

RULES OF PRACTICE BEFORE THE DISCIPLINE TRIBUNAL AND THE APPEALS TRIBUNAL

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INTRODUCTION AND PURPOSE

The principal objective of the *Motor Vehicle Dealers Act, 2002* (“MVDA”) discipline process is to determine whether dealers and salespersons (“Registrants”) have failed to comply with the Code of Ethics (O. Reg. 332/08, ss. 3-9). The Code of Ethics supports consumer protection and ensures a fair marketplace for the Registrants.

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 Tribunal and Appeals Tribunal in fulfilling their mandates.

Panels follow these Rules during the Discipline or Appeals Process and the Parties should make themselves familiar with these Rules.

In addition to these Rules the following documents guide the proceedings: the Motor Vehicle Dealers Act, 2002 (“MVDA”), Ontario Regulation 332/08 (“the Regulations”), and the Statutory Power and Procedures Act, R.S.O. 1990, c. S. 22 (“SPPA”), as well as Practice Directions issued from time to time by the Discipline Tribunal and Appeals Tribunal

TABLE OF CONTENTS

Rule 1	Interpretation and Application	
	Definitions	1.01
	General Principles	1.02
	Application of Rules	1.03
	Conflicts	1.04
	General Rules of Practice for Proceedings Before the Discipline Panel or Appeals Panel	1.05

	Computing Time	1.06
	Disposition Without a Hearing – Consent	1.07
	Disposition Without a Hearing – Frivolous and Vexatious	1.08
Rule 2	Hearings	
	Hearing Notices	2.01
	Oral Hearing	2.02
	Written Hearing	2.03
	Electronic Hearing	2.04
	When to Hold a Written or Electronic Hearing	2.05
	Serving a Notice of Hearing	2.06
	Non-Attendance or Non-Participation	2.07
	Registrar’s Statement	2.08
Rule 3	Public Access	
	General Rules	3.01
	Notice to the Public	3.02
	Access to Hearing Record by the Public	3.03
	Conduct of Observers	3.04
Rule 4	Service and Filing	
	Service	4.01
	Filing	4.02
Rule 5	Interpreters	

	Interpreters for Other Languages	5.01
Rule 6	Disclosure	
	Disclosure of Documents or Things Generally	6.01
	Disclosure of Written Reports of Expert Witnesses	6.02
	Duty of Expert	6.03
	Disclosure of Particulars (Oral and Electronic Hearings)	6.04
	Failure to Disclose	6.05
	Production of Documents from a Third Party	6.06
Rule 7	Pre-Hearing Conferences	
	Initiating Pre-hearing Conferences	7.01
	Procedure at Pre-Hearing Conferences	7.02
	Resolutions at a Pre-Hearing Conference	7.03
	Case Management Orders	7.04
	Motions at the Pre-Hearing Conference	7.05
	Settlements at the Pre-Hearing Conference	7.06
Rule 8	Constitutional Questions	
	Notice of Constitutional Question	8.01
Rule 9	Motions	
	Procedure for Motions	9.01
Rule 10	Adjournments	
	Consideration for Adjournments	10.01

Rule 11	Summonses	
	Summonses	11.01
Rule 12	Vulnerable Witnesses	
	Vulnerable Witnesses	12.01
Rule 13	Costs	
	Entitlement to Costs	13.01
	Amount of Costs	13.02
Rule 14	Appeal Process	
	Appeal Process	14.01

Appendices

Form 6A	–	Acknowledgement of Experts Duty
Form 9A	–	Notice of Motion
Form 9B	–	Request for Adjournment
Form 12A	–	Summons
Form 13A	–	Notice of Motion for Costs
Form 14A	–	Notice of Appeal

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;

