



## REAL ESTATE COUNCIL OF ONTARIO

# DISCIPLINE AND APPEALS COMMITTEES RULES OF PRACTICE (REBBA 2002)

Pursuant to Section 25.1 of the *Statutory Powers Procedure Act* ("SPPA") the Discipline and Appeals Committees (the "Committees") have made these Rules of Practice which govern the practices and procedures of matters before the Committees. The Committees approved the Rules of Practice on May 30, 2006.

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**Disponible en français**

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**REAL ESTATE COUNCIL OF ONTARIO  
DISCIPLINE COMMITTEE AND APPEALS COMMITTEE  
RULES OF PRACTICE (REBBA 2002)**

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**REAL ESTATE COUNCIL OF ONTARIO  
DISCIPLINE COMMITTEE AND APPEALS COMMITTEE  
RULES OF PRACTICE (REBBA 2002)**

**RULE 1 - INTERPRETATION AND APPLICATION**

**1.01 Definitions**

1.01 In these rules, unless the context requires otherwise,

“Act” means the *Real Estate and Business Brokers Act, 2002* and any successor legislation;

“Affidavit” means a written and signed statement of evidence, typically used on a Motion, that is either sworn under oath or solemnly affirmed to be true;

“Allegations Statement” means a statement of allegations that has been referred by the Registrar to the Discipline Committee under the Act;

“Appeals Committee” means the appeals committee of RECO, and includes a Panel of the Appeals Committee or, where appropriate, the Chair or the Presiding Officer;

“Book of Authorities” means a copy of case law and statutory law similar to that used in the courts;

“Chair” means the applicable chair or vice-chair of the full Discipline Committee or Appeals Committee or their designate;

“Code of Ethics” means the code of ethics established by the Minister under the Act;

“Defence Counsel” means the Lawyer or Lawyers retained by or on behalf of a Registrant;

“Deliver” means to serve on every other Party and to file with the Hearings Coordinator with proof of service, and “Delivery” and “Delivering” have corresponding meanings;

“Deponent” means a person who makes an Affidavit;

“Direction” means an Order of a procedural nature which may be given by the Chair, the Discipline Committee or Appeals Committee and, in a pre-hearing conference, by the Presiding Officer;

“Discipline Committee” means the discipline committee of RECO, and includes a Panel of the discipline committee or, where appropriate, the Chair or the Presiding Officer;

“Electronic” with respect to a Proceeding means a Proceeding held by telephone conference call or some other form of technology allowing persons to hear one another;

“Factum” means a brief written statement of fact and law similar to that used in the courts and its format is outlined in Form 18B;

“Hearing” means a Proceeding before a Panel of the Discipline Committee or Appeals Committee that deals with the merits of the Allegations Statement or Notice of Appeal rather than simply an interim or procedural step in the proceeding;

“Hearings Coordinator” means the employee or employees of RECO who are assigned the duty of providing administrative assistance to the Discipline Committee and Appeals Committee;

“Holiday” means,  
(a) any Saturday or Sunday,

- (b) New Year's Day,
- (c) Good Friday,
- (d) Victoria Day,
- (e) Canada Day,
- (f) Civic Holiday,
- (g) Labour Day,
- (h) Thanksgiving Day,
- (i) Christmas Day,
- (j) Boxing Day,
- (k) any special holiday proclaimed by the Governor General or the Lieutenant Governor, and
- (l) any other day designated by RECO as a holiday,
- (m) and where New Year's Day, Canada Day, Christmas Day or Boxing Day falls on a Saturday or Sunday, the day designated by RECO as a holiday;

"Independent Legal Counsel" means the Lawyer or Lawyers appointed by the Discipline Committee or Appeals Committee to provide advice to them;

"Lawyer" means a member of the Law Society of Upper Canada;

"Motion" is a request made to the Discipline Committee or Appeals Committee to make an Order in a particular Proceeding;

"Motion Participant" is a Party and any other person permitted to participate in a Motion;

"Motion Record" means a bound book that contains all of the paper materials a Motion Participant is relying on for a Motion other than a Factum and Book of Authorities.

"Non-Party Participant" means a person who has been permitted to participate to some extent in a Proceeding but does not have the same role as a Party designated under the Regulations;

"Notice of Appeal" means a notice of appeal issued and served by a Party to a Hearing before the Discipline Committee under the Regulations;

"Notice of Hearing" means a notice issued and served by the Hearings Coordinator notifying the Parties of a Hearing before the Discipline Committee or Appeals Committee;

"Order" means any decision made by the Discipline Committee or Appeals Committee and includes, if permitted by the context, a Direction;

"Panel" means a Panel of the Discipline Committee or Appeals Committee assigned in accordance with the Regulations or the *Statutory Powers Procedure Act*;

"Party" means a Party under the Regulations and normally means the Registrant who is the subject of the Proceedings and the Registrar (acting on behalf of RECO) and may, if the context permits, include a Motion Participant or a Non-Party Participant;

"Presiding Officer", in respect of a pre-hearing conference, means a member of the Discipline Committee or Appeals Committee or another person designated by the Chair under these rules to preside over the pre-hearing conference;

"Proceeding" means any step in the discipline or appeals process and includes a request for a Direction, a Motion, a pre-hearing conference and the Hearing itself;

"Prosecutor" means a person appointed by the Registrar to prosecute allegations against one or more Registrants before the Discipline Committee or Appeals Committee;

"RECO" means the Real Estate Council of Ontario and is normally represented in Proceedings by its Registrar (except for matters like appointing or removing members or the Chair of the Discipline Committee or Appeals Committee, which is done by the Board of Directors of RECO);

"Registrant" means a "registrant" of RECO as defined in the Act who is the subject of a Hearing before the Discipline Committee or Appeals Committee and includes a former "registrant"; and

"Registrar" means the registrar under the Act.

