

Hearing and Appeal Practice and Procedure Guidelines

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Disclaimer: In these Hearing and Appeal Practice and Procedure Guidelines (Guidelines), the Real Estate Council of Alberta is not providing specific legal or other professional advice with respect to a particular case. The Guidelines are rules of procedure and other important information. If you are governed by the *Real Estate Act*, R.S.A. 2000, c. R-5 and you are involved in a disciplinary or other proceeding before a hearing or appeal panel under the *Real Estate Act*, you may be facing serious consequences affecting your licence as a licensee and your ability to earn a livelihood. It is strongly recommended for you to obtain independent legal advice or other expert assistance.

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PART 1: INTRODUCTION AND PURPOSE OF THESE GUIDELINES

In addition to the Alberta *Real Estate Act*, R.S.A. 2000, c. R-5 (the “Act”), Rules, Regulations and Bylaws, these Hearing and Appeal Practice and Procedure Guidelines (“Guidelines”) are designed to outline and describe rules, processes and procedures with respect to Real Estate Council of Alberta (“RECA”) hearings, appeals and other processes. If there is any conflict between these Guidelines and the Act, Rules, Regulations or the Bylaws, the latter prevail.

The Guidelines set out straightforward rules, processes and procedures all parties and panels must follow when they are involved in disciplinary and other proceedings. They provide information about disciplinary and other processes so that those involved understand the processes. RECA can conduct electronic hearings. The processes and procedures set out in the Guidelines anticipate the use of electronic documents, evidence and records in hearings and appeals.

PART 2: LEGISLATIVE AUTHORITY, PURPOSE, AND MANDATE

RECA is authorized to administer the Act. The Act creates four Industry Councils to set and enforce standards of conduct for the residential real estate broker industry; the commercial real estate broker and commercial property manager industry; the residential property manager industry; the condominium manager industry and the mortgage broker industry respectively. The RECA Board of Directors (the “Board”) and Industry Councils are ultimately responsible for the licensing and disciplinary processes under the Act.

The Industry Councils set and enforce industry standards and any additional requirements outlined in the Act, Rules, Regulations, and Bylaws. The Act, Rules, Regulations and Bylaws are intended to protect the public, provide services to licensees, guard against mortgage fraud, and enhance, improve, and promote the integrity of licensees.

The licensing process is set out in Part 1 of the Act Rules. The registrar may refuse, suspend, or cancel a licensee’s licence in certain circumstances. If this occurs, the licensee may request a review of the registrar’s decision by an appeal panel.

The disciplinary process is set out in Part 3 of the Act. Conduct review officers must conduct investigations into written complaints about licensee’s conduct and counsels for the registrar present cases to panels under the Act. If a panel finds a licensee’s conduct to be deserving of sanction, a panel will impose appropriate disciplinary sanctions and costs.

The term “conduct deserving of sanction” is not defined in the Act. Although not defined, it generally embodies one or more of the following elements:

- (a) a detriment to the best interests of the public or licensees
- (b) a contravention of the Act, the Rules, Regulations, or Bylaws
- (c) harm or potential harm to the public at large
- (d) harm or tendency to harm the reputation or standing of the industry

- (e) a display of a lack of knowledge or lack of skill or judgment in the practice of a licensee and/or lack of adherence to the normally accepted standards of practice

The registrar, hearing and appeal panels, the Industry Councils, the Board and the courts all have specific roles in the disciplinary process. These will be explained in greater detail below. Note that the disciplinary process can be concluded at any stage and may not necessarily proceed to the next stage.

PART 3: CONDUCT HEARING INFORMATION, PROCESSES AND PROCEDURES

A. ROLE OF THE HEARINGS ADMINISTRATOR

The hearings administrator is responsible for overseeing the administrative aspects of proceedings before panels. The hearings administrator acts as a clerk and relays important information about the proceedings to and from the licensee, the counsel for the registrar and the panel. The hearings administrator is the only person permitted to contact the panel directly. The hearings administrator is responsible for the following:

- (a) maintaining a list of the hearing panel roster
- (b) recording the status of hearings and appeals
- (c) scheduling dates on which the panels are to convene
- (d) ensuring that panels have all necessary materials for each hearing or appeal
- (e) recording the hearing or appeal proceedings
- (f) creating the record of the proceedings for the Board and for appeal purposes
- (g) swearing in or affirming all witnesses
- (h) marking all exhibits introduced during the hearing or appeal and ensuring that all exhibits have been properly catalogued and filed in the exhibits binder
- (i) communicating to the parties about processes, forms, applications, panel directions and timelines or other matters
- (j) general administration and support to panels

The hearings administrator does not provide legal advice to parties. They can only provide general process advice to parties. When involved in a hearing or appeal, licensees are strongly encouraged to obtain legal counsel.

B. COMMUNICATING WITH THE HEARINGS ADMINISTRATOR

The counsel for the registrar and the licensee or other person must refrain from contacting the panel directly. If the licensee or the counsel for the registrar need to make applications or communicate with the panel, they must do so in writing and send all communications to the

hearings administrator. This person will then relay that information to the panel. This includes sending the panel information or submissions for the hearing or appeal. The panel will communicate with the licensee and the counsel for the registrar through the hearings administrator.

The parties must use and communicate with the hearings administrator using the forms approved in these Guidelines. The parties should refrain from telephoning the hearings administrator and use written communication, preferably email, whenever possible. Written communication reduces confusion or misunderstanding.

C. NOTICE OF HEARING

A notice of hearing is the formal document that the registrar issues and the Board serves on a licensee to notify them that the registrar or Board has referred a matter concerning their conduct to a hearing panel and that a hearing is scheduled to take place. The hearing must take place within 60 days after the registrar or Board refers the matter to a hearing panel. At the hearing, the panel will determine if the licensee engaged in conduct deserving of sanction and if so, what the sanction and costs should be.

Notices of hearing and the accompanying covering letter must contain the following information:

- (a) the date for the hearing
- (b) whether the hearing will take place in person or via teleconference
- (c) if the hearing is in person, the location for the hearing
- (d) if the hearing is via teleconference, the dial-in information for the hearing
- (e) the allegations of conduct deserving of sanction against the licensee
- (f) the particulars and facts of the allegations of conduct deserving of sanction against the licensee
- (g) the names of all panel members who will preside over the hearing, as well as alternate panel members
- (h) information about how to object to the composition of the hearing panel, in particular, a notice stating that the hearings administrator must be provided any objections together with reasons within 14 days of the date of receipt of the notice of hearing
- (i) notification to the licensee of their right to be represented by legal counsel
- (j) a reference that full disclosure of the investigation file has occurred or will occur
- (k) a warning as to the consequences for non-attendance at the hearing, in particular, the potential that the hearing will proceed without the licensee in attendance or that it may be rescheduled without their consent

- (l) an invitation for the licensee to meet with the counsel for the registrar to consider agreements
- (m) whether oral or written submissions will be accepted at the hearing
- (n) contact information for the counsel for the registrar

The notice of hearing must be provided to the licensee at least 15 days in advance of the hearing. It must also be provided to any other person who may be impacted by the subject matter of the hearing during this same timeline.

The notice of hearing is a public document.

D. AFFIDAVIT OF SERVICE OF THE NOTICE OF HEARING

The hearings administrator will serve on behalf of the Board a notice of hearing and complete an affidavit of service in Form "A", stipulating the date on which the notice of hearing was served on the licensee or other person and the method. The notice of hearing may be served by any of the following means:

1. On a licensee:
 - (a) by personal service
 - (b) by sending the document by recorded mail addressed to the licensee at the last business or residential address provided by the licensee to the Board or Industry Council, as the case may be
 - (c) by sending the document by a telecopier or electronic device to be received and printed by a receiving telecopier or electronic device that is situated at the last business or residential address provided by the licensee to the Board or Industry Council, as the case may be. The sender must receive acknowledgment of receipt from the licensee for service by telecopier or electronic device to be effected.
2. On a person other than a licensee:
 - (a) by personal service
 - (b) by leaving the document at the person's primary residence with a person who appears to be 16 years of age or older
 - (c) by mailing the document to the person's primary residence by a method that provides confirmation of delivery
 - (d) by sending the document by a telecopier or electronic device to be received and printed by a receiving telecopier or electronic device that is situated at the person's primary residence

E. AMENDING THE NOTICE OF HEARING

The registrar may amend the notice of hearing at any time. However, the amended notice of hearing must be served on the licensee at least 15 days in advance of the hearing. The hearings administrator must complete, on behalf of the Board, an affidavit of service of the amended notice of hearing in the same form as section D above.

F. LICENSEE IS ENTITLED TO LEGAL COUNSEL REPRESENTATION

A person who has been served with a notice of hearing is entitled to be represented by legal counsel. A person who chooses to be represented by legal counsel is responsible for retaining and paying their legal counsel. They must also provide notice that they have legal representation by having their legal counsel submit Form "B" (licensee Form B, non-licensee Form B) to the hearings administrator. Notice of changes of legal representation must be provided using Form "B.1" (licensee Form B.1, non-licensee Form B.1) and withdrawals of legal representation using Form "B.2" (licensee Form B.2, non-licensee Form B.2). The hearings administrator will provide copies to the counsel for the registrar to confirm the person's legal representation.

G. COMPOSITION OF HEARING PANELS

Hearing panels must meet the following requirements:

- (a) they must consist of at least three members
- (b) at least one of the hearing panel members must be a licensee
- (c) at least one of the hearing panel members must be a member of the public. However, the number of public members cannot exceed the number of licensees.

H. OBJECTIONS TO THE COMPOSITION OF A PANEL

Objections to the composition of the panel must be made within 14 days of receiving the notice of hearing. If a party objects to the composition of the hearing panel, they must complete Form "C" (registrar Form C, licensee Form C, non-licensee Form C). The opposing party will have the opportunity to respond to the objection in oral or written submissions at the discretion of the panel.

The hearing panel must be independent, neutral and unbiased. Grounds upon which a party may object to the composition of a hearing panel include:

- (a) bias and circumstances creating a perception of bias or a reasonable apprehension of bias
- (b) conflict of interest
- (c) panel members' membership in organizations
- (d) other reasons leading to a reasonable belief that a panel member would not render a fair decision

Upon receipt of an objection relating to the composition of the panel, the hearings administrator will provide it to the hearing panel and the counsel for the registrar. The counsel for the registrar will have 10 days to respond to the objection. The submissions will be supplied to the panel. The chair of the hearing panel must determine the validity of the objection within 15 days unless there is good reason why this timeline cannot be met. If there is any doubt with respect to the panel member's neutrality and impartiality, the chair will ask the panel member to disqualify themselves from the hearing panel and should they not, the chair will disqualify the panel member themselves. The alternate panel member will replace the disqualified panel member.

I. PANEL MEMBER SHOULD NOT ACCEPT APPOINTMENT

When consulted for a possible panel member appointment, panel roster members must not accept appointments whenever there is a business, family, personal relationship or other circumstance that is or could be perceived by the licensee or counsel for the registrar as being cause for an unfair hearing or appeal, or that is or could be perceived to be a bias or conflict of interest. If there is a doubt, the potential panel member should consult with the hearings committee chair. If there is any doubt with respect to the potential panel member's neutrality and impartiality, the hearings committee chair will not approve the appointment to a panel.