- “Agent” is a lay person designated by a Party to act on their behalf.
- “Appeals Tribunal” means an appeals committee as set out in section 17(2) of the MVDA.
- “Appeals Panel” means a panel of the Appeals Tribunal appointed under the Act to hear an appeal;
- “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 the Discipline Tribunal, a Discipline Panel, or the Appeals Tribunal, depending on the context, who is appointed under the Act;
- “Discipline Tribunal” means a discipline committee as set out in section 17(1) of the MVDA.
- “Discipline Panel” means a panel of the Discipline Tribunal appointed under the Act to preside over a Hearing;
- “Document” includes data and information recorded or stored by any means, including in electronic form;
- “Electronic Hearing” means a hearing held by conference telephone, video conference or similar form of electronic technology allowing persons to communicate with and hear and/or see one another simultaneously;
- “Expert” is a person, once certified by the Panel as an Expert, who gives an opinion based on their education, training, qualifications, expertise, and/or experience on specified issues at a Hearing.
- “Expert Evidence” is opinion evidence given by an Expert.
- “File” means effective delivery of Documents to the intended party.
- “Hearing” is a legal proceeding where parties to a matter have the opportunity to state their case to a Panel, who is the decision maker. Relevant submissions may include oral or document evidence regarding the merits of the proceeding.
- “H. O.” means Hearings Officer and is one or more individuals who provide administrative assistance and support for the function of the discipline process;

- “Holiday” means Saturday, Sunday, or any Ontario statutory holiday;
- “Legal Practitioner” means a lawyer or paralegal licensed by the Law Society of Ontario representing a participant in a Proceeding.
- “Member” means a member of the Appeals Tribunal or the Discipline Tribunal 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 Referral to the Discipline Tribunal” means a document generated under the authority of the Registrar, to a Registrant(s) giving notice and detailing the background and non-compliance alleged to have been committed by the Registrant(s). Typically includes the names and addresses of the Registrants involved, background information with regard to the alleged non-compliant activity, the particulars of alleged non-compliance, the section(s) of the Code of Ethics involved and other pertinent information concerning the process to deal with the notice.
- “Notice of Hearing” means notice of hearing before a Panel. Typically, it includes the Parties to a matter, the manner, and the date, time and location of the Hearing;
- “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; A Panel can consist of one, three or five individuals, one of whom serves as the Panel Chair.
- “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 standing 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 Discipline Tribunal to conduct a pre-hearing conference;
- “Proceeding” means the entire Discipline or Appeal process from the start to the time the matter is finally resolved. Proceeding includes interim or procedural steps;

- “Registrant” means a motor vehicle dealer or salesperson that is registered under the Act at the time material to the proceeding and can include a former registrant;
- “Registrar” is a person so appointed under the Act. In the usual course, during the hearing the role of the Registrar and their responsibilities are delegated to a Representative;
- “Regulations” means the regulations made under the Act;
- “Representative” means a Legal Practitioner or an Agent acting on behalf of a participant in the Proceedings who a Panel is satisfied is authorized to represent the participant in Proceedings before the Panel;
- “Reviewing Panel” means a Panel consisting of three members of the Discipline Tribunal under Rule 1.07;
- “Rules” means these Rules of Practice;
- “Serve” or “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 in the Panel’s judgement appears to not have the capacity to withstand a normal Proceeding 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.
- (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 Tribunal or Appeals Tribunal 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 Tribunal and Appeals Tribunal.

CONFLICTS

- 1.04 Where any of these Rules conflicts 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 as directed by the Panel.
- (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 Business Day;
 - 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 serve the proposed disposition in writing along with 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) along with any written submissions to the Chair, care of the H.O.

- (2) The Chair shall assign a Reviewing Panel to consider the proposed disposition along with any written submissions of the Parties.
- (3) The Reviewing Panel shall not alter or amend a proposed disposition without a Hearing unless the Parties consent.
- (4) Where the Reviewing Panel has concerns as to whether the proposed disposition is in the public interest, the matter shall proceed to a Hearing.
- (5) No member of a Reviewing Panel shall be a member of the Panel presiding over the Hearing in the same matter.
- (6) Nothing in this Rule prevents a Panel presiding over the Hearing from subsequently accepting any 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 has been conducted in bad faith; or
 - b. the Proceedings relates to matters that are outside the jurisdiction of the Discipline Tribunal or Appeals Tribunal.
- (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 - HEARINGS