"Regulations" mean the regulations made under the Act.

## **1.02 Interpretation of Rules**

- 1.02(1) These rules shall be liberally construed to secure a just and expeditious determination of the allegations against a Registrant.
- 1.02(2) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.
- 1.02(3) Where a Registrant is not represented by Defence Counsel, anything these rules require or permit a Defence Counsel to do shall be done by the Registrant either personally or through his or her agent.

## **1.03 Application of Rules**

- 1.03(1) These rules apply to all Proceedings before the Discipline Committee and Appeals Committee of RECO.

## **1.04 Computation, Extension or Abridgment of Time**

- 1.04(1) In the computation of time under these rules or under an Order, except where the contrary intention appears,
- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even where the words "at least" are used;
  - (b) where a period of seven days or less is required, Holidays shall not be counted;
  - (c) where the time for doing an act under these rules expires on a Holiday, the act may be done on the next day that is not a Holiday; and
  - (d) service of a document made after 4:00 p.m. or at any time on a Holiday shall be deemed to have been made on the next day that is not a Holiday.
- 1.04(2) Where a time of day is mentioned in these rules, in an Order or in any document in a Proceeding, the time referred to shall be taken as the time observed at RECO's head office.
- 1.04(3) The Discipline Committee or Appeals Committee may extend or abridge any time required by these rules or an Order on such terms or conditions as the Discipline Committee or Appeals Committee considers just either before or after the expiration of the time.

## **RULE 2 – GENERAL RULES**

### **2.01 General Rules**

- 2.01(1) The Discipline Committee or Appeals Committee may exercise any of its powers under these rules or the Act or Regulations on its own initiative or at the request of a Party.
- 2.01(2) No Proceeding is invalid by reason only of a defect or other irregularity of form or a failure to comply with these rules.
- 2.01(3) If a Party seeks a remedy or Order that the Discipline Committee or Appeals Committee cannot grant without providing other Parties an opportunity to make submissions, the Party seeking the remedy or Order should first seek, where practical, the consent of the other Parties and advise the Discipline Committee or Appeals Committee whether consent was obtained.
- 2.01(4) All communications with the Chair or the Discipline Committee or Appeals Committee in the absence of other Parties shall be made through the Hearings Coordinator.
- 2.01(5) Where a Party is represented by a Lawyer or agent, the Hearings Coordinator may communicate with the Party, through the Party's Lawyer or agent.
- 2.01(6) Where a Party is to attend before the Discipline Committee or Appeals Committee and fails to do so and the Discipline Committee or Appeals Committee under these Rules decides to proceed without that Party's participation, the Discipline Committee or Appeals Committee may recess the Proceeding for fifteen minutes before proceeding in the absence of that Party.
- 2.01(7) The Discipline Committee or Appeals Committee may at any time correct a typographical error, error of calculation, or other similar error made in its decision without prior notice to the Parties.
- 2.01(8) The Discipline Committee or Appeals Committee may make such Orders in Proceedings before it, as it considers proper, to prevent abuse of its processes.

### **2.02 Procedure for Requesting a Direction from the Chair**

- 2.02(1) The Chair can give a Direction on behalf of the Discipline Committee or Appeals Committee unless the Direction has to, in law, be given by the Panel or the Presiding Officer. A Direction can be given without notice on the initiative of the Chair or the Discipline Committee or Appeals Committee or at the request of a Party.
- 2.02(2) Where the Chair can Direct something, a Party may make submissions in writing to the Chair, care of the Hearings Coordinator, requesting or opposing a Direction.
- 2.02(3) A Party may make submissions to the Chair by filing a letter with the Chair, care of the Hearings Coordinator, and Delivering a copy of the letter.
- 2.02(4) The other Parties may respond to the submissions described in this rule by addressing a letter, care of the Hearings Coordinator, to the Chair and Delivering a copy of the letter.
- 2.02(5) The Chair shall not give a Direction where the submissions have been Delivered under this rule unless at least 3 days have passed since the first submission was Delivered unless it is urgent that the Chair do so or if Delivering the first submission is not appropriate or feasible.
- 2.02(6) Where the Chair has given a Direction before receiving one or more submissions under this rule, the Chair may reconsider the Direction and may confirm, vary, suspend or cancel the Direction.
- 2.02(7) The Chair may designate the chair of the Panel assigned to the Proceeding or another appropriate person to consider one or more requests for Direction in a Proceeding.