Bias is prejudice in favour of or against one thing, person, subject, or group compared with another. It is usually considered to be unfair. It occurs when someone shows an inclination or favouritism for or against someone or something. Bias can be inferred from the experiences or relationships of a panel member with the licensee, registrar, witnesses, panel or other persons.

A conflict of interest is a real or seeming incompatibility between a panel member's own interests and the interests of the registrar or the licensee. It can occur, for example, when a panel member is in a position to derive personal benefit from actions or decisions made in their official capacity as a panel member. A conflict of interest is something that could possibly corrupt the motivation or decision-making of the panel member.

J. ADJOURNMENTS

All pre-hearing requests to adjourn a hearing or appeal must be made in writing to the hearings administrator who will notify the panel and supply written documentation to it.

For first-time and subsequent adjournment applications, the party requesting the adjournment must submit a written request in Form "D" (registrar Form D, licensee Form D, non-licensee Form D). The application should include reasons as well as available dates for a hearing of the adjournment application, if needed. The opposing party will be provided with the application and will respond. In most cases, if the opposing party agrees or has no position on the application, a panel decision adjourning the matter is issued in writing and provided to all parties. An attendance in person may not be necessary. Should any party have an objection to the adjournment application, a teleconference may be arranged so the parties can make oral submissions to the panel.

For any subsequent adjournment applications, the panel may meet in person or via a conference call in order to receive oral submissions from both parties to decide whether an adjournment should be granted. Submissions should be made as to alternate dates. The panel

will provide a written decision stating whether the adjournment has been granted, the alternate date, and brief reasons for the decision to both parties.

Panels must not grant adjournments except where compelling reasons exist for doing so, or where proceeding would amount to a denial of natural justice and fairness. For example, if for good reason, one party cannot put their case before the panel on the date the hearing is scheduled, natural justice requires that the party be granted the requested adjournment.

K. EXTENSIONS

Either party may apply to the panel for an extension of time to complete any of the procedural requirements outlined in these Guidelines. This application must be submitted in Form "E" (registrar Form E, licensee Form E, non-licensee Form E).

L. PRE-HEARING CONFERENCES

The purpose of a pre-hearing conference is to ensure the parties understand the process they are engaged in. It is also a process to determine if there are opportunities for agreements between the parties and to assist them to enter into any agreements. If agreements are possible, they will improve hearing processes and reduce hearing time and costs. Any party can request a pre-hearing conference but both parties must agree to attend a pre-hearing conference before one will be scheduled. It is a voluntary process. If the parties agree to attend, a presiding officer will be appointed to run the pre-hearing conference. The presiding officer is a member of the panel roster but is not a member of the panel which will decide the matter at the hearing.

A party requesting a pre-hearing conference must submit Form "F" (registrar Form F, licensee Form F, non-licensee Form F) to the hearings administrator. The hearings administrator will contact the opposing party to see if they consent to the pre-hearing conference. If both parties consent to a pre-hearing conference, the hearings administrator will schedule a pre-hearing conference within 14 days of the request unless the parties agree to another date. The pre-hearing conference must conclude at least 30 days in advance of the date of a scheduled hearing. The panel will not adjourn a hearing so that a pre-hearing conference can take place. Those involved in pre-hearing conferences are responsible to conclude the process at least 30 days in advance of the date of the scheduled hearing.

M. AGREEMENTS BETWEEN PARTIES

After service of the notice of hearing and before the commencement of the hearing, the parties may agree on matters related to the hearing. Agreements may include:

- (a) an admission of conduct deserving of sanction
- (b) agreed statement of facts
- (c) an agreement on breach
- (d) an agreement on a finding of conduct deserving of sanction
- (e) an agreement on sanction and/or costs

All agreements should be finalized and will be provided to the panel at least 7 days in advance of the scheduled date of the hearing. If the timeline cannot be met for valid reasons and agreements are only available at the hearing, the timeline may be extended on application to the panel.

N. DOCUMENT EXCHANGE PROTOCOL

In order to ensure a fair hearing, reduce the length of the hearing, reduce costs, and avoid surprise, both parties to the hearing are required to outline and exchange the documents they intend to rely on at the hearing. For the counsel for the registrar, this requirement is in addition to any earlier disclosure, including the investigation file disclosure. The parties should complete Form "G" (registrar Form G, licensee Form G, non-licensee Form G) which lists all of the documents they intend to rely on at the hearing and send copies of those documents to the opposing party. Documents must be exchanged at least 7 days in advance of the scheduled date of the hearing.

If the parties do not follow this procedure, the hearing panel has discretion not to allow the entry of documents as exhibits at the hearing.

O. SUMMONSING WITNESSES

Witnesses may be called to attend a hearing. Witnesses give oral testimony and supply documentary evidence about the licensee's conduct. Witnesses may be called by either the counsel for registrar or the licensee.

If a party intends to have witnesses, they must ask the hearings administrator to make arrangements to have the hearing panel issue a summons in Form "H" (registrar Form H, licensee Form H, non-licensee Form H). A summons is an order stating that the witness must appear at the hearing. The summons can also include a direction to the witness to produce books, records, and other documents, provided that the attendance and the documents fall within the acceptable limits of relevancy and materiality. If the information is irrelevant or the information is privileged by law, a summons may not be issued. Witnesses must be provided attendance money with the summons. Each party is responsible to pay their own attendance money for their witnesses. The hearings administrator can assist in determining the appropriate amounts for attendance money. It is calculated in accordance with the *Alberta Rules of Court*.

P. RULES OF COURT APPLY TO SUMMONSING WITNESSES

There are time limits, requirements for paying conduct money to the witness, and other requirements in the *Alberta Rules of Court*. These must be followed to properly summon a witness to attend a RECA Hearing or to produce a document.

The counsel for the registrar and the licensee are each responsible for ensuring that the provisions of the *Alberta Rules of Court* are followed. However, the hearings administrator may be available to assist the parties with service of the witness summons if they are provided sufficient advance notice.

Q. LICENSEE IS A COMPELLABLE WITNESS

The licensee who is the subject of a hearing is a compellable witness to a hearing. If the counsel for the registrar calls the licensee as a witness to the hearing, that licensee must give evidence and answer the registrar's questions. The licensee does not have a right to remain silent at the hearing.

R. NOTICE OF EXPERT WITNESSES

In some circumstances, the parties will be entitled to call expert witnesses. In order to avoid surprise at a hearing, a party intending to call an expert witness should provide notice to the opposing party in Form "I" (registrar Form I, licensee Form I, non-licensee Form I) at least 7 days before a hearing.

S. PUBLIC HEARINGS AND IN CAMERA (PRIVATE) HEARINGS

All RECA hearings are open to the public, including the media, to ensure transparency and accountability to the public. There may, however, be exceptions when privacy issues outweigh the desirability of adhering to the principles of open hearings. Such circumstances will be rare. If the counsel for the registrar or a licensee believes they have grounds for a hearing in private, they must submit an application for an *in camera* hearing in Form "J" (registrar Form J, licensee Form J, non-licensee Form J) at least 14 days in advance of the hearing.

The application must contain convincing information that strongly suggests evidence to be given during the hearing will have a significant adverse effect on competitive advantage, adverse effect on brokerage business or information, or other viable reason. The application should give particulars as to why the public disclosure of the evidence will have adverse effects. The opposing party will be given an opportunity to respond to the application in writing. The parties may request oral submissions to the panel or the panel may direct them, in addition to written submissions.

The panel may decide to hold part or all of the hearing *in camera*. Among other factors, the panel must balance the public and the media's right to know with the individual's right to conduct business and their right to a fair hearing. If the hearing or a portion of the hearing is to take place *in camera*, the panel must be satisfied:

- (a) that of all hearing alternatives, the *in camera* session is the best alternative given the circumstances
- (b) that the procedure adopted is fair to both parties involved and the public interest, including the public's right to know what is taking place

In-camera sessions should be kept to a minimum to allow the greatest possible public access to the hearing process.

An *in-camera* hearing may be denied if confidentiality or adverse consequences in a public hearing may be protected by redacting portions of documents.

T. APPLICATION FOR ADVICE AND DIRECTIONS

A party may apply to a panel for advice and directions on any matter not dealt with in these Guidelines or the Act in advance of a hearing or appeal. These should be made no less than 7 days in advance of the hearing or appeal. The party must submit Form "K" (registrar Form K, licensee Form K, non-licensee Form K) at least 7 days in advance of the hearing or appeal.

PART 4: HEARING PROCESSES AND PROCEDURES: PHASE 1-DECISIONS ABOUT CONDUCT DESERVING OF SANCTION

A. LOCATION OF HEARINGS

Hearings can take place in person at the RECA offices, by video conference or by teleconference. The notice of hearing will set out the particulars of whether an in-person, videoconference or teleconference hearing is scheduled. The parties should always refer to the notice of hearing to confirm the details of the hearing. Generally, if an in-person hearing is scheduled it will be in the hearing room at RECA's main Calgary office. The address can be found at <https://www.reca.ca/>.

B. STANDARD OF PROOF

The onus of proving the misconduct allegations is on the counsel for the registrar. They must prove the case on a balance of probabilities. The hearing panel will decide whether or not there is conduct deserving of sanction on a balance of probabilities.

C. ADMISSION OF CONDUCT DESERVING OF SANCTION

If a licensee wishes to admit to the allegations of conduct deserving of sanction set out in the notice of hearing, the licensee and the registrar may sign and provide a section 46 admission of conduct deserving of sanction to the Board. If they decide to do this, the licensee admits to the facts, breaches, and conduct deserving of sanction set out in the notice of hearing. In such a case, under the Act the allegations set out in the notice of hearing will have been proven and no evidence, no witnesses, and no arguments are required. The hearing panel must accept the admission of conduct deserving of sanction. An admission of conduct deserving of sanction is an agreement discussed in Part 4: Section M.

When an admission of conduct deserving of sanction is entered as evidence before a hearing panel, usually the only issue is the appropriate sanction and costs, if any. In this case, Part 6: Hearing Phase 2 - Sanction and Costs applies.

D. DOCUMENTS AND EXHIBITS

Parties are entitled to rely on documents in support of their case, in electronic or paper form. In order to rely on a document, it must be introduced by agreement or entered through a witness who can verify the document's authenticity. The document will be marked as an exhibit and form part of the hearing record. If a document is not marked as an exhibit, it does not form part of the hearing record.

While electronic evidence is preferred, if paper documents are going to be used at the hearing, the person relying on the document is responsible for bringing 8 copies of each document to

the hearing: one for each hearing panel member (3); one for the witness; one for the hearings administrator; one for the hearing panel independent legal counsel; one for the counsel for the registrar; and one for the licensee. If a party intends to use electronic documents and run an electronic hearing, they must advise and coordinate with the hearings administrator to ensure proper systems are in place to conduct the electronic hearing.

In order to ensure that evidence is properly marked and preserved, the hearings administrator must mark, maintain, catalogue, and place all exhibits in the exhibit binder, either in paper or electronic form. During any *in camera* process, the hearings administrator will mark, maintain, catalogue, and place confidential documents not to be disclosed as confidential (or redacted at the request of the panel, if appropriate).