- 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 Referral to the Discipline Tribunal issued by the Registrar and shall include Particulars of the conduct at issue.
- (2) The Discipline Tribunal (through 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, among other things, 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) The Discipline Tribunal may include in a Notice of Hearing any other information or directions it considers necessary for the proper conduct of the Hearing.
- (5) The location and time of a hearing shall be set out in the Notice of Hearing.
- (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 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 Serve every Document, in sequentially numbered pages, that he or she intends to rely upon the H.O. and any other party, 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) OMVIC shall be responsible for giving public notice of Proceedings that are open to the public by posting a notice on the OMVIC website. Such notice shall be given a minimum of 30 days prior to the hearing or as soon as is reasonably possible after the hearing date has been set.
- (2) Despite sub-rule (1), OMVIC 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 Discipline Tribunal Chair.
- (3) In considering a Motion under this Rule, the Panel or the Discipline Tribunal 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. may charge a reasonable fee for the provision of access to or copies of the record.

CONDUCT OF OBSERVERS

- 3.04**
- (1) Since Hearings are open to the public, any member of the public can attend; however, the Panel may exclude at its discretion any person that it deems detrimental to the process.
 - (2) 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 Hearing, 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).
 - (3) Sub-rule (1) does not apply to:
 - (a) a person unobtrusively making handwritten or typewritten notes or sketches at a Hearing; or
 - (b) a person with a disability using a device to compensate for the disability.
 - (4) No person shall interfere with or disrupt the Hearing including by making a noise, signaling, or using gestures or by communicating with any 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 electronic mail on the day following the transmission;
- (d) by personal service effective the day of Service on the Party or any employee working at the last business address for the Party which, in the case of a Registrant or Dealer, shall be the last address for the Registrant as shown in the records of OMVIC; or
- (e) by such other methods as permitted or directed by a Panel.

FILING

- 4.02 (1) All Documents required to be Filed in a Proceeding 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, 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 Proceeding 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 qualified, competent and independent as determined by the Panel and shall swear or affirm an oath that they understand the English or French language, as well as the language they are being brought in to translate, and that they will interpret accurately to the best of their skill and ability. 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

- 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 Serve on 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 an opposing party wishes to call an expert witness in response, that Party shall, not less than ten (10) days before the Hearing, serve on that Party and the H.O. a report signed by the expert and containing the information set out in sub-rule 6.02 (1).
 - (3) Notwithstanding sub-rule 6.02 (4), the responding Party may bring a motion for additional time to serve on responding expert report and the Panel may grant such additional time upon such terms and conditions as are just.
 - (4) No expert witness may testify, except with leave of the Panel, unless sub-rule 6.02.(1) and/or sub-rule 6.02 (2) have been complied with.
 - (5) A Party who calls an Expert as a witness pays the full fee of the Expert.

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 Tribunal 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 Panel may reasonably require to determine a matter in issue.
- (2) The duty in sub-rule 6.03 (1) prevails over any obligation owed by the Expert to the Party by whom or on whose behalf they are engaged.
- (3) Any Expert who gives evidence at a hearing shall certify, either in writing or during oral evidence that they acknowledge and understand the duty described in sub-rule 6.03.

DISCLOSURE OF PARTICULARS (ORAL AND ELECTRONIC HEARINGS)

- 6.04 (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

- 6.05 If a Party fails to comply with the provisions of this Rule, the Party may not refer to the Document or enter the Document 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

- 6.06 (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 may be brought before the Chair of the Discipline Tribunal prior to the hearing or may be brought before the Panel after 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 Discipline Tribunal 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 Discipline Tribunal Chair or a Panel directs otherwise.
- (3) The Discipline Tribunal Chair shall designate a person who is not a member of the Hearing Panel but is a member of the Discipline and Appeals Tribunal to act as the Pre-hearing Conference Chair.
- (4) Under the direction of the Discipline Tribunal Chair, 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) Pre-hearing Conferences are generally held orally; however, the Pre-hearing Conference Chair may direct a pre-hearing conference to be held by telephone conference call or 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 Service of any additional disclosure;
 - c. the Service 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. Should either party object to the Panel reviewing any or all documents, the Pre-hearing Conference Chair may order that those documents not be shared prior to the Hearing.
 - d. the scheduling of the Hearing;
 - e. when the witnesses to be called at the Hearing must be available to testify; and
 - f. 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 Serve 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 or Reviewing Panel in accordance with subsection 4.1 of the *Statutory Powers and Procedures Act*.