## **RULE 3 - DOCUMENTS**

### **3.01 Form of Documents**

3.01(1) Every document shall, to the extent practical and with appropriate modifications, comply with the standards and requirements for documents set out under rule 4.01 and subrule 4.02(2) under the Rules of Civil Procedure.<sup>1</sup>

3.01(2) The front and back page of documents shall be coloured as follows:

- (a) white if prepared by the Registrar;
- (b) blue if prepared by Registrant; and
- (c) green if prepared by any other person.

### **3.02 Notice to be in Writing**

3.02(1) Where these rules require notice to be given, it shall be given in writing.

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<sup>1</sup> Those rules read as follows:

#### ***Standards — Documents in Writing***

**4.01** (1) A document in writing in a proceeding shall meet the following standards:

1. The text shall be printed, typewritten, written or reproduced legibly, with double spaces between the lines and a margin of approximately 40 millimetres on the left-hand side.
2. The characters used shall be of at least 12 point or 10 pitch size.
3. Good quality white paper or good quality near white recycled paper 216 millimetres by 279 millimetres shall be used. O. Reg. 427/01, s. 4 (1).

#### ***One Side or Both***

(2) The text may appear on one side or on both sides of the paper. O. Reg. 396/91, s. 2.

#### ***Standards — Electronic Documents***

(3) A document mentioned in rule 4.05.1 is sufficient, despite subrule (1), if it meets the standards of the software authorized by the Ministry of the Attorney General. O. Reg. 14/04, s. 2.

#### ***Body of Document***

**4.01** (2) Every document in a proceeding shall contain,

- (a) the title of the document;
- (b) its date;
- (c) where the document is filed by a party and not issued by a registrar or is an originating process, the name, address and telephone number of the solicitor filing the document or, where a party acts in person, his or her name, address for service and telephone number; and
- (d) where the document is issued by a registrar, the address of the court office in which the proceeding was commenced or, in the case of an application to the Divisional Court, the address of the court office in the place where the application is to be heard. R.R.O. 1990, Reg. 194, r. 4.02 (2).

### **3.03 Service of Documents**

3.03(1) Service of a document is deemed to be effective:

- (a) by regular, registered or certified mail or by courier including priority post on the third day after the day of mailing or the date the document was given to the courier;
- (b) by fax or electronic mail on the day following the transmission;
- (c) by personal service effective the day of receipt;
- (d) by such other methods as directed by the Discipline Committee or Appeals Committee;

at the last address for service for the Party shown in the records of RECO at the time the document is Delivered.

### **3.04 Filing of Documents**

3.04(1) All documents to be filed in a Proceeding shall be filed with the Hearings Coordinator, except where they are filed in the course of a Hearing.

3.04(2) Any document may be filed with the Hearings Coordinator by leaving it with a person at the RECO office or by mailing it or by sending it by courier to:

Real Estate Council of Ontario  
3250 Bloor Street West  
Suite 600, East Tower  
Toronto, ON M8X 2X9

or, if it is less than 15 pages, by facsimile to: 416-207-4820.

## **RULE 4 - WAIVERS**

### **4.01 Methods of Waiving a Rule**

4.01(1) Any provision of these rules may be waived upon an Order of the Discipline Committee or Appeals Committee.

4.01(2) A Party requesting that a provision of these rules be waived shall, unless it is impractical or inappropriate to do so, request a Direction or bring a Motion to the Discipline Committee or Appeals Committee permitting the waiver.

4.01(3) A request or Motion under this rule may be made after a failure to comply with these rules has occurred.

4.01(4) The Discipline Committee or Appeals Committee may refuse to grant a request or Motion for a waiver from a provision of these rules where a Party does not act on a timely basis.

4.01(5) The Discipline Committee or Appeals Committee may waive a provision of these rules on its own initiative and may, if it deems appropriate, first give notice to the Parties and provide an opportunity for submissions to be made in writing.

### **4.02 Disposition Without a Hearing (Waiver of Hearing Requirements)**

4.02(1) Where the Parties consent to the disposition of all or part of a matter without a Hearing, the Parties shall Deliver the proposed disposition in writing and a written waiver of the requirement for a Hearing or a full Panel with any written submissions to the Chair, care of the Hearings Coordinator.

4.02(2) Where the proposed disposition appears to be in the public interest, the Chair may accept and sign the proposed disposition and provide an Order.

- 4.02(3) Where the Chair has concerns as to whether the proposed disposition is in the public interest, the Chair shall assign a Panel to consider it along with any written submissions of the Parties.
- 4.02(4) The Chair or a Panel shall not alter or amend a disposition without a Hearing unless the Parties consent.
- 4.02(5) Nothing in this rule prevents a Panel from accepting a joint submission from the Parties at a Hearing.
- 4.02(6) A Panel may also dismiss a Proceeding if the Panel concludes that:<sup>2</sup>
- (a) the Proceeding is frivolous, vexatious or is commenced in bad faith; or
  - (b) the Proceeding relates to matters that are outside the jurisdiction of the Discipline Committee or Appeals Committee.
- 4.02(7) A Panel shall not dismiss a Proceeding under subrule (6) unless notice has been given to the Parties in accordance with ss. 4.6(2) of the *Statutory Powers Procedure Act* and the Parties given notice are provided with at least fifteen days to make submissions in writing.