E. HEARING ETIQUETTE

During a hearing, only one person may speak at a time. Individuals must not shout, interrupt, or argue. The person talking must speak clearly and slowly. The hearing panel and all parties are addressed through the chair. The proper title is Madame Chair or Mr. Chair.

Individuals attending a hearing must conduct themselves in a courteous manner. Rudeness such as insults, sarcasm, coarse language, and other inappropriate or disruptive behaviour is not permitted.

When rude behaviour occurs, the chair can direct the party to stop the behaviour, call a recess, or order the individual to leave the hearing.

The hearing panel may take a licensee's (or their legal counsel's) extremely rude or disruptive behaviour into account during sanctioning and costs. In especially serious cases, the hearing panel may consider initiating contempt proceedings.

F. ROLE OF THE CHAIR

The chair sits at the front of the hearing room and in the middle of the hearing panel.

The chair is responsible for all procedural matters during the hearing and for ensuring that a reasonable degree of formality is maintained. Any questions about procedure or processes, including applications made at the hearing, should be addressed through the chair. The chair is the person responsible for the hearing panel proceedings. They may have questions for parties or witnesses.

G. ROLE OF HEARING PANEL MEMBERS

The remaining hearing panel members sit to each side of the chair. Each hearing panel member is involved in making decisions about process, procedure, and the licensee's conduct. They may have questions for parties or witnesses.

H. ROLE OF INDEPENDENT LEGAL COUNSEL

Independent legal counsel provides a neutral source of legal advice to the hearing panel. Their assistance helps ensure the principles of natural justice and fairness are upheld. Independent legal counsel may provide legal advice on procedural or substantive matters and may legally assist and provide guidance to hearing panels in their decisions, if required. Independent legal

counsel's role is to provide legal advice to the hearing panel, not to the parties. They do not guide proceedings, as this is the chair's role. They give legal advice only when the chair requests it, unless they are concerned there is risk of breach of a rule of natural justice or fairness, in which case they should address this concern with the chair.

If legal issues are raised at the hearing, the hearing panel may either take a recess, adjourn the hearing, or reserve its decision in order to seek legal advice. Independent legal counsel is not a member of the hearing panel and may not make any decision on behalf of the hearing panel.

Independent legal counsel must address all comments or questions to the chair. Independent legal counsel must not be involved with the examination or cross-examination of witnesses or the presentation of arguments. RECA's General Counsel, who is responsible for RECA hearings administration, or external legal counsel may be independent legal counsel to panels.

I. ROLE OF COUNSEL FOR THE REGISTRAR

The registrar is represented by counsel. The role of counsel for the registrar is to present to the hearing panel the registrar's case about the allegations of conduct deserving of sanction against the licensee. The registrar's case is the allegations of conduct deserving of sanction set out in the notice of hearing.

J. ROLE OF LICENSEE/LICENSEE'S LEGAL COUNSEL

The licensee or their legal counsel (or other agent e.g., broker) may choose to present a response or defence to the registrar's case about allegations of conduct deserving of sanction. Because the onus of proof is on the counsel for the registrar, the licensee is not required to present a defence. Nevertheless, the licensee can be compelled to testify at the hearing and they must testify if the counsel for the registrar requests it.

K. THE DAY OF THE HEARING

1. Chair's Opening Remarks

A hearing begins when the chair calls the hearing to order. The chair will ensure introductions take place and provide a brief outline of the hearing procedures to be followed at the hearing. These points will include a statement that the function of the hearing panel is to hold a hearing regarding a matter referred by the registrar and a brief explanation of the procedure to be followed during the hearing. Preliminary matters and objections will be dealt with first.

2. Dealing with Preliminary Objections

If the licensee or the counsel of the registrar raises preliminary objections, the hearing panel must rule on the objection. The opposing party is allowed to respond to the objection. The hearing panel may take a recess to deliberate privately, seek an opinion from independent legal counsel, or allow the other party to prepare a response to the objection.

3. Hearing Applications

There may be instances when a party needs to bring an application during a hearing. If the hearing panel is called upon to give a ruling, the chair will consult with other hearing panel members before making a decision. The chair may call a recess if they are uncertain how to

proceed. During this recess, the chair may caucus with the hearing panel members and independent legal counsel.

4. Opening Statements

Once the chair has completed their opening remarks, the counsel for the registrar and the licensee will each be invited to give an opening statement about their case. The counsel for the registrar will go first, followed by the licensee.

Opening statements should contain a summary of the evidence that the party will call and why the party believes that there is or is not conduct deserving of sanction. Opening statements are intended to be short and an overview of the case. They are not intended to contain the full details of the party's case.

5. Appearance of Witnesses

After opening statements, the chair may request information regarding appearances of witnesses, in particular their identity and when each party intends to call the witnesses. The chair may also ask how long each witness will give evidence. Witnesses are not permitted in the hearing room until after they have given their testimony. Witnesses will wait in an assigned waiting area. After a witness has been called and has entered the hearing room, they will be instructed where to sit. The hearings administrator will have them make an affirmation to tell the truth while giving testimony. A witness who refuses to make an affirmation is not permitted to give evidence at the hearing.

6. Order of Witnesses

Witnesses do not have to be called in any particular order. Order may be a matter of strategy and will be determined by the party. Witnesses, other than the licensee, may be accompanied by legal counsel who has no role in the hearing. Since the licensee cannot be excluded from the hearing, it is common for the licensee to testify first on their own behalf. However, this is not required. The hearing panel should not take this factor into consideration in weighing evidence.

7. Registrar Presents Case

As the registrar is the moving party, the counsel for the registrar will always present first. The counsel for the registrar will outline the allegations of conduct deserving of sanction in the notice of hearing and call witnesses to present the evidence against the licensee. If there is an admission of conduct deserving of sanction or an agreed statement of facts, breaches, or conduct, it should be acknowledged and entered as evidence for the hearing record at this time.

The witness procedure is as follows:

- (a) witness called by the counsel for the registrar
- (b) witness affirmed by the hearings administrator
- (c) direct examination by the counsel for the registrar

- (d) at the end of the direct examination, the chair asks the licensee or legal counsel if they wish to cross-examine
- (e) if there is a cross-examination, the chair asks the counsel for the registrar if they wish to re-examine the witness
- (f) after any re-examination, the chair asks questions, and they ask the other hearing panel members if they have questions
- (g) the counsel for the registrar and the licensee or their legal counsel may conduct a re-examination from questions posed by the hearing panel
- (h) after all questions are concluded, the witness is excused

8. Rules of Examination, Cross-Examination, and Re-Examination

The hearing panel should try to adhere to normal judicial practices in examining, cross-examining, and re-examining witnesses.

9. Licensee Presents Case

On conclusion of the registrar's case, the chair asks the licensee or their legal counsel if they wish to present any evidence.

The witness procedure is as follows:

- (a) witness called by the licensee
- (b) witness affirmed by the hearings administrator
- (c) direct examination by the licensee
- (d) at the end of the direct examination, the chair asks the counsel for the registrar if they wish to cross-examine
- (e) if there is a cross-examination, the chair asks the licensee if they wish to re-examine the witness
- (f) after any re-examination, the chair may ask questions and they ask the other hearing panel members if they have questions
- (g) the counsel for the registrar and the licensee or their legal counsel may conduct a re-examination from questions posed by the hearing panel
- (h) after all questions are concluded, the witness is excused

10. Rebuttal

After the registrar and the licensee present their cases, the chair will ask the counsel for the registrar if they wish to rebut the evidence the licensee raised. This rebuttal may take place in the form of comments by the counsel for the registrar and additional witnesses may be called.

The scope of the rebuttal is limited to issues raised by the licensee or the hearing panel that the counsel for the registrar could not reasonably have anticipated. The counsel for the registrar is not permitted to split their case in half. The hearing panel must disallow any attempts to raise evidence or argument that the counsel for the registrar should have presented at first instance.

11. Panel Clarification Questions and the Right to Interject

The hearing panel is permitted to interject at any time during a hearing in order to clarify or ask questions of witnesses. In addition, any party may interject to lodge an objection with the chair during presentation of evidence. The panel may ask clarifying questions after the counsel for the registrar and the licensee have concluded their questioning.

12. Objections Go to the Chair

All objections must go through the chair. They will allow a response from the other party before ruling on the objection. If the hearing panel is faced with an objection regarding the admissibility of evidence, one of the options is to hear the evidence and decide the evidentiary issue later. Another option is to hear arguments before hearing the evidence. If the hearing panel decides to rely on the evidence in question, it should incorporate its reasons for doing so in its written decision.

13. Recesses

The hearing panel, through the chair, has discretion to call a recess where it believes it is necessary. Some examples include, but are not limited to:

- (a) on request of a party, if an unanticipated issue arises that is critical to the case
- (b) during long and complex hearings, recesses may be helpful to allow both the hearing panel and the parties to remain more alert and focused during the proceedings
- (c) if witnesses become upset, a recess may be preferred in order for the witness to regain composure. In such a case, the chair should remind the witness that they remain under oath and they are not to speak to anyone about the case during the recess.
- (d) should the hearing panel be ready to hear a witness before the witness is scheduled to appear, a recess may be appropriate until the witness arrives
- (e) if the hearing is out of control due to parties' behavior, or if an issue arises that cannot be dealt with within the confines of the hearing

If a recess is called, the chair will announce the time when the hearing will reconvene.

14. Closing Arguments

Once the rebuttal has finished, both parties will make their closing arguments. This should include argument on what findings of fact the panel should make and what findings the panel

should make about the allegations of conduct deserving of sanction in the notice of hearing. No new evidence may be introduced during closing arguments.

The counsel for the registrar goes first followed by the licensee or their legal counsel. The counsel for the registrar may be permitted a brief rebuttal on new issues raised by the licensee or their legal counsel. The counsel for the registrar is not entitled to split their argument in half and cannot repeat arguments during rebuttal that were raised during the initial closing argument. The hearing panel must disregard any attempts to raise an argument that should have been raised in first instance.

L. WRITTEN SUBMISSIONS

Written submissions with respect to closing arguments are not required in all cases and are requested infrequently. The hearing panel has discretion to request written submissions from the parties at the close of the hearing. The order of exchange of written submissions must be as follows:

- (a) Counsel for the registrar provides written submissions within a timeframe the panel orders
- (b) licensee provides response written submissions within a timeframe the panel orders
- (c) counsel for the registrar provides rebuttal written submissions within a timeframe the panel orders

There will be no further written submissions permitted after the counsel for the registrar's deadline for rebuttal submissions has passed. The counsel for the registrar's rebuttal written submissions must be limited to issues raised by the licensee that could not be reasonably anticipated by the counsel for the registrar. The counsel for the registrar is not permitted to split their written submissions in half. The hearing panel must disregard any attempts to raise an argument that should have been presented at the first instance.

Written submissions must be provided to the hearings administrator who will then provide a copy to the opposing party and the hearing panel.

The hearing panel has discretion to set a timeline for the exchange of written submissions. If the hearing panel sets a timeline for the exchange of written submissions, the parties must adhere to that timeline. Failure to do so can result in adverse consequences to the party who fails to comply with the timeline. This may include the hearing panel refusing to accept written submissions from the party who failed to comply or costs consequences.

