Hearing. This may include Motions for:
- (a) the exchange of documents;
 - (b) the oral or written examination of a Party;
 - (c) the exchange of witness statements and reports of expert witnesses;
 - (d) the provision of additional details about the allegations;
 - (e) a Party to provide a list disclosing all relevant Documents and things in the possession or control of the Party;
 - (f) the ability of a party to view Documents;
 - (g) any other form of disclosure;
 - (h) adjourning the Hearing; and
 - (i) waiving a Rule.
- (2) A Motion with respect to the following matters must be heard at the Hearing:
- (a) the exclusion of the public from all or part of a Hearing;
 - (b) the exclusion of witnesses from the Hearing;

- (c) constitutional issues;
- (d) orders respecting the accommodation of witnesses; and
- (e) any matter that a Panel hearing a Motion adjourns to the Panel presiding over the Hearing.

RULE 10 - ADJOURNMENTS

CONSIDERATIONS FOR ADJOURNMENTS

- 10.01 (1) A Hearing may be adjourned from time to time by a Panel of its own Motion or where it is shown to the satisfaction of the Chair or a Panel that the adjournment is required to permit an adequate Hearing to be held.
- (2) Adjournment requests shall be made in a timely manner so as to minimize inconvenience to the Parties and the Panel.
 - (3) When an adjournment is requested, the Chair or a Panel may consider any relevant factors, including:
 - (a) the reason for the request;
 - (b) the extent to which prejudice will be suffered if the adjournment is refused;
 - (c) the extent to which any other Party will suffer prejudice if the adjournment is granted;
 - (d) the extent to which the requesting Party gave advance notice to other Parties and to a Panel of its request for an adjournment;
 - (e) the consent of other Parties to the request;
 - (f) whether the requesting Party previously consented to the Hearing going ahead on the scheduled date;
 - (g) the length of the proposed adjournment;

- (h) previous delays including the number and length of previous adjournments granted at the request of or with the consent of the Party now requesting an adjournment; and
 - (i) the public interest in the efficient and timely conduct of Proceedings.
- (4) Except in extraordinary circumstances, the Chair or a Panel may refuse an adjournment where:
- (a) the Hearing date was scheduled peremptory against the Party requesting the adjournment; or
 - (b) where the only ground for the adjournment is that the Party unreasonably delayed retaining a Representative.
- (5) In granting an adjournment, the Chair or a Panel may impose such conditions as it considers appropriate.

RULE 11 - SUMMONSES

REQUESTING SUMMONSES

- 11.01 (1) A Party wishing to obtain a summons shall provide the name and address of the witness, as soon as practicable, to the H.O. who may provide a summons signed by the Chair of the Discipline or Appeals Committee.
- (2) No Party shall request a summons for a Hearing before the Appeals Panel without first obtaining the permission of the Appeals Panel.
- (3) The summons shall be in accordance with Form 12A.

RULE 12 - VULNERABLE WITNESSES

- 12.01 (1) A Panel may order that a support person be permitted to be present and to sit near a Vulnerable Witness while testifying and may issue directions regarding the conduct of the support person during the testimony of the witness.
- (2) A Panel may order that a Vulnerable Witness testify outside the Hearing room and/or behind a screen or other device that would allow the

Vulnerable Witness not to see a Party if the Panel is of the opinion that the exclusion is necessary to obtain a full and candid account of the matter.

- (3) A Panel shall not make an order under sub-rule (2) unless arrangements are made for the Parties the Panel and Legal Practitioner for the Parties to watch the testimony of the Vulnerable Witness by means of closed-circuit television or otherwise and each Party is permitted to communicate with his or her Legal Practitioner while watching the testimony.
- (4) A Panel may order that a Party not personally conduct the cross-examination of a Vulnerable Witness if the Panel is of the opinion that the order is necessary to obtain a full and candid account of the vulnerable witness's testimony.

RULE 13 - COSTS

ENTITLEMENT TO COSTS

- 13.01
- (1) Upon the request of a Party, the Panel hearing a matter may make an order at any stage as to costs payable by one Party to another Party if the conduct or course of conduct of a Party has been unreasonable, frivolous or vexatious or a Party has acted in bad faith.
 - (2) Requests for costs shall be made, as set out in Form 13A, unless a Party satisfies the Panel that to do so is likely to cause the party significant prejudice.
 - (3) Unless the Panel otherwise permits, a request for costs must be delivered to all other Parties and the H.O. by the requesting party as soon as the circumstances requiring the notice become known and, in any event, at least fifteen (15) days before the request for costs is to be argued.

AMOUNT OF COSTS

- 13.02
- (1) The amount of costs that may be ordered include the following:
 - (a) the actual reasonable disbursements or expenses, excluding a Legal Practitioner's fees, of the Party related to the Proceedings to a maximum of \$1,000;

- (b) an amount representing legal fees of the Party equal to a maximum of \$3,000 per Hearing day (inclusive of preparation) by the Party's Legal Practitioner; and
- (2) A Panel may order that a Party receive a proportion of the amount of costs described in this Rule.
- (3) A Panel may fix costs after providing an opportunity for written or oral submissions on the amount.
- (4) In this Rule, legal fees include deemed fees for in-house Legal Practitioners.
- (5) In this Rule, Hearing days include Motions and pre-hearing conferences and similar matters.
- (6) Where the request for costs includes disbursements or expenses and they are challenged, they may be proved by an Affidavit attaching a copy of any invoice or receipt.