## **RULE 5 – PANEL COMPOSITION**

### **5.01 Initial Selection**

- 5.01(1) The Chair shall, with the administrative assistance of the Hearings Coordinator, select the Panel for any Proceeding in accordance with the Regulations and the *Statutory Powers Procedure Act*.
- 5.01(2) The Hearings Coordinator shall notify the Parties of the identity of the Panel members in the Notice of Hearing or other document.

### **5.02 Objections to Composition of Panel**

- 5.02(1) Every Party shall review the composition of the Panel as soon as advised of it and make any necessary inquiries. If a Party has an objection to any or all of the Panel members it shall Deliver them in writing with reasons to the Hearings Coordinator within seven days of notification.
- 5.02(2) If a Party fails to object to the composition of the Panel in accordance with these rules, it is deemed to accept the composition of the Panel. Despite this rule, the Panel may permit an objection after the period for objection has passed if a failure of justice may result.
- 5.02(3) Nothing in this rule requires the Discipline Committee or Appeals Committee to accept the objection.

## **RULE 6 - NOTICE OF HEARING**

### **6.01 Preparation and Service of Notice of Hearing**

- 6.01(1) The Registrar shall deliver an Allegations Statement to the Hearings Coordinator as soon as possible after a matter has been referred to discipline.
- 6.01(2) The Hearings Coordinator shall issue<sup>3</sup> and serve a Notice of Hearing that contains the following:

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<sup>2</sup> The Discipline Committee or the Appeals Committee can dismiss a Proceeding without a hearing on these grounds under s. 4.6 of the *Statutory Powers Procedure Act* only if a rule is made.

<sup>3</sup> Sections 45 and 53 of Ontario Regulation 580/05 require 45 days notice be given for Hearings.

- (a) the information required by the *Statutory Powers Procedure Act* to be included in the Notice of Hearing including any information required for holding all or part of the Proceedings Electronically or in writing;
- (b) the composition of the Panel and notice of the procedure for objecting to any or all of the Panel members, if possible;
- (c) notice of the procedure for objecting to the Hearing date, if possible;
- (d) if the Hearing is before the Discipline Committee, notice of the duty of the Parties to make disclosure;
- (e) if the Hearing is before the Discipline Committee, notice that the documents Delivered by the Parties to the Hearings Coordinator will be provided to the Panel about ten days before the Hearing unless a Party objects;
- (f) if the Hearing is before the Appeals Committee, notice that the record before the Discipline Committee will be provided to the Panel;
- (g) notice of the right of the Parties to have counsel; and
- (h) a copy of the Allegations Statement or the Notice of Appeal.

## **6.02 Objecting to a Hearing Date**

- 6.02(1) Every Party shall review the Hearing date, time and place as soon as advised of it and make any necessary inquiries including of any witness it might call. If a Party has an objection to the date, time or place it shall Deliver them in writing with reasons to the Hearings Coordinator within seven days of notification.
- 6.02(2) If a Party fails to object to the Hearing, date, time and place in accordance with these rules, it is deemed to accept them. Despite this rule, the Panel may permit an objection after the period for objection has passed if a failure of justice may result.
- 6.02(3) Nothing in this rule requires the Discipline Committee or Appeals Committee to accept the objection.

## **6.03 Objection to Documents Being Delivered to the Panel in Advance**

- 6.03(1) Every Party shall review the documents provided by another Party as soon as receiving them and make any necessary inquiries. If a Party has an objection to the Panel receiving any or all of the documents in advance of the Hearing, it shall Deliver them in writing with reasons to the Hearings Coordinator within seven days of notification.
- 6.03(2) If a Party fails to object to the Panel being provided with the documents in advance of the Hearing in accordance with these rules, the Hearings Coordinator may provide them to the Panel. Despite this rule, the Panel may permit an objection after the period for objection has passed if a failure of justice may result and if the Panel has not yet received and reviewed the documents.
- 6.03(3) If an objection is made to the Panel being provided with the documents in advance of the Hearing, another Party can bring a motion for an Order permitting the Panel to be provided with the documents.

6.03(4) This rule does not apply to the Appeals Committee receiving the record of the Hearing before the Discipline Committee in advance of the Hearing. The Hearings Coordinator shall provide a copy of the record of the Hearing before the Discipline Committee to the Panel of the Appeals Committee as soon as possible after it is available and the Panel is assigned.<sup>4</sup>

#### **6.04 Public Notice**

6.04(1) The Hearings Coordinator will give public notice of Proceedings that are open to the public including, where practical, posting a notice on the website of RECO.

6.04(2) The public notice shall contain the name of the Registrant, a brief summary of the provision in the Code of Ethics alleged to have been breached by the Registrant, the nature of the Proceeding (e.g., a Motion, a Hearing) and the date, time and place of the Proceeding.

6.04(3) Despite subrule (1), the Hearings Coordinator shall not give public notice of a pre-hearing conference or other Proceedings that are closed to the public unless directed to do so by a Panel.<sup>5</sup>

### **RULE 7 - MOTIONS**

#### **7.01 Initiating Motions**

7.01(1) A Motion shall be made by a Notice of Motion in accordance with Form 7A unless the nature of the Motion or the circumstances makes a Notice of Motion impractical or inappropriate.