M. HEARING PANEL DECISION

The hearing panel must make a decision about whether there is conduct deserving of sanction on the allegations set out in the notice of hearing. The hearing panel may adjourn the hearing for a recess to determine whether or not there is conduct deserving of sanction. If the hearing panel is able to render a decision on the day the hearing concludes, the chair will present its decision to the parties that same day. A written decision may follow.

A hearing panel is not required to render a decision on the same day that a hearing closes. When a hearing panel cannot determine if there is conduct deserving of sanction at the close of a hearing, the chair will advise that the decision will be reserved. The hearing will be adjourned for hearing panel deliberations on whether the licensee's conduct is deserving of sanction and the hearing panel will issue a written decision. These are typically issued within 60 days of the end of the phase 1 hearing.

The hearing panel may consider RECA disciplinary decisions, other professional disciplinary bodies' decisions, and court cases the parties submitted in rendering its decision on conduct deserving of sanction.

N. REASONS OF THE HEARING PANEL

The hearing panel must provide reasons for its decision. The reasons may contain at least some of the following elements:

- (a) a review of the key evidence and the significance the hearing panel attaches to the various matters considered
- (b) where there are disputes over facts, the hearing panel should make specific findings of fact indicating the accepted and rejected evidence
- (c) if the hearing panel makes a finding of credibility, it should state the reasons for that conclusion
- (d) an analysis of the substantial points raised by the parties
- (e) the reasoning process the hearing panel used to arrive at its conclusion
- (f) a finding of whether the licensee's conduct is conduct deserving of sanction as set out in the notice of hearing

O. SERVICE OF THE HEARING PANEL'S DECISION

Once the hearing panel reaches a written decision, it will forward the decision to the hearings administrator. This person will serve it on both parties. If the hearing panel finds there was no conduct deserving of sanction, then the matter is concluded unless an appeal is filed. Appeals are discussed below in Part 7.

PART 5: HEARING PROCESSES AND PROCEDURES: PHASE 2-SUBMISSIONS AND DECISIONS ABOUT SANCTION AND COSTS

A. SANCTION AND COSTS AFTER FINDING OF CONDUCT DESERVING OF SANCTION

If a hearing panel finds the licensee engaged in conduct deserving of sanction, it will next decide what sanction to order against the licensee. This process is the hearing phase 2 on sanction and costs.

B. PROCESS TO BE FOLLOWED

The hearing panel will ask for submissions from the parties about sanction and costs. These submissions may be made in writing or orally, at the discretion of the hearing panel. The hearing panel may ask for these to be supplied to the hearing panel in writing within a specified period in the decision about conduct deserving of sanction.

If the hearing panel orders written submissions, the order of exchange of written submissions must be as follows:

- (a) Counsel for the registrar provides written submissions to the licensee and the hearings administrator within a timeframe the panel orders
- (b) licensee provides response written submissions to the counsel for the registrar and the hearings administrator within a timeframe the panel orders
- (c) counsel for the registrar provides rebuttal written submissions to the licensee and the hearings administrator within a timeframe the panel orders

There will be no further written submissions permitted after the counsel for the registrar's deadline for rebuttal submissions has passed. The counsel for the registrar's rebuttal written submissions must be limited to issues raised by the licensee that could not be reasonably anticipated by the counsel for the registrar. The counsel for the registrar is not permitted to split its written submissions in half. The hearing panel must disregard any attempts to raise an argument that should have been presented at the first instance.

The hearings administrator will supply all written submissions to the hearing panel.

Where either the hearing panel orders or the hearing panel has permitted the parties to make oral submissions, the hearings administrator will typically arrange a teleconference with the hearing panel, the counsel for the registrar, and the licensee and their legal counsel. The parties may also request an in-person hearing.

C. PROCESS FOR REQUESTING ORAL SUBMISSIONS

If the hearing panel has requested written submissions about sanction and costs, but the licensee or counsel for the registrar wants to have an oral hearing then they must apply in Form "L" (registrar Form L, licensee Form L) before the deadline for the counsel for the registrar's written submissions passes. If an oral hearing is permitted, both parties may call witnesses, submit other evidence, or make oral submissions relating to sanction and costs.

D. COSTS OF THE HEARING

The hearing panel has discretion to determine if the licensee must pay for all or some of the costs of the hearing. The costs of the hearing can include, but are not limited to, the following items:

- (a) costs of the investigation
- (b) costs of the registrar's legal counsel
- (c) independent legal counsel costs

- (d) the hearing panel honorarium and location costs
- (e) hearing administrator costs
- (f) witness conduct money
- (g) witness service costs

All of the items that may be recovered in a costs award are included in the *Act*, Bylaws.

E. JOINT SUBMISSION ON SANCTION AND COSTS

The counsel for the registrar and the licensee may make a joint submission on sanction and costs. The joint submission on sanction and costs will be submitted to the hearing panel for consideration. The hearing panel is not required to accept the joint submission on sanction and costs and has discretion whether to accept it. However, absent special circumstances, such as the sanction falling well below or above the range in similar cases, the hearing panel should accept the joint submission on sanction and costs. If the hearing panel is considering a joint submission on sanction and costs, the hearing panel has discretion to ask questions or request further written submissions from the parties to clarify their sanction and costs proposal. If the hearing panel is considering an alternate sanction and costs than that proposed by the parties, the hearing panel must request the parties' positions on the alternate sanction and costs before making an order.

F. RELIANCE ON PANEL DECISIONS FOR SANCTION AND COSTS

The parties may choose to rely on prior RECA hearing panel disciplinary cases or other legal precedents in support of the requested sanction and costs. These may have significant influence on the panel. RECA maintains a database of all past decisions. Disciplinary decisions from January 2018 or later are available at www.reca.ca and through CanLII at www.canlii.org. Parties can request access to older RECA disciplinary decisions. RECA staff can also provide parties with hard copies of decisions upon request. There may be costs associated with photocopying these materials.

G. RESERVATION OF DECISION

In cases of an oral hearing, a hearing panel may reserve its decision on sanction and costs. After supply of written submissions, the hearing panel will typically issue a written decision on sanction and costs. Decisions are typically issued within 60 days of receipt of submissions.

H. POTENTIAL SANCTIONS

The hearing panel may make an order for any one or more of the following:

- (a) a cancelation or suspension of the licensee's licence
- (b) a letter of reprimand
- (c) conditions or restrictions on the licensee and on that licensee's carrying on of the business of a licensee

- (d) fines against the licensee of not more than \$25,000.00 for each finding of conduct deserving of sanction
- (e) a prohibition against the licensee from applying for a licence for a specified period of time until one or more conditions are fulfilled by the licensee
- (f) any other order agreed to by the parties

The hearing panel may consider RECA disciplinary decisions, other professional disciplinary body decisions and court cases in rendering the decision on sanction and costs.

I. STAY OF PROCEEDINGS

A licensee whose conduct has been found deserving of sanction, was ordered a sanction and/or costs by a hearing panel and who is appealing the hearing panel's decision to an appeal panel may wish to have the decision of the hearing panel stayed pending the outcome of the appeal. Such a stay application may be brought before the hearing panel. If the hearing panel refuses to grant the stay, the licensee may then apply to the appeal panel for a stay. A stay application may be brought before a hearing panel or an appeal panel.

PART 6: APPEALS OF HEARING PANEL DECISIONS

A. TIME FOR APPEAL

The registrar or a licensee may appeal a hearing panel's decision to an appeal panel. To appeal a finding or an order of a hearing panel, the party must provide a written notice of intent to appeal in Form "M" (registrar Form M, licensee Form M) within 30 days after the date on which the decision of the hearing panel is served on the licensee.

B. LOCATION OF APPEALS

Appeals can take place in person, by videoconference, or by teleconference. The notice of appeal will set out the particulars of whether an in person, videoconference, or teleconference appeal is scheduled. The notice of appeal will confirm the details of the appeal. If an in-person appeal is scheduled it will be in the hearing room at RECA's Calgary Office.

C. REGISTRAR'S RIGHT OF APPEAL LIMITED

The registrar can only commence an appeal if they determine it is in the best interests of the public to do so.

D. COMPOSITION OF APPEAL PANELS

Appeal panels must meet the following requirements:

- (a) they must consist of at least three members
- (b) at least one of the appeal panel members must be a member of the public

- (c) at least one of the appeal panel members must be a licensee. However, the number of members of the public must not exceed the number of licensees on the appeal panel.
- (d) no appeal panel member can have been a member of the hearing panel involving the same matter on appeal

E. OBJECTIONS TO THE COMPOSITION OF AN APPEAL PANEL

Objections to the composition of the appeal panel must be made within 14 days of receiving the notice of appeal. If a party objects to the composition of the appeal panel, then they must complete the Form "C" (registrar Form C, licensee Form C, non-licensee Form C). The opposing party will have the opportunity to respond to the objection in oral or written submissions at the discretion of the panel.

The appeal panel must be independent, neutral and unbiased. Grounds upon which a party may object to the composition of an appeal panel include:

- (a) bias and circumstances creating a perception of bias or a reasonable apprehension of bias
- (b) conflict of interest
- (c) panel members' membership in organizations
- (d) other reasons leading to a reasonable belief that a panel member would not render a fair decision

Upon receipt of an objection relating to the composition of the panel, the hearings administrator will provide it to the appeal panel and the counsel for the registrar. The counsel for the registrar will have 10 days to respond to the objection. The submissions will be supplied to the panel. The chair of the panel must determine the validity of the objection within 15 days unless there is good reason why this timeline cannot be met. If there is any doubt with respect to the panel member's neutrality and impartiality, the chair will ask the panel member to disqualify themselves from the appeal panel and should they not, the chair will disqualify the panel member. The alternate panel member will replace the disqualified panel member.

F. PROCESS FOR FILING MATERIAL FOR APPEAL

The following process applies to appeals where materials are filed in hard copy or electronically under this section:

- (a) the appellant will provide written notice of intent to appeal to the hearings administrator in Form "M" (registrar Form M, licensee Form M)
- (b) the appellant is required to pay the costs for preparation of the hearing record to the hearings administrator immediately upon filing the notice of intent to appeal (no later than 5 days after filing the notice of intent to appeal)
- (c) these costs will include transcription of the hearing, photocopying, binder preparation, and other costs

- (d) costs for preparation of the record may range from \$500 - \$2000 or more, depending on length and complexity of the original hearing
- (e) an appeal panel will be appointed and an appeal date scheduled
- (f) the hearings administrator will provide the appeal panel with a copy of the notice of intent to appeal within 5 days of their appointment
- (g) upon the hearing record's completion, it will be provided to the licensee, the counsel for the registrar, and the appeal panel members. It may be provided in electronic form.
- (h) once the counsel for the registrar serves the notice of appeal of the hearing on the appellant, the appellant will have no more than 3 weeks to provide a written summary of argument to the appeal panel through the hearings administrator. It may be provided in electronic form. Failure to comply with the timeline set out in the notice of appeal may result in adverse consequences for the party who failed to comply, including the appeal panel's refusal to accept a written summary of argument or costs consequences. The written summary of argument should not exceed 10 pages in length and may address the grounds of appeal, substance of the argument as it relates to those grounds of appeal, identification of the evidence being relied upon, an identification of case law, if any, and a short discussion on its relevancy.
- (i) if hard copies are used, 6 copies of the written summary of argument will be served on the hearings administrator for distribution to the appeal panel members and the respondent
- (j) the respondent will have no more than 3 weeks to provide a response to the appellant's written summary of argument to the appeal panel through the hearings administrator. It may be provided in electronic form. Failure to comply with the timeline may result in adverse consequences, such as refusal to accept the response or costs consequences. The response to the appellant's written summary of argument should not exceed 10 pages in length and may address the grounds of appeal, substance of the argument as it relates to those grounds of appeal, identification of the evidence being relied upon and an identification of case law, if any, and a short discussion on its relevancy.
- (k) if hard copies are used, 6 copies of the respondent's response summary of argument will be served on the hearings administrator for distribution to the appeal panel members and the licensee
- (l) the appeal will proceed by oral argument on the scheduled date
- (m) the appeal panel will issue its written decision with reasons, typically within 60 days upon completion of the appeal

G. SPECIAL LEAVE FOR NEW EVIDENCE ON APPEAL

Without special leave from the appeal panel, no new evidence will be considered by the appeal panel.