RULE 14 - APPEAL PROCESS

APPEAL PROCESS

- 14.01 (1) Any Party to a Hearing conducted by the OMVIC Discipline Panel may appeal the final order of a Discipline Panel to an Appeals Panel in accordance with section 19 of Ontario Regulation 332/08 and Form 14A.
- (2) The H.O. shall hold the record of the Hearing before the Discipline Panel on behalf of the Appeals Panel under subsection 19(4) of Ontario Regulation 332/08.
 - (3) The appeal shall proceed solely on the basis of the transcript of the evidence led before the Discipline Panel and the exhibits Filed. No additional or fresh evidence may be used on the appeal unless an order is obtained from the Appeals Panel. The Appeals Panel shall not grant an order permitting additional or fresh evidence unless the additional or fresh evidence:
 - (a) is apparently credible;

- (b) if admitted it would probably have an important influence on the result; and
 - (c) it could not have been obtained by reasonable diligence at the time of the original Hearing.
- (4) The Party appealing is obliged, at its own expense, to Deliver one copy to each Party and five (5) copies to the H.O. of the transcript of the Proceedings before the Discipline Panel and an appeal record, including the notice of appeal and all Documents Filed as exhibits before the Discipline Panel unless the other Party agrees that some of these Documents are not necessary for the appeal.
- (5) The Chair of the Appeals Committee may direct the H.O. not process an appeal where:
- (a) the Documents are incomplete;
 - (b) the Documents are received after the time required for commencing the appeal has elapsed;
 - (c) the fee required for commencing the appeal is not paid; or
 - (d) there is some other technical defect in the commencement of the appeal including a failure to provide proof of ordering the transcript of the Hearing before the Discipline Panel,
- and in those circumstances the appeal shall not be deemed to have been commenced.
- (6) Where the Chair of the Appeals Committee makes a decision under sub-rule (5), he or she shall give the Party seeking to commence an appeal notice of the reasons for the decision and of the requirements for resuming the processing of the Documents.
- (7) In accordance with section 25 of the *Statutory Powers Procedure Act*, implementation of the decision of the Discipline Panel shall be stayed pending determination by the Appeals Panel unless an Appeals Panel orders otherwise.
- (8) The Parties to the appeal shall be given the opportunity to appear before the Appeals Panel to make submissions on the matter.

- (9) To the extent applicable and by way of analogy, if necessary, the Rules of Practice before Discipline Panels shall apply to Hearings before the Appeals Panel.
- (10) The Appeals Panel may make any order permitted under the Act.
- (11) The Appeals Panel shall report to the Parties its decision in writing accompanied by necessary reasons for the decision.

FORM 6A - ACKNOWLEDGEMENT OF EXPERT'S DUTY

File No. _____

DISCIPLINE COMMITTEE *[or Appeals Committee]* OF THE
ONTARIO MOTOR VEHICLE COUNCIL OF ONTARIO

B E T W E E N :

REGISTRAR UNDER THE *MOTOR VEHICLE DEALERS ACT, 2002*

- and -

[NAME OF REGISTRANT(S)]

ACKNOWLEDGEMENT OF EXPERT'S DUTY

I *[Identify Party]* of *[city]* in the province of *[name of province]* ACKNOWLEDGE:
that I have read sub-rule 6.03 and understand my duty to the *[Discipline or Appeals]*
Committee.

- a. I have been retained by *[name of party]* to give evidence in the above noted hearing before the Ontario Motor Vehicle Industry Council.
- b. I acknowledge that it is my duty to provide opinion evidence that is fair, objective and non-partisan
- c. I acknowledge that it is my duty to provide opinion evidence that is related only to the matters within my area of expertise.
- d. I acknowledge that it is my duty to provide such additional assistance as the Committee may reasonably require to determine the matters in issue.
- e. I acknowledge that these duties prevail over any obligation which I may owe to the party that retained me or the party's representatives.

[Date]

[Signature of Expert]

*[Name, address, telephone and facsimile numbers of appealing
Party's Lawyer / agent or appealing Party]*



FORM 9A - NOTICE OF MOTION

File No. _____

**DISCIPLINE COMMITTEE [or Appeals Committee] OF THE
ONTARIO MOTOR VEHICLE COUNCIL OF ONTARIO**

B E T W E E N :

REGISTRAR UNDER THE MOTOR VEHICLE DEALERS ACT, 2002

- and -

[NAME OF REGISTRANT(S)]

NOTICE OF MOTION

THE [IDENTIFY MOVING PARTY] WILL make a Motion to the Discipline Committee [or Appeals Committee as the case may be] of OMVIC on [day], [date], at [time], or as soon after that time as the Motion can be heard, at 300-65 Overlea Blvd., Toronto, Ontario [or at a place to be determined by the H.O.].