7.01(2) A Motion that may result in an adjournment or delay of the Hearing, such as a Motion for disclosure brought to the Discipline Committee or a Motion to admit additional or fresh evidence brought to the Appeals Committee, shall be brought as soon as possible. The main exception is a Motion for production of documents from a third party as discussed below.

7.01(3) A person bringing a Motion shall Deliver the Notice of Motion and materials in support of the Motion at least 10 days before the Motion is to be heard.

7.01(4) The other Motion Participants shall Deliver their materials at least 3 days before the Motion is to be heard.

#### **7.02 Scheduling a Motion**

7.02(1) A person bringing a Motion to be heard other than at a scheduled pre-hearing conference or at a Hearing shall obtain available dates and times for the hearing of the Motion from the Hearings Coordinator and shall attempt to obtain agreement from the other Motion Participants as to a date and time for the hearing of the Motion.

7.02(2) A person bringing a Motion shall inform the Hearings Coordinator of the estimated length of time it will take to argue the Motion and the nature of the motion when first seeking available dates and times.

7.02(3) If the person bringing the Motion cannot, after reasonable efforts, obtain agreement for a date and time under subrule (1), the person shall seek Directions from the Chair or, where there is

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<sup>4</sup> Provision of the record before the Discipline Committee to the Appeals Panel is required by ss. 50(3) of Ontario Regulation 580/05.

<sup>5</sup> Normally a pre-hearing conference is not open to the public because it is really an off-the-record settlement discussion. Otherwise most Proceedings are presumed to be open to the public unless an Order has been made under s. 9 of the *Statutory Powers Procedure Act*. Sections 47 and 53 of Ontario Regulation 580/05 permit a Panel to ban publication of evidence or submissions given at a Hearing if it is closed.

insufficient time to do so, shall obtain an available date and time from the Hearings Coordinator under subrule (1).

### **7.03 Evidence on Motions**

- 7.03(1) Evidence on a Motion shall be given by Affidavit unless the Discipline Committee or Appeals Committee directs that it be given in some other form or unless otherwise provided by law.
- 7.03(2) All Affidavits used on a Motion shall,
- (a) be confined to the statement of facts within the personal knowledge of the Deponent, except that the Affidavit may contain statements of the Deponent's information and belief if the source of the information and the fact of the belief are specified in the Affidavit; and
  - (b) be signed by the Deponent and sworn or affirmed before a person authorized to administer oaths or affirmations, which person shall also mark all exhibits as such to the Affidavit.
- 7.03(3) A Motion Participant may not cross-examine the Deponent of an Affidavit filed by another Motion Participant without the consent of the Motion Participants or a Direction.
- 7.03(4) The cross-examination shall take place before a court reporter or in some other reliable manner to ensure that a transcript can be prepared and Delivered for use at the hearing of the Motion.

### **7.04 Materials on Motions**

- 7.04(1) The person bringing a Motion shall Deliver the Notice of Motion and other materials in support of the Motion in the form of a Motion Record.
- 7.04(2) The Motion Record shall contain the Notice of Motion, all Affidavits to be relied upon and any other material to be relied upon.
- 7.04(3) If another Motion Participant intends to rely upon materials not contained in the moving person's Motion Record, the Motion Participant shall Deliver those materials in the form of a responding Motion Record.
- 7.04(4) A Motion Record and responding Motion Record shall have consecutively numbered pages and a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter.
- 7.04(5) Despite subrules (2) and (3), a Motion Participant may Deliver separately from the Motion Record or responding Motion Record a Book of Authorities and a Factum relied on by the Motion Participant.
- 7.04(6) Three copies of all materials for a Motion shall be filed with the Hearings Coordinator.

### **7.05 Assigning a Motion Panel**

- 7.05(1) The Chair shall, in accordance with section 4.2 of the *Statutory Powers Procedure Act*, assign a Panel of one or more members of the Discipline Committee or Appeals Committee to hear each Motion. The quorum of a Panel to hear a Motion is one.
- 7.05(2) A Motion Participant who believes that the Motion ought to be heard by members of the Discipline Committee or Appeals Committee who will not sit on the Hearing Panel shall request an Order from the Motion Panel on the matter in the Notice of Motion or a Notice of Cross-Motion.

## **7.06 Hearing Motions Electronically**

7.06 Motions other than Motions brought at a scheduled pre-hearing conference or at a Hearing shall be heard Electronically in accordance with these rules unless the Discipline Committee or Appeals Committee Directs otherwise.

## **7.07 Written Order**

7.07(1) Immediately after a Motion has been determined, the Motion Participant initiating the Motion shall, and any other Motion Participant affected by an Order may, prepare a draft of the formal Order and Deliver it.

7.07(2) The Order shall be in accordance with Form 7B.

7.07(3) After providing a reasonable opportunity for the other Motion Participants to comment in writing on the draft Order, it shall be reviewed, amended if necessary and signed by a representative of the Discipline Committee or Appeals Committee.

7.07(4) This rule does not apply to Orders made on the record during the Hearing.

## **7.08 Renewing or Rearguing a Motion**

7.08(1) A Motion Participant shall not renew or reargue a matter that has previously been determined on a Motion unless permission has been obtained from the Discipline Committee or Appeals Committee by means of written submissions.