H. PROCESS FOR APPEAL

At the appeal, the appeal panel and the parties will be introduced and the chair will make general opening remarks. Independent legal counsel may be present to assist the appeal panel. The chair will confirm if legal counsel is representing anyone, and if not, if those who are unrepresented wish to continue to proceed without legal counsel. If there are preliminary matters or objections, they will be considered and decided first. The appellant will present their submissions. The appeal panel may ask clarifying questions of the appellant. The respondent will present their submissions. The appeal panel may ask clarifying questions of the respondent and the appeal panel may ask if there is any rebuttal from the appellant.

I. DECISION POWERS OF THE APPEAL PANEL

The appeal panel may do any one of the following:

- (a) make any finding or order that in its opinion should have been made by the hearing panel
- (b) quash, vary or confirm the finding or order of the hearing panel or substitute or make a finding or order of its own
- (c) refer the matter back to the hearing panel for further consideration in accordance with any direction that the appeal panel makes

J. STAY OF PROCEEDINGS

A licensee whose conduct has been found deserving of sanction, was ordered a sanction and/or costs by a hearing panel and who is appealing the hearing panel's decision to an appeal panel may wish to have the decision of the hearing panel stayed pending the outcome of the appeal. As noted, such a stay application may be brought before the hearing panel. If the hearing panel refuses to grant the stay, the licensee may then apply to the appeal panel for a stay.

PART 7: APPEALS OF APPEAL PANEL DECISION TO THE COURTS

A. APPEAL OF APPEAL PANEL DECISION TO COURT OF KING'S BENCH

1. Time for Appeal

The registrar (with approval of the relevant Industry Council) or a licensee may appeal the decision of an appeal panel to the Court of King's Bench of Alberta. The appeal will be commenced by an originating notice as set out in the *Alberta Rules of Court*. The originating notice must describe the decision appealed and the reasons for the appeal. The originating notice must be filed with the clerk of the Court of King's Bench of Alberta within 30 days after the licensee or the registrar is served with the decision of the appeal panel. Under the *Rules of Court*, the opposing party must receive a copy of the originating notice and the supporting documents not less than 15 days before the date set for the appeal.

2. Record of Appeal

The party initiating the appeal is required to request a record of the appeal in Form "N" (registrar Form N, licensee Form N) from the hearings administrator. Costs for preparation of the record of the appeal are required to be paid in advance of any appeal. If not paid and no panel or court order addresses these costs, the appeal will not proceed. In such a case, the counsel for the registrar will typically bring an application to the appeal panel or court to dismiss any appeal. These costs will include transcriptions of the appeal and all materials presented during the appeal, photocopying, binder preparation, and other items. Cost for preparation of the record may range from \$500 - \$2000 or more, depending on length and complexity of matter.

3. Review on the Record

The court's decision will be based on the record of the appeal and the appeal panel's decision.

4. Stay of Proceedings

A licensee whose appeal was unsuccessful and who is appealing the appeal panel's decision to the Court of King's Bench may wish to have the decision of the appeal panel stayed pending the outcome in court. Such a stay application may be brought before the appeal panel which decided the matter.

B. APPEAL OF COURT OF KING'S BENCH DECISION TO COURT OF APPEAL

Once the Act appeal processes are exhausted, Alberta Court of Appeal procedures may apply. Legal counsel should be consulted if this process is under consideration.

PART 8: APPEAL OF AN ADMINISTRATIVE PENALTY

A. COMMENCING AN APPEAL OF AN ADMINISTRATIVE PENALTY

If a licensee or other person disagrees with an administrative penalty the registrar issued to them, they have the right to appeal it to a hearing panel. The notice of intent to appeal must be made by completing Form "O" (licensee Form O, non-licensee Form O) within 30 days of the date of receipt of the administrative penalty. The licensee or other person must indicate whether the hearing request is for an oral or written submissions, or both. Any written submissions hearing request must be consented to by all parties to the matter. The licensee or other person must also submit three times the amount of the administrative penalty or \$1,000.00, whichever is lesser, as security for costs for the appeal. The Form "O" and the security for costs must be submitted to the hearings administrator who will supply it to the Board. The Board will refer the matter to a hearing panel. The hearings administrator will serve on behalf of the Board a licensee or other person with a notice of appeal of administrative penalty. If an oral proceeding has been accepted by the hearing panel, the notice will set out the date, time, and location of the hearing. If written submissions or written submissions and oral combined proceeding has been accepted by the hearing panel, the notice will set out dates when the hearing panel will require materials from all parties and will provide additional direction for the conduct of the hearing. For oral or written submissions hearings, counsel for the registrar must provide the licensee or other person with a copy of the investigation file,

subject to content which cannot be disclosed due to privilege or relevancy, as soon as possible and in any event at least 15 days in advance of the date of the hearing.

B. PROCESS FOR APPEAL OF ADMINISTRATIVE PENALTY

The appeal of the administrative penalty will be appealed to a hearing panel. The hearing will have two phases, similar to a hearing about conduct deserving of sanction described in Part 4. Phase 1 is either an oral hearing or written submissions, or both, while phase 2 about penalty and costs is usually dealt with by way of written submissions.

Phase 1: This phase of the hearing is about whether the licensee or other person contravened a provision of the Act, Rules, Regulations or Bylaws or their conduct was otherwise deserving of sanction. For an oral hearing, the licensee or other person and the counsel for the registrar will present their evidence and make submissions to the hearing panel in person. For a written submissions hearing, the licensee or other person and counsel for the registrar will provide written evidence and submissions to the hearing panel on the dates provided in the notice of hearing.

Phase 2: If the hearing panel finds that the licensee or other person contravened a provision of the Act, Rules, Regulations, or Bylaws, the second phase of the hearing will proceed. Counsel for the registrar and the licensee or other person will make submissions, usually in writing, about penalty and costs. This may include reliance on prior RECA hearing panel decisions or legal precedents to support each party's requested sanction and costs. For further information on prior RECA panel decisions see Part 5: Section F.

The following phase 1 process applies to an oral administrative penalty appeal hearing:

- (a) the hearing panel and the parties will be introduced. Independent legal counsel may be present to assist the panel. The chair will confirm that all electronic devices are turned off and only the hearings administrator is recording the appeal
- (b) preliminary matters and objections will be dealt with first. The chair will confirm if legal counsel is representing parties, and if not, if those who are unrepresented want to proceed without legal counsel
- (c) the counsel for the registrar will give their opening statement
- (d) the licensee or other person will give their opening statement
- (e) all witnesses will be affirmed by the hearings administrator prior to giving their testimony
- (f) the counsel for the registrar will present their evidence, including calling witnesses and producing documents
- (g) the licensee or other person has the opportunity to cross-examine the counsel for the registrar's witnesses
- (h) the counsel for the registrar will have the opportunity for re-examination on any witnesses that the licensee or other person has cross-examined

- (i) the hearing panel will have the opportunity to ask the counsel for the registrar's witnesses clarifying questions
- (j) the licensee or other person will present their evidence, including calling witnesses and producing documents
- (k) the counsel for the registrar will have the opportunity to cross-examine the licensee's or other person's witnesses
- (l) the licensee or other person will have the opportunity for re-examination on any witnesses that the counsel for the registrar has cross-examined
- (m) the hearing panel will have the opportunity to ask witnesses clarifying questions
- (n) the counsel for the registrar will give their closing arguments
- (o) the licensee or other person will give their closing arguments
- (p) the counsel for the registrar will be given the opportunity for rebuttal
- (q) the hearing panel will be given the opportunity to ask questions
- (r) the chair of the hearing panel will give their closing remarks
- (s) the phase 1 oral hearing will conclude and the hearing panel will issue a written decision

The following phase 1 process applies to a written submission administrative penalty appeal hearing. The written submissions or combined written submissions and oral combined administrative penalty appeal is to a hearing panel. The appeal may be in electronic form and no hard copies are necessary.

- (t) the notice of administrative penalty appeal will set out that the appellant will have no more than 3 weeks to prepare a written summary of argument for the appeal to the hearing panel through the hearings administrator. It may be supplied electronically. Failure to comply with the timeline that the hearing panel sets may result in adverse consequences such as refusal to accept the written summary of argument or costs consequences. The written summary of argument should not exceed 10 pages in length and may address the grounds of appeal, substance of the argument as it relates to those grounds of appeal, identification of the evidence being relied upon including the identification of case law, if any, and a short discussion on its relevancy
- (u) if hard copies are used, 6 copies of the appellant's written summary of argument will be provided to the hearings administrator for distribution to the counsel for the registrar and the hearing panel
- (v) the counsel for the registrar will have 2 weeks to respond to the complainant's summary of argument

- (w) if hard copies are used, 6 copies of the counsel for the registrar's written summary of argument will be provided to the hearings administrator for distribution to the appellant and to the hearing panel
- (x) the complainant may prepare a written rebuttal to counsel for the registrar's written summary of argument within 1 week of its receipt
- (y) if a rebuttal is prepared, and if hard copies are used, 6 copies will be provided to the hearings administrator for distribution to counsel for the registrar and to the hearing panel
- (z) the hearing panel may ask clarifying questions of any parties on the date of the hearing and if a written submissions and oral hearing is combined, the parties may appear before the hearing panel.
- (aa) the hearing panel will render its written decision, usually within 60 days of the date of the hearing

If a phase 2 for penalty and costs is required, the hearing panel decision will typically set out the phase 2 process. It will usually be by written submissions but an oral phase 2 hearing is also possible.

C. POWERS OF THE PANEL ON AN APPEAL OF ADMINISTRATIVE PENALTY

On an appeal of an administrative penalty, the hearing panel may quash, confirm, or vary the administrative penalty. The hearing panel also has the authority to order the licensee to pay the costs of the investigation and the appeal of the administrative penalty if the appeal is unsuccessful. For further information on costs, see Part 5: Section D.

D. HEARING PANEL DECISION FINAL FOR APPEAL OF ADMINISTRATIVE PENALTY

The decision of the hearing panel of an administrative penalty is final and there is no further right of appeal. Judicial review of the decision may be available. Advice from a lawyer is strongly encouraged.