CASE MANAGEMENT ORDERS

- 7.04 The Pre-hearing Conference Chair 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 Filed 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. The Party raising the constitutional question shall be required to bring a Motion to advance the argument thereon.
- (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

LIMITATIONS ON BRINGING A MOTION IN ADVANCE OF THE HEARING

- 9.01 (1) Subject to sub-rule 9.01(2) and to the discretion of the Discipline Tribunal 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;
 - (i) waiving a Rule; and
 - (k) third party production orders
- (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 questions; and
 - (d) any matter that a Panel hearing a Motion adjourns to the Panel presiding over the Hearing.

PROCEDURE FOR MOTIONS

- 9.02 (1) Notice is required for any Motion unless the Discipline Tribunal 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 Discipline Tribunal Chair at the time the Party files his or her Notice of Motion.
- (3) Where a Party intends to bring a Motion, 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 Discipline Tribunal 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 Served on the other Parties to the Proceedings.
- (8) A Party who wishes to respond to a Motion shall Serve 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 Discipline Tribunal 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.

RULE 10 - ADJOURNMENTS

CONSIDERATIONS FOR ADJOURNMENTS

- 10.01 (1) A Hearing may be adjourned from time to time by a Panel on its own motion or where it is requested by a Party and 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 Discipline Tribunal 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 refused or 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) The Discipline Tribunal 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 Discipline Tribunal 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 forward it to the Chair of the Discipline or Appeals Tribunal their consideration.
- (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.
- (4) Service of a summons is the responsibility of the Party that requested the summons.

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 Representatives of 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 Representative 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.
- (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 Served on 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 can include the legal fees of a Party and/or reasonable disbursements or expenses related to the Proceedings.
- (2) In this Rule, legal fees include deemed fees for in-house Legal Practitioners.

RULE 14 - APPEAL PROCESS

APPEAL PROCESS

- 14.01 (1) Any Party to a Hearing conducted by the OMCVIC 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 relevant and reliable;
 - 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 Serve one copy on each Party and five (5) copies on the H.O. of the transcript of the Proceeding 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 Tribunal 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 if there is one 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 Tribunal 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 TRIBUNAL *[or APPEALS TRIBUNAL]*

B E T W E E N:

ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

- 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]* Tribunal.

- a. I have been retained by *[name of party]* to give evidence in the above noted hearing before the Discipline Tribunal/Appeals Tribunal.
- 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 Tribunal 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 TRIBUNAL *[or Appeals Tribunal]*

B E T W E E N:

ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

- and -

[NAME OF REGISTRANT(S)]

NOTICE OF MOTION

THE *[IDENTIFY MOVING PARTY]* WILL make a Motion to the Discipline Tribunal *[or Appeals Tribunal as the case may be]* 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 Tribunal 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 Tribunal 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 H.O.:

Proceeding:

	<input type="checkbox"/>	<input type="checkbox"/>	
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.

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Signature of Requestor:

_____ Print Name: _____ Date: _____

Signature of Consenting Party

_____ Print Name: _____ Date: _____

FORM 12A - SUMMONS

File No. _____

DISCIPLINE TRIBUNAL *[or APPEALS TRIBUNAL]*

B E T W E E N:

ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

- 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 TRIBUNAL
[OR APPEALS TRIBUNAL] 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 TRIBUNAL *[or APPEALS TRIBUNAL]*

B E T W E E N:

ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

- and -

[NAME OF REGISTRANT(S)]

NOTICE OF MOTION FOR COSTS

THE *[IDENTIFY MOVING PARTY]* WILL make a Motion for Costs to the Discipline Tribunal *[or Appeals Tribunal as the case may be]* 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 Discipline Tribunal]*.

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 TRIBUNAL

B E T W E E N:

ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

- and -

[NAME OF REGISTRANT(S)]

NOTICE OF APPEAL

THE [identify Party] APPEALS to the Appeals Tribunal from the final Order of the Discipline Tribunal 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 Tribunal 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]