7.08(2) Despite subrule (1), a Motion Participant may renew or reargue a matter that has previously been determined on a Motion if that is provided for in the Order of the Panel hearing the Motion.

## **RULE 8 - SUMMONSES**

### **8.01 Obtaining a Summons**

8.01(1) A Party wishing to obtain a summons shall provide the name of the witness to the Hearings Coordinator who may provide a summons in accordance with Form 8A, pre-signed by the Chair, to the Party requesting it.

8.01(2) No Party shall request a summons for a Hearing before the Appeals Committee without first obtaining the permission of the Panel in accordance with these rules to introduce new or additional evidence.

## **RULE 9 - PRE-HEARING CONFERENCES AND ADR**

### **9.01 Initiating Pre-Hearing Conferences**

9.01(1) Any Party to a Hearing may request a pre-hearing conference within ten days of notice of the referral to discipline. The pre-hearing conference shall be held within 45 days of the request unless the Parties consent otherwise.

9.01(2) Once a pre-hearing conference has been requested, full participation is mandatory for all Parties unless the Discipline Committee or Appeals Committee Directs otherwise.<sup>6</sup>

9.01(3) The Chair shall designate a person who is not a member of the Hearing Panel to act as the Presiding Officer.<sup>7</sup>

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<sup>6</sup> Under s. 5.3 of the *Statutory Powers Procedure Act*, rules are required to make pre-hearing conferences mandatory.

- 9.01(4) The Hearings Coordinator shall, after consultation with the Parties and the Presiding Officer, if possible, schedule a date for the pre-hearing conference to be held and shall notify the Parties of the date.
- 9.01(5) The representatives of the Parties attending a pre-hearing conference shall either have authority to make decisions on the matters to be discussed or shall be readily able to obtain instructions on them.
- 9.01(6) The Presiding Officer may direct a pre-hearing conference to be held Electronically.

## **9.02 Procedure at Pre-Hearing Conference**

- 9.02(1) At the pre-hearing conference, the Presiding Officer shall first discuss the following with the Parties on a without prejudice basis:
- (a) whether any or all of the issues can be settled;
  - (b) whether the issues can be simplified;
  - (c) whether there are any agreed facts; and
  - (d) the advisability of attempting other forms of resolution of the matter.
- 9.02(2) After the discussion referred to in subrule (1), the Presiding Officer shall discuss with the Parties and then may make Orders<sup>8</sup> about the following:
- (a) the scheduling of any Motions that can be heard before the Hearing;
  - (b) the content and timing of Delivery of any additional disclosure;
  - (c) the Delivery and form of any additional documents to be used at the Hearing and whether the documents can appropriately be reviewed by the Discipline Committee or Appeals Committee before the commencement of the Hearing;
  - (d) the Delivery of Facts and Books of Authorities and whether these can appropriately be reviewed by the Discipline Committee or Appeals Committee before the commencement of the Hearing;
  - (e) the scheduling of the Hearing;
  - (f) the scheduling of any Motions;
  - (g) when the witnesses to be called at the Hearing must be available to testify; and
  - (h) any other matter that may assist in the just and most expeditious disposition of the Proceeding.
- 9.02(3) The Presiding Officer shall prepare a report after the pre-hearing conference in accordance with Form 9A listing every agreement reached under subrule (1), every Order made under subrule (2) and every undertaking given by the Parties and shall send a copy of the report to the Parties.
- 9.02(4) If a Party becomes aware of additional circumstances that would materially affect the conduct of the Hearing before the commencement of the Hearing, the Party shall immediately Deliver a written notice of the circumstances and the Presiding Officer may schedule a supplementary pre-hearing conference.

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<sup>7</sup> Under the *Statutory Powers Procedure Act*, a Presiding Officer cannot participate in a hearing afterwards unless all Parties consent. As a matter of practice, the Chair never assigns a Presiding Officer to a hearing Panel in the same matter regardless of whether there is consent.

<sup>8</sup> A Presiding Officer can only make Orders if he or she is a member of the Discipline Committee or Appeals Committee. See Rule 9.04.

9.02(5) The provisions of this rule apply to further or supplementary pre-hearing conferences with necessary modifications.

### **9.03 Resolutions at a Pre-Hearing Conference**

9.03(1) Any resolution as to agreed facts, a determination as to whether a Registrant failed to comply with the Code of Ethics or the terms of a final Order does not become final until it is accepted and an Order is given under the Disposition Without a Hearing rules.

### **9.04 Case Management Orders**

9.04(1) If the Presiding Officer is a member of the Discipline Committee or Appeals Committee, he or she may give Orders as to the timing and nature of procedural steps that must be taken by the Parties to ensure that the Hearing is fair and expeditious.

### **9.05 Motions at the Pre-hearing Conference**

9.05(1) A Party may bring a Motion to be heard at the pre-hearing conference in accordance with these rules if the Presiding Officer is a member of the Discipline Committee or Appeals Committee.

9.05(2) A Presiding Officer may decline to hear a Motion if the Presiding Officer believes it may be inappropriate for him or her to hear it.