PART 9: APPEAL OF A LETTER OF REPRIMAND

A. COMMENCING AN APPEAL OF A LETTER OF REPRIMAND

If the licensee disagrees with a letter of reprimand, they have the right to appeal it within 30 days of the date of receipt of the letter of reprimand. The appeal must be commenced by completing a notice of intent to appeal Form "P". Form "P" must be submitted to the hearings administrator who will supply it to the Board. The Board will refer the matter to a hearing panel. The hearings administrator on behalf of the Board will serve the licensee with a notice of appeal of letter of reprimand. It will set out the date, time, and location of the appeal of the letter of reprimand.

B. PROCESS FOR APPEAL OF A LETTER OF REPRIMAND

The appeal of the letter of reprimand will be appealed to a hearing panel. The counsel for the registrar and the licensee will present their evidence and make submissions to the hearing panel about whether there is conduct deserving of sanction to warrant the letter of reprimand.

The following phase 1 process will be used at an appeal of a letter of reprimand:

- (a) the hearing panel and the parties will be introduced. Independent legal counsel may be present to assist the panel. The chair will confirm that all electronic devices are turned off and only the hearings administrator is recording the appeal
- (b) preliminary matters and objections will be dealt with first. The chair will confirm if legal counsel is representing parties, and if not, if those who are unrepresented want to proceed without legal counsel
- (c) the counsel for the registrar will give their opening statement
- (d) the licensee will give their opening statement
- (e) all witnesses will be affirmed by the hearings administrator prior to giving their testimony
- (f) the counsel for the registrar will present their evidence, including calling witnesses and producing documents
- (g) the licensee has the opportunity to cross-examine the counsel for the registrar's witnesses
- (h) the counsel for the registrar will have the opportunity for re-examination on any witnesses that the licensee has cross-examined
- (i) the hearing panel will have the opportunity to ask the counsel for the registrar's witnesses clarifying questions
- (j) the licensee will present their evidence, including calling witnesses and producing documents
- (k) the counsel for the registrar will have the opportunity to cross-examine the licensee's witnesses
- (l) the licensee will have the opportunity for re-examination on any witnesses that the counsel for the registrar has cross-examined
- (m) the hearing panel will have the opportunity to ask witnesses clarifying questions
- (n) the counsel for the registrar will give their closing arguments
- (o) the licensee will give their closing arguments

- (p) the counsel for the registrar will be given the opportunity for rebuttal
- (q) the hearing panel will be given the opportunity to ask questions
- (r) the chair of the hearing panel will give their closing remarks
- (s) the hearing will conclude and the hearing panel will issue a written decision about conduct deserving of sanction

If a phase 2 for sanction and costs is required, the hearing panel decision will typically set out the phase 2 process. It will usually be by written submissions but an in-person phase 2 hearing is also possible.

C. POWERS OF THE HEARING PANEL ON AN APPEAL OF LETTER OF REPRIMAND

The hearing panel may quash, confirm, or vary the letter of reprimand. The hearing panel also has the authority to order the licensee or RECA to pay the costs of the appeal of the letter of reprimand if the appeal is unsuccessful.

D. APPEAL OF HEARING PANEL DECISION

The decision of the hearing panel on an appeal of a letter of reprimand may be appealed to an appeal panel. Part 6 of these Guidelines applies to an appeal of a letter of reprimand.

PART 10: APPEAL OF A SUSPENSION FOR FAILURE TO CO-OPERATE WITH A PERSON CONDUCTING AN INVESTIGATION

A. COMMENCING AN APPEAL OF A SUSPENSION FOR FAILURE TO CO-OPERATE

If the licensee disagrees with a notice of an Industry Council's suspension for failure to co-operate with a person conducting an investigation, they have the right to appeal it within 30 days of the date of receipt of the notice of suspension for failure to co-operate. The appeal can be commenced by completing a notice of intent to appeal suspension for failure to co-operate in Form "Q". Form "Q" must be submitted to the hearings administrator who will supply it to the Board. The Board will then serve the licensee with a notice of appeal of suspension for failure to co-operate. It will set out the date, time, and location of the hearing.

B. PROCESS FOR APPEAL OF A SUSPENSION FOR FAILURE TO CO-OPERATE WITH A PERSON CONDUCTING AN INVESTIGATION

The appeal of the Industry Council's suspension for failure to co-operate will be appealed to a hearing panel. The counsel for the registrar and the licensee will present their evidence and make submissions to the hearing panel about whether the licensee failed to co-operate with a person conducting an investigation.

The following process will be used at an appeal of a suspension for failure to co-operate:

- (a) the hearing panel and the parties will be introduced. Independent legal counsel may be present to assist the panel. The chair will confirm that all electronic

devices are turned off and only the hearings administrator is recording the appeal

- (b) preliminary matters and objections will be dealt with first. The chair will confirm if legal counsel is representing parties, and if not, if those who are unrepresented want to proceed without legal counsel
- (c) the counsel for the registrar will give their opening statement
- (d) the licensee will give their opening statement
- (e) all witnesses will be affirmed by the hearings administrator prior to giving their testimony
- (f) the counsel for the registrar will present their evidence, including calling witnesses and producing documents
- (g) the licensee has the opportunity to cross-examine the counsel for the registrar's witnesses
- (h) the counsel for the registrar will have the opportunity for re-examination on any witnesses that the licensee has cross-examined
- (i) the hearing panel will have the opportunity to ask the counsel for the registrar's witnesses clarifying questions
- (j) the licensee will present their evidence, including calling witnesses and producing documents
- (k) the counsel for the registrar will have the opportunity to cross-examine the licensee's witnesses
- (l) the licensee will have the opportunity for re-examination on any witnesses that the counsel for the registrar has cross-examined
- (m) the hearing panel will have the opportunity to ask witnesses clarifying questions
- (n) the counsel for the registrar will give their closing arguments
- (o) the licensee will give their closing arguments
- (p) the counsel for the registrar will be given the opportunity for rebuttal
- (q) the hearing panel will be given the opportunity to ask questions
- (r) the chair of the hearing panel will give their closing remarks
- (s) the hearing will conclude and the hearing panel will issue a written decision

C. POWERS OF THE HEARING PANEL ON AN APPEAL OF SUSPENSION FOR FAILURE TO CO-OPERATE WITH A PERSON CONDUCTING AN INVESTIGATION

A hearing panel on an appeal of a suspension for failure to co-operate with a person conducting an investigation may quash, confirm, or vary the notice of suspension for failure to co-operate. The hearing panel also has the authority to order the licensee or RECA to pay the costs of the appeal if the appeal is unsuccessful.

D. HEARING PANEL DECISION IS FINAL FOR APPEAL OF SUSPENSION FOR FAILURE TO CO-OPERATE WITH A PERSON CONDUCTING AN INVESTIGATION

The decision of the hearing panel on an appeal of a suspension for failure to co-operate with a person conducting an investigation is final and there is no further right of appeal. Part 6 of these Guidelines does not apply to an appeal of a suspension for failure to co-operate. Judicial review of the decision may be available. Legal advice from a lawyer is strongly encouraged.

PART 11: REVIEWS OF REGISTRAR LICENCE DECISIONS

A. COMMENCING AN APPEAL OF A LICENCE DECISION

The registrar will give notification of a decision to a licensee, or prospective licensee:

- (a) who had licence terms, conditions, or restrictions imposed
- (b) whose licence has been refused
- (c) whose licence has been suspended or cancelled
- (d) who has been suspended or expelled from a course or program in accordance with the Education Code of Conduct for Learners

The person may appeal the decision by requesting an appeal panel review it within 30 days of receipt of the registrar's decision. To request a review, the individual must complete the notice of intent to appeal a licence in Form "R". Form "R" must be submitted to the hearings administrator who will supply it to the counsel for the registrar. The counsel for the registrar will serve the person with a notice of appeal. It will set out the date, time, and location of the review.

B. TIMELINES FOR A LICENCE DECISION REVIEW

The review of a licence decision is to an appeal panel. The review may be in electronic form and no hard copies are necessary. The following process applies to reviews of licence decisions:

- (a) the notice of appeal will set out that the licensee or prospective licensee will have no more than 3 weeks to prepare a written summary of argument for the review to the appeal panel through the hearings administrator. It may be supplied electronically to the hearings administrator. Failure to comply with the timeline that the appeal panel sets may result in adverse consequences such as refusal to accept the written summary of argument. The written summary of

argument should not exceed 10 pages in length and may address the reasons the licensee or prospective licensee believes the decision by the registrar is wrong, an explanation of those reasons, any documents or other evidence the reasons are based on, and any relevant case law or prior RECA cases

- (b) if hard copies are used, 6 copies of the licensee's or prospective licensee's written summary of argument will be provided to the hearings administrator for distribution to the counsel for the registrar and the appeal panel
- (c) the counsel for the registrar will have 2 weeks to respond to the licensee's or prospective licensee's written summary of argument
- (d) if hard copies are used, 6 copies of the counsel for the registrar's written summary of argument will be provided to the hearings administrator for distribution to the licensee or prospective licensee and to the appeal panel
- (e) the licensee or prospective licensee may prepare a written rebuttal to the counsel for the registrar's written summary of argument within 1 week of its receipt
- (f) if a rebuttal is prepared, and if hard copies are used, 6 copies will be provided to the hearings administrator for distribution to the counsel for the registrar and to the appeal panel

C. PROCESS FOR A LICENCE DECISION REVIEW

An appeal panel hears reviews of the registrar licence decisions. Typically, reviews are treated as an appeal of the registrar's decision on the record. This means that the appeal panel will not consider new evidence and will consider only what the registrar considered when they made their decision. The registrar's decision will be reviewed on a certain standard. It is most likely a reasonableness standard. However, this is a legal question and the panel will decide it. Sometimes the review can take the form of an original application.

At the licence decision review, both the counsel for the registrar and the licensee or prospective licensee may make oral arguments and submissions to the appeal panel. The following process will be used at a review of a licence decision:

- (a) the appeal panel and the parties will be introduced. Independent legal counsel may be present to assist the appeal panel. The chair will confirm that all electronic devices are turned off and only the hearings administrator is recording the appeal
- (b) preliminary matters and objections will be dealt with first. The chair will confirm if legal counsel is representing parties, and if not, if those who are unrepresented want to proceed without legal counsel
- (c) the licensee or prospective licensee will present their submissions
- (d) the appeal panel may ask clarifying questions of the licensee or prospective licensee or their legal counsel

- (e) the counsel for the registrar will present their submissions
- (f) the appeal panel may ask clarifying questions of the counsel for the registrar
- (g) the appeal panel will consider a rebuttal, if any

D. POWERS OF THE APPEAL PANEL ON A REVIEW OF LICENCE DECISION

The appeal panel will review the registrar's decision and determine whether it was legally appropriate to make that decision given the information the registrar had. It will either confirm the registrar's decision or approve the application for licensing. The appeal panel will review the decision on either a reasonableness or correctness standard depending on the grounds of appeal and the issues in the review.

E. APPEAL PANEL DECISION IS FINAL FOR REVIEW OF LICENCE DECISION

The decision of an appeal panel on a review of a licence decision is final and there is no further right of appeal. Judicial review of the decision may be available. Legal advice from a lawyer is strongly encouraged.