THE MOTION IS FOR [state here the precise relief sought].

THE GROUNDS FOR THE MOTION ARE [specify the grounds to be argued, including a reference to any statutory provision or Rule to be relied on].

THE FOLLOWING DOCUMENTARY EVIDENCE WILL be used at the hearing of the Motion: [list the Affidavits to be relied on].

[Date]

[Name, address, telephone and facsimile numbers of moving Motion Party's Lawyer / agent or moving Party]

TO: [Name, address, telephone and facsimile numbers of responding Motion Party's Lawyer / agent or responding Party]



FORM 9B - REQUEST FOR ADJOURNMENT

File No. _____

Rule 10 of the Rules of Practice before the Discipline and Appeals Committee explains the Rules for the adjournment of a proceeding. The request must include the reasons and alternate dates. You must also seek the signed consent of the opposing party. The committee may require the parties attend in person to argue for an adjournment, even if all parties consent. You may request an adjournment of a proceeding you are a party to, please complete the sections below and submit to the Coordinator:

Proceeding:

Pre-Hearing Hearing Motion Scheduled Date

Reasons for the request to adjourn (attach additional sheets as necessary):

(If the request is made on medical grounds, please provide a dated and legible medical certificate with reasons)

I have contacted the other parties to this matter and they:

Consent Do not consent to the adjournment

Alternate dates parties are available:

*If all parties consent to this adjournment, provide three dates within the next 90 days that all parties are available to attend. If all parties do not consent, provide dates in the next 90 days, you (the requestor) are available to attend.



Signature of Requestor:

_____ Print Name: _____ Date: _____

Signature of Consenting Party

_____ Print Name: _____ Date: _____



FORM 12A - SUMMONS

File No. _____

DISCIPLINE COMMITTEE [or APPEALS COMMITTEE] OF THE
ONTARIO MOTOR VEHICLE COUNCIL OF ONTARIO

B E T W E E N :

REGISTRAR UNDER THE *MOTOR VEHICLE DEALERS ACT, 2002*

- and -

[NAME OF REGISTRANT(S)]

SUMMONS

TO:
Name:
Address:

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding on _____, _____, 20__, at _____ a.m., at _____, and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing all relevant documents and things including the following documents and things:

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS REQUIRES, THE ONTARIO SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.



Date: _____

**THE DISCIPLINE COMMITTEE
[OR APPEALS COMMITTEE] OF THE
ONTARIO MOTOR VEHICLE COUNCIL
OF ONTARIO**

This summons issued upon the request of:
*[insert name and address of
lawyer / agent requesting the summons]*

Chair

NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Ontario Superior Court of Justice.

FORM 13A - NOTICE OF MOTION

File No. _____

DISCIPLINE COMMITTEE *[or APPEALS COMMITTEE]* OF THE
ONTARIO MOTOR VEHICLE COUNCIL OF ONTARIO

B E T W E E N :

REGISTRAR UNDER THE *MOTOR VEHICLE DEALERS ACT, 2002*

- and -

[NAME OF REGISTRANT(S)]

NOTICE OF MOTION FOR COSTS

THE *[IDENTIFY MOVING PARTY]* WILL make a Motion for Costs to the Discipline Committee *[or Appeals Committee as the case may be]* of OMVIC on *[day]*, *[date]*, at *[time]*, or as soon after that time as this Motion can be heard, at 300-65 Overlea Blvd., Toronto, Ontario *[or at a place to be determined by the H.O.]*.

THE GROUNDS FOR THE MOTION ARE *[specify the grounds to be argued, including a reference to any statutory provision or Rule to be relied on]*.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL be used at the hearing of the Motion: *[list the Affidavits to be relied on]*.

[Date]

[Name, address, telephone and facsimile numbers of moving Motion Party's Lawyer / agent or moving Party]

TO: *[Name, address, telephone and facsimile numbers of responding Motion Party's Lawyer / agent or responding Party]*

FORM 14A - NOTICE OF APPEAL

File No. _____

APPEALS COMMITTEE OF THE
ONTARIO MOTOR VEHICLE COUNCIL OF ONTARIO

B E T W E E N :

REGISTRAR UNDER THE *MOTOR VEHICLE DEALERS ACT, 2002*

- and -

[NAME OF REGISTRANT(S)]

NOTICE OF APPEAL

THE *[identify Party]* APPEALS to the Appeals Committee from the final Order of the Discipline Committee dated *[insert date]*. The responding Party is *[insert name of other Party(ies) at the discipline hearing]*.

THE GROUNDS OF THE APPEAL are as follows:

1. *[set out grounds in numbered paragraphs]*

THE RELIEF SOUGHT is as follows:

1. *[set out exactly what Order you want the Appeals Committee to make]*

[Date]

[Name, address, telephone and facsimile numbers of appealing Party's Lawyer / agent or appealing Party]

TO: *[Name, address, telephone and facsimile numbers of responding*



Party's Lawyer / agent or responding Party]