## **RULE 10 - ELECTRONIC AND WRITTEN PROCEEDINGS**

### **10.01 Procedure on Electronic Proceedings**

10.01(1) The Discipline Committee or Appeals Committee may Direct that all or part of any Proceeding before it take place Electronically unless holding the Proceeding Electronically is likely to cause a Party significant prejudice.<sup>9</sup>

10.01(2) This rule applies to any Proceeding held Electronically, including Motions and pre-hearing conferences, under these rules or at the Direction of the Discipline Committee or Appeals Committee.

10.01(3) At least 48 hours before an Electronic Proceeding is scheduled to commence, every person participating in the Proceeding shall give notice to the Hearings Coordinator of the telephone number where he or she can be reached for the Proceeding.

10.01(4) Unless otherwise provided in the rules, every person participating in the Proceeding shall Deliver every document, in consecutively numbered pages, he or she intends to rely upon at least 3 days before the Proceeding.

10.01(5) Every person participating in the Proceeding shall ensure that he or she, as arranged by the Hearings Coordinator, calls in to the number provided by the Hearings Coordinator or can be reached at the telephone number provided to the Hearings Coordinator beginning at five minutes before the Proceeding is scheduled to commence.

### **10.02 Procedure on Written Proceedings**

10.02(1) The Discipline Committee or Appeals Committee may Direct that all or part of any Proceeding before it take place in writing unless there is a good reason for not doing so<sup>10</sup>.

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<sup>9</sup> See s. 5.2 of the *Statutory Powers Procedure Act*.

<sup>10</sup> See s. 5.1 of the *Statutory Powers Procedure Act*.

- 10.02(2) In a written hearing each Party shall Deliver to the other Parties its evidence and Factum and Book of Authorities, if any, at least ten days before the scheduled review of the documents by the Panel unless another rule provides otherwise.
- 10.02(3) The Discipline Committee or Appeals Committee may provide additional Directions for the conduct of a written Proceeding.

## **RULE 11 - DISCLOSURE AND PRODUCTION**

### **11.01 Disclosure**

- 11.01(1) The Parties shall make disclosure in accordance with the requirements set out in the Regulations.<sup>11</sup>
- 11.01(2) Any person who receives disclosure relating to a Proceeding before the Discipline Committee or Appeals Committee, whether under these rules or otherwise, shall only use the information for the purposes of the Proceeding, and shall not use it for any other purpose. The person shall also ensure that any other person to whom he or she gives the information undertakes to similarly restrict the use of the information.
- 11.01(3) Subrule (2) does not prevent RECO from using disclosed information for other regulatory purposes under the Act.

### **11.02 Motions for Disclosure**

- 11.02(1) All Motions for disclosure shall be brought in accordance with these rules unless special circumstances require that the Motion be brought later.
- 11.02(2) The Discipline Committee or Appeals Committee may, to protect the privacy of any person, impose terms or conditions upon the extent and method of disclosure or the use of the information disclosed.

### **11.03 Production of Documents from a Third Party**

- 11.03(1) A summons for the production of documents from a third party that are not in the possession of a Party shall not require the production of any documents before the commencement of the Hearing.
- 11.03(2) A Motion relating to the production of documents from a third party that may require the examination of the documents by a Panel shall not be heard until the commencement of the Hearing.
- 11.03(3) Notice of a Motion relating to the production of documents from a third party shall be served on the person possessing the documents and on any other person with a significant interest, including a privacy interest, in the documents.

## **RULE 12 - TAKING EVIDENCE BEFORE THE HEARING**

### **12.01 Initiating the Taking of Evidence Before the Hearing**

- 12.01(1) A Party who intends to introduce the evidence of a person at the Hearing and who has made all required disclosure in respect of the evidence of that witness may, with the consent of the Parties or by Order of the Discipline Committee or Appeals Committee, examine the witness on affirmation before the Hearing for the purpose of having the witness' testimony available to be tendered as evidence at the Hearing.

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<sup>11</sup> See sections 46 and 53 of Ontario Regulation 580/05.

- 12.01(2) The Discipline Committee or Appeals Committee may make an Order under subrule (1) if it is satisfied that the Order would not cause significant prejudice to a Party and would not prevent the Discipline Committee or Appeals Committee from fully and fairly understanding the evidence. The Appeals Committee shall not make an Order under subrule (1) unless it has first made an Order to receive new or additional evidence under these rules.
- 12.01(3) The Party who intends to introduce the evidence of the witness shall ensure that the examination is recorded, at the Party's cost, by a court reporter or some other reliable manner and shall Deliver a copy of the transcript of the evidence at least 3 days before the Hearing is scheduled to commence.
- 12.01(4) The Party who intends to introduce the evidence of the witness shall also ensure that the examination is video recorded, at the Party's cost, unless the Parties consent or the Discipline Committee or Appeals Committee Orders otherwise and shall Deliver a copy of the video recording at least 3 days before the Hearing is scheduled to commence.
- 12.01(5) The examination shall take place at the date, time and place consented to or Ordered by the Discipline Committee or Appeals Committee.
- 12.01(6) The Discipline Committee or Appeals Committee may impose terms or conditions in the Order for an examination including a term or condition that the Party intending to introduce the evidence of the witness pay for the reasonable travel expenses of the other Lawyers and Parties.