PART 12: COMPLAINANT APPEAL

A. GENERAL

On completion of an investigation, the registrar may direct that no further action be taken, if the registrar is of the opinion that

- (i) the complaint is frivolous or vexatious or
- (ii) there is insufficient evidence of conduct deserving of sanction

The registrar also has discretion to refuse to investigate a complaint, discontinue the investigation of a complaint or dismiss the complaint under the following circumstances:

- (a) the identity of the licensee complained of is not clearly identified
- (b) the conduct complained of is not a breach of the *Act*, Rules, Regulations or Bylaws or there is insufficient evidence of breach of the *Act*, Rules, Regulations, or Bylaws
- (c) the conduct complained of was the subject of a prior complaint
- (d) the breach complained of is minor in nature and an advisory note is sent to the licensee complained of
- (e) the complainant fails or refuses to cooperate with an investigator
- (f) the complainant asks not to proceed with the complaint

"Sufficient evidence of conduct deserving of sanction" means there is a reasonable prospect that a hearing panel would find the licensee committed the alleged conduct and that the conduct is deserving of sanction.

See Part 2 above for a definition of “conduct deserving of sanction”.

A “reasonable prospect” is more than a prima facie case, but less than proof on a balance of probability. A reasonable prospect does not mean that the registrar must be completely certain that a hearing panel will find conduct deserving of sanction, but they should believe that the information could reasonably provide the basis for proof at a hearing.

The registrar’s role in applying the “sufficient evidence test” is to ensure matters do not proceed to a hearing where there is no reasonable prospect of a finding of conduct deserving of sanction.

B. COMMENCING A COMPLAINANT APPEAL

If a complainant disagrees with the registrar’s decision not to investigate a complaint, to discontinue investigating a complaint, or dismiss a complaint against a licensee, they have the right to appeal that decision. An appeal must be initiated within 30 days of the complainant receiving notice of the registrar’s decision by completing a notice of intent to commence a complainant appeal in Form “S” and paying the required security for costs. Form “S” must be submitted to the hearings administrator. The hearings administrator will provide the complainant and the licensee against whom the complaint was made with a notice of complainant appeal. It will set out information about how the complainant appeal will be conducted and the date that a hearing panel will review the appeal.

C. TIMELINES FOR A COMPLAINANT APPEAL

The complainant appeal is to a hearing panel. The following process applies to complainant appeals:

- a. the notice of complainant appeal will give a deadline for the complainant to provide a written summary of argument for the appeal. It may be supplied electronically. Failure to comply with the timeline may result in adverse consequences such as the hearing panel’s refusal to accept the written summary of argument or costs consequences. The written summary of argument should not exceed 10 pages in length and may address the grounds of appeal, substance of the argument as it relates to those grounds of appeal, identification of the evidence being relied upon and the identification of case law, if any, and a short discussion on its relevancy
- b. if paper hard copies are used, a copy of the complainant’s written summary of argument should be mailed or couriered to the attention of the hearings administrator.
- c. the licensee will have 2 weeks to respond to the complainant’s summary of argument if they wish to do so

- d. if hard copies are used, a copy of the licensee's written summary of argument should be mailed or couriered to the hearings administrator for distribution to the complainant and to the hearing panel
- e. the complainant may prepare a written rebuttal to the licensee's written summary of argument within 1 week of its receipt
- f. if a rebuttal is prepared, and if hard copies are used, a copy should be mailed or couriered to the hearings administrator for distribution to the licensee and to the hearing panel

D. NO DISCLOSURE OF THE INVESTIGATION FILE TO COMPLAINANT

The investigation file is not made available to the complainant or the licensee in a complainant appeal. This is because the investigation file contains material the licensee and other witnesses were required to supply under the Act, and the licensee was required to cooperate with an investigator. The information obtained in the investigation may contain personal information and is subject to privacy laws. The hearing panel, however, will receive all information related to the complaint for the purpose of its review. The panel may consider disclosing certain information from the investigation file upon application from the complainant if the complainant can satisfy the panel that disclosure is necessary in order for them to fully explain their complaint. If the hearing panel determines that there is sufficient evidence of conduct deserving of sanction to warrant a hearing, then the licensee will receive disclosure of the investigation file as part of the hearing process.

E. COMPLAINANT APPEAL IS A DE NOVO REVIEW

A complainant appeal is a de novo review of the complaint and related evidence. This means the issue is considered afresh without regard to any previous decision. The hearing panel in a complainant appeal is directed by the Act to make its own determination of whether there is sufficient evidence of conduct deserving of sanction to warrant a hearing, without regard to the prior decision of the registrar.

F. PROCESS FOR A COMPLAINANT APPEAL

Complainant appeals are conducted through written submissions. If a complainant or licensee wishes to request an alternative hearing format such as teleconference or video conference, they must bring an application to the Panel within 14 days of receiving the notice of complainant appeal. The application should be in writing and include submissions in support of the alternative format proposed and any evidence to support the submissions. It is at the discretion of the Panel to grant or refuse the request.

G. POWERS OF THE HEARING PANEL ON A COMPLAINANT APPEAL

The hearing panel in a complainant appeal does not determine whether or not the licensee has engaged in conduct deserving of sanction. Instead, the hearing panel reviews all relevant information and evidence related to the complaint, the written submissions from the

complainant and the licensee, as well as any additional evidence that the panel has agreed to accept from the complainant and determines whether there is sufficient evidence of conduct deserving of sanction to warrant a hearing.

The panel applies the same test of “sufficient evidence”, “reasonable prospect” and “conduct deserving of sanction” set out in Section A of this Part. The panel will base its decision on review of the evidence. The panel makes an assessment of the admissibility and probative value of available evidence and potential defences, taking care not to pre-judge the case. The alleged conduct does not have to be proven at this stage, but the panel should determine that the information presented could reasonably provide the basis for proof at a hearing to ensure matters do not proceed to a hearing where there is no reasonable prospect of a finding of conduct deserving of sanction.

If the hearing panel finds there is insufficient evidence of conduct deserving of sanction, the panel will notify the complainant and licensee of that decision. The matter will not proceed to a hearing. If the hearing panel determines that a complaint is frivolous or vexatious, it may order the complainant to pay the costs of the hearing. If the hearing panel determines there is sufficient evidence of conduct deserving of sanction to warrant a hearing, the *Act* provides that a hearing shall be held. In that case, the hearings administrator will schedule a hearing date and the licensee will be served with a notice of hearing.

H. NO APPEAL TO AN APPEAL PANEL

The hearing panel’s decision on a complainant appeal is final. There is no right of appeal to an appeal panel after a complainant appeal ends. Judicial review of the decision may be available. Legal advice from a lawyer is strongly encouraged. The *Alberta Rules of Court* apply to applications for judicial review.

I. CONDUCT HEARING AFTER COMPLAINANT APPEAL

Where the hearing panel in a complainant appeal determines there is sufficient evidence of conduct deserving of sanction to warrant a hearing, a hearing date will be scheduled before a new hearing panel and the licensee will be served with a notice of hearing. The hearing must be commenced within 60 days after the date that the licensee is served with the notice of hearing. The registrar will also receive notice of the hearing and counsel for the registrar will undertake the role of case presenter against the licensee in the hearing. If the registrar maintains the position that there is no conduct deserving of sanction, they will still appear at the hearing and provide the investigation evidence to the panel but will take no position before the panel on whether conduct deserving of sanction has been proven or not.

PART 13: MISCELLANEOUS

A. RECORDING PROCEEDINGS

All oral evidence received in front of a hearing or appeal panel must be taken down in writing or electronically to ensure an accurate record of the proceedings is available. The hearing will be digitally recorded, and the hearings administrator may also take notes of the proceedings.

Should there be a technological defect in the recording, an incomplete transcript will not invalidate the proceedings unless there is material harm arising from the defect.

Whenever required, the chair may, with the consent of all present, ask the hearings administrator not to record and go off the record to informally discuss procedures or any appropriate matter.

B. NO RECORD OF IN CAMERA (PRIVATE) PROCEEDINGS

During *in camera* portions of a hearing, the chair should clearly announce the beginning and the end of the *in-camera* session for the benefit of the recording. The *in-camera* session is recorded but it not made publicly available and is not part of the record. Written materials or transcripts of an *in-camera* hearing segment should be clearly marked as such and the *in camera* portions should be deleted in all written materials and recordings before providing copies to anyone except the parties present during the in camera session.

C. LIMITATION OF USE OF EVIDENCE AT A HEARING

Any evidence, including verbal or documentary evidence, given in the course of a hearing cannot be used in any civil court proceedings, in a prosecution under the *Act*, or in any proceedings under any other Act. The only exception to this rule is that such evidence may be used in prosecution proceedings in respect of perjury or the giving of contradictory evidence.

D. FAILURE OF A WITNESS TO APPEAR OR TO PRODUCE A DOCUMENT

If a witness fails to appear before a panel, has failed to produce records in compliance with a summons, or refuses to be sworn or answer questions they have been directed to answer, the *Act* allows civil contempt proceedings to be brought against the witness at the hearing. A contemptuous act impedes a panel from performing its duties. The purpose of civil contempt proceedings is to secure compliance with the panel processes. Fines or other penalties may result.

If contempt proceedings against a witness occur, the panel must first cite the witness for contempt. This is notice to the witness that they have been contemptuous. If the ability to continue a hearing or appeal is in jeopardy due to the contemptuous behavior, the chair may immediately punish the contempt in order for the hearing or appeal to proceed. Otherwise, the witness should be cited in contempt and given the opportunity to argue their case later.

Possible penalties for contempt include expulsion from the hearing, fines and payment of the costs of the contempt proceedings. A contemptuous witness may purge themselves of the contempt by doing what they neglected or failed to do.

Should a contempt proceeding take place before the courts, a person who the court holds in contempt may face imprisonment.

E. FAILURE OF LICENSEE TO ATTEND HEARING

If a licensee who has been properly served with a notice of hearing or other commencement document fails to attend a hearing or appeal, the panel may proceed in that licensee's absence,

or the hearing or appeal may be adjourned. If the licensee initiated an application or a proceeding, the panel may dismiss the application or proceeding.

F. DISCONTINUATION OF HEARING

A hearing panel has authority to discontinue a hearing if it is satisfied that the conduct of a licensee does not justify the continuation of the hearing. The hearing panel must provide reasons for this decision.

G. POWER TO REHEAR OR RECONSIDER

Once a hearing panel has made its decision, the decision is final. A hearing panel may only rehear or reconsider a decision when:

- (a) it is necessary to correct a clerical error, an accidental error or omission, or an ambiguity in the decision
- (b) the decision mandated by statute has not yet been made, the decision made is void or voidable for lack of jurisdiction (including breaches of the principles of natural justice or fairness), or an issue remains outstanding
- (c) the decision in question was obtained by fraud, mental disability, or some other circumstance which calls the decision's integrity into question

A party may appeal a decision if these grounds do not apply. Appeal grounds may include:

- (a) the hearing panel made a jurisdictional error
- (b) the decision is unreasonable with respect to the evidence on the record, circumstances have changed, or contractual or other financial reliance has been placed on a decision

Appeals processes are found at Part 6.

H. PUBLICATION OF DISCIPLINARY ACTIONS

The *Act* gives the Board, an Industry Council, and the registrar authority to publish information about a refusal, cancellation, or suspension of a licence, a withdrawal of a licence, information regarding prosecutions and disciplinary actions taken under the *Act*. RECA has a publication policy at www.reca.ca. For transparency, all disciplinary actions and withdrawals from the industry are public. All enforcement actions are published in the *Regulator*, on the RECA Website, and other media. Publication demonstrates RECA's commitment to protect the public, promote the integrity of the industry and accountability.

THESE GUIDELINES ARE INTENDED TO PROVIDE PROCESSES, PROCEDURES AND INFORMATION ABOUT HOW RECA HEARING AND APPEAL PROCESSES OPERATE.
INDIVIDUALS INVOLVED IN HEARINGS AND APPEALS UNDER THE *REAL ESTATE ACT*

ARE STRONGLY ENCOURAGED TO SEEK INDEPENDENT LEGAL ADVICE AS THESE PROCEEDINGS MAY HAVE SERIOUS IMPLICATIONS.

For more information about hearing and appeal panel processes,
please contact the RECA General Counsel Unit at
THE REAL ESTATE COUNCIL OF ALBERTA
Hearings Administrator, info@reca.ca
202, 1506 11th Avenue SW, Calgary AB T3C 0M9
T: (403) 228-2954 or 1-888-425-2754
F: (403) 228-3065
www.reca.ca

GLOSSARY

Act: The *Real Estate Act*, R.S.A. 2000, c. R-5

Administrative penalty: A disciplinary outcome issued to a licensee for conduct deserving of sanction or a penalty to a person for unauthorized trading in real estate as a real estate broker, dealing in mortgages as a mortgage broker or acting as a property manager or for other issues as set out in the *Real Estate Act*. It is typically issued when 1 or 2 straight-forward, though potentially serious breaches of the *Real Estate Act*, Rules, Regulations or Bylaws occur, and includes the required monetary penalty the licensee or member of the public must pay.

Admission of conduct deserving of sanction: An agreement between the licensee and the registrar that the licensee engaged in conduct deserving of sanction as set out in the notice of hearing.

Advisory note: A letter issued to a licensee typically for a technical breach of the *Real Estate Act*, Rules, Regulations or Bylaws. It is not a form of disciplinary sanction but rather advice to avoid the same or similar breach of the legislation in the future.

Affidavit: A formal written statement of fact sworn to or affirmed by the author and witnessed as to the authenticity of the author's signature before a person such as a notary or commissioner of oaths who is authorized to administer an oath

Appeal: A legal proceeding in which a lower panel or court's decision is brought before a higher panel or court for review and possible reversal. Under the *Real Estate Act*, a licensee is

given the right to appeal certain decisions made by the registrar, an Industry Council, or a hearing panel.

Appeal Panel: A panel comprised of licensees and members of the public, who consider appeals of a decision of a hearing panel. Appeal panels can uphold, modify, or quash decisions made by a hearing panel or refer the matter back to the hearing panel for further consideration.

Appellant: The person who has commenced an appeal.

Board: The 7 members appointed under the Act who make up the Real Estate Council of the Alberta. The Purposes of the Board include: to set the strategic direction and ensure the effective operation of the Council; to protect against, investigate, detect and suppress fraud as it relates to the business of licensees and to protect consumers; to provide, or support the provision of, services and other things that facilitate the business of licensees, as provided for in the Regulations; and to administer the Act, as provided in the Act, the Regulations, the Bylaws, and the Rules.

Bylaws: *Real Estate Act* Bylaws enacted under the authority of the Act. The Board approves these Guidelines in accordance with *Real Estate Act* Bylaws and they must be followed.

Case law: The body of legal decisions where the court has interpreted legislation when applying it to a specific set of facts. Court decisions can be made at various levels within the judicial system (e.g. Alberta Court of Justice, Court of King's Bench, and Court of Appeals provincially and the Supreme Court of Canada federally). The decisions of a higher court may alter decisions made by lower courts, and the prior decisions of courts will influence future court decisions. Therefore, case law is based on judicial precedent rather than statutory law.

Counsel: The person who presents the registrar's case. Generally, a lawyer employed by RECA or external counsel hired by RECA to represent the registrar.

Chair: The member of the hearing or appeal panel who has control of the hearing or appeal and directs the flow of the proceedings. The chair usually sits in the center of the hearing or appeal panel members.

Closing argument: Oral argument, though it can be in writing as well, presented at the end of a hearing or appeal. This is not evidence, but rather a summary of the party's position.

Common law: The accumulated case law made by courts. The courts create laws based on decisions (i.e. precedents) made previously by the same or different courts.

Complainant: A person who makes a complaint about a licensee to the registrar.

Complainant appeal: An appeal initiated by a complainant who is dissatisfied with the registrar's decision not to investigate, cease to investigate or dismiss the complaint against a licensee.

Complaint: An allegation from a complainant against a licensee or other person that states their conduct was not appropriate and failed to follow the standards of practice as set out in the *Real Estate Act* and Rules or otherwise breached the legislation. It must be in writing, contain the name of the complainant, and give reasonable particulars about the conduct complained of.

Conduct deserving of sanction: The conduct and actions of a licensee that contravenes the *Real Estate Act*, the Rules, the Regulations or the Bylaws; is a detriment to the best interests

of the public or licensees; harms or potentially harms the public; displays a lack of knowledge, skill or judgment in the practice of a licensee; or displays a lack of adherence to the normally accepted standards of practice.

Confidential information: Includes any information, such as information concerning a client, including their financial information, personal information or situation, or the details of a real estate, mortgage brokerage, condominium management or property management transaction.

Conflict of interest: A situation that undermines the impartiality of a person. It can occur when there is a real or seeming incompatibility between the interests, concerns, or aims of two different parties. For example, it can occur when a person is in a position to derive personal benefit from actions or decisions made in their official capacity as a panel member. It is something that could possibly corrupt the motivation or decision-making of the panel member.

Costs: The expense that is incurred to conduct a hearing or appeal. A panel can order a licensee or RECA to pay all or some of the costs of a hearing or appeal. These costs can include, but are not limited to, costs of the investigation, general hearing and appeal costs, legal fees, panel expenses, location costs, witness costs, and document service costs.

Court of Appeal of Alberta: The highest court in the province of Alberta that hears appeals from the Court of King's Bench, the Alberta Court of Justice and administrative tribunals. The Court also provides its opinion on questions referred by the Lieutenant Governor under the *Judicature Act*.

Court of King's Bench: The superior trial court for the province of Alberta that hears trials in civil matters, criminal matters and appeals from decisions of the Alberta Court of Justice.

Exhibits: Documents that are entered as evidence before a panel.

Hearing: A formal process similar to a court proceeding to determine if a licensee has engaged in conduct deserving of sanction.

Hearing administrator: The individual who is responsible for the administrative aspects of the hearing and appeal processes. All communications about the hearing and appeal process flow through the hearings administrator.

Hearing Panel: A panel comprised of licensees and members of the public who consider evidence in deciding whether a licensee's conduct is deserving of sanction under the *Real Estate Act*. A hearing panel has the right to question witnesses under oath and it has many of the powers of the court for the trial of civil actions.

Hearing record: All the information and evidence that was before a panel when it made its decision.

Hearing room: The room where the hearing or appeal takes place at RECA's main office.

In camera: A Latin phrase meaning private. The public and press are not allowed to observe the procedure or process when it is in camera.

Independent legal counsel: A member of the Law Society of Alberta who assists a hearing or appeal panel to provide neutral and independent legal advice about legal matters that occur in a hearing or the appeal.

Industry Councils: The 4 bodies established by the Act to create and administer rules and licensing requirements for the industries governed by the Real Estate Council of Alberta. The

purposes of the Industry Councils include: to set and enforce standards of conduct for licensees and the business of licensees in order to protect consumers and promote the integrity of the industry, and to administer the Act as provided in the Act, the regulations, the bylaws and the rules.

Investigation: The formal process RECA undertakes to gather evidence to help determine if a licensee's conduct is deserving of sanction. Otherwise known as professional conduct reviews, investigations are carried out based on the legislative requirements of the *Real Estate Act*, the principles of natural justice, administrative law and investigative policies and procedures.

Investigator: The person who is responsible for carrying out the duties of RECA's formal investigative process according to the legislative requirements in the *Real Estate Act*, the principles of natural justice, administrative law and investigative policies and procedures. They may be referred to as a conduct review officer.

Joint submission on sanction and costs: An agreement between the licensee and the registrar about the sanction and costs that the licensee should be subject to as a result of their conduct deserving of sanction.

Judicial review: A process where a court is asked to rule on the appropriateness of the decision of an administrative decision maker or tribunal.

Letter of reprimand: The least severe form of discipline following an investigation. A letter of reprimand is typically issued to a licensee when there is sufficient evidence of conduct deserving of sanction, but the resulting breaches are technical or minor in nature.

Licence: It is the real estate, mortgage broker brokerage, or property management authorization required under the Act for brokers, associate brokers or associates to trade in real estate, deal in mortgages, or engage in property management.

Licensee: The term used in the *Real Estate Act*, Rules, Regulations and Bylaws to refer to any person who holds a licence as a real estate broker, a property manager, or a mortgage broker, issued by an Industry Council.

Order: An enforceable decision made by a panel or court that may or may not be the final outcome of a matter.

Party/parties: Someone who is participating in a hearing or an appeal. Generally, it is a licensee and the counsel for the registrar who appears before a panel.

Pre-hearing conference: A meeting between the licensee and the counsel for the registrar held in advance of a hearing or appeal to discuss the process, agreements to resolve issues and timelines.

Real Estate Act: Alberta legislation regulating the real estate brokerage, property management, condominium managers and mortgage brokerage industries.

Real Estate Council of Alberta (RECA): The governing body for Alberta's real estate brokerage, mortgage brokerage, property management and condominium management professionals as set out in the Act. The Council consists of the members of the Board.

Recess: A break in the hearing or the appeal.

Registrar: A statutory position established by the Act. They are appointed by the RECA Board.

Regulations: A statutory instrument made in the exercise of a legislative power conferred by or under an Act. The *Real Estate Act* sets out that the Lieutenant Governor and the Minister responsible for the *Real Estate Act* can make regulations about specific items.

Respondent: The person who is responding to an appeal or an application.

Rules: These are made by Industry Councils under the Act and include licensing requirements and the standards of practice for licensees in real estate brokerage, property management, condominium management and mortgage brokerage. The rules relate to the legislative requirements and industry practices that affect licensees.

Rules of Court A set of procedural regulations that govern court proceedings which are mandatory on the parties in the court's jurisdiction.

Sanction: A disciplinary outcome that panels issue to a licensee as a result of the licensee's conduct deserving of sanction.

Summons: An order to appear before a panel or a court to give testimony as a witness.

Telecopier: A machine or device that electronically transmits a copy of a document, picture or other printed material by means of a telecommunication system.

Witness: A person who is present at a hearing or an appeal to give oral evidence about the matters in the hearing or the appeal.

Written submissions: Written argument that outlines a party's position on the outcome of a hearing or an appeal.