## **12.02 Procedure at the Examination**

- 12.02(1) A witness examined under this rule may, after being affirmed by a person authorized to do so, be examined, cross-examined and re-examined in the same manner as a witness at a Hearing.
- 12.02(2) Where a question is objected to, the objector shall state briefly the reason for the objection, and the question and the brief statement shall be recorded.
- 12.02(3) The Party objecting to a question may, after the objection, permit the question to be answered subject to a ruling being obtained from the Discipline Committee or Appeals Committee before the evidence is used at a Hearing.
- 12.02(4) A ruling on the propriety of a question that is objected to and not answered may be obtained on Motion to the Discipline Committee or Appeals Committee.
- 12.02(5) Where the question is not answered under subrule (3) and the objection is found not to be valid, the person who objected shall ensure that the witness is produced at the expense of the person who objected for another examination prior to the Hearing or at the Hearing to answer the question.
- 12.02(6) Any document used during the examination that is intended to be filed as an exhibit at the Hearing shall be marked at the examination by the person introducing it so it can be identified later and the person introducing it shall Deliver a copy of it if it has not already been disclosed.

## **12.03 Use of Examination at the Hearing**

- 12.03(1) At the Hearing, any Party may use the transcript and video recording of an examination made under this rule as the evidence of the witness unless the Discipline Committee or Appeals Committee Orders otherwise.
- 12.03(2) A witness who has been examined under this rule shall not be called to give evidence at the Hearing except on the Order of or at the request of the Discipline Committee or Appeals Committee.

- 12.03(3) Where a witness is Ordered or requested to give evidence at the Hearing under subrule (2), the Party who tendered the evidence under subrule (1) shall arrange for the witness to attend at the Party's expense.
- 12.03(4) The transcript and any video recording need not be read or played during the Hearing with the Parties present unless a Party or the Discipline Committee or Appeals Committee requires it.
- 12.03(5) Where the reading of a transcript or the playing of a video recording is required under subrule (4), the Party introducing the evidence under this rule shall conduct the reading or playing during the presentation of that Party's case unless the Discipline Committee or Appeals Committee Orders otherwise.

## **RULE 13 - NON-PARTY PARTICIPATION**

### **13.01 General Non-Party Participation**

- 13.01(1) A person who is not a Party who wishes to participate in a Hearing shall bring a Motion in accordance with these rules at the earliest possible opportunity. The Chair shall assign the Panel that will be conducting the Hearing to hear the Motion.
- 13.01(2) The Notice of Motion shall set out the extent of participation the person proposes to have in the Hearing and shall be accompanied by the evidence upon which the person intends to rely in support of the Motion and a Factum in support of the Motion.
- 13.01(3) If the Panel allows the person to participate in the Hearing, the person shall comply with the rules as much as is practical unless to do so would be inconsistent with the Panel's determination of the extent of the person's participation in the Hearing.
- 13.01(4) If the Panel allows the person to participate in the Hearing, the other Parties shall apply the rules to the person as much as is practical unless to do so would be inconsistent with the Panel's Order as to the extent of the person's participation in the Hearing.

### **13.02 Notice of Constitutional Questions<sup>12</sup>**

- 13.02(1) Where a Party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a Party claims a remedy under subsection 24(1) of the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be Delivered and shall also be served on the Attorneys General of Canada and Ontario as soon as the circumstances requiring notice become known and, in any event, at least 15 days before the question is to be argued.
- 13.02(2) Where the Attorneys General of Canada and Ontario are entitled to notice, he or she or both of them are entitled to adduce evidence and to make submissions to the Discipline Committee or Appeals Committee regarding the constitutional question.

## **RULE 14 – EXPEDITED HEARINGS**

### **14.01 Requesting Expedited Hearings**

- 14.01(1) A Party can request, by Motion, that the Discipline Committee or Appeals Committee expedite a Hearing where circumstances warrant it.

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<sup>12</sup> Based on s. 109 of the *Courts of Justice Act*.

## **RULE 15 - PROCEDURE DURING HEARINGS**

### **15.01 Electronic Devices and Publication of Proceedings**

15.01(1) No person shall:

- (a) take or attempt to take a photograph, motion picture, audio or video recording or other record capable of producing visual or audio representations by any means at a Proceeding, or
- (b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio or video recording or other record taken in contravention of clause (a).

15.01(2) Subrule (1) does not apply to:

- (a) a person unobtrusively making handwritten or typewritten notes or sketches at a Proceeding;
- (b) a Party or an agent or Lawyer representing a Party unobtrusively making an audio recording at a Proceeding that is used only as a substitute for handwritten or typewritten notes for the purposes of the Proceeding;
- (c) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee or Appeals Committee for any purpose of the Proceeding;
- (d) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee or Appeals Committee and the consent of the Parties and of the witnesses to be recorded, for such educational or instructional purposes as the Discipline Committee or Appeals Committee approves; or
- (e) a disabled person using a device to compensate for a disability.

### **15.02 Vulnerable Witnesses**

15.02(1) The Discipline Committee or Appeals Committee may Order that a support person be permitted to be present and to sit near a vulnerable witness while testifying and may issue Directions regarding the conduct of the support person during the testimony of the witness.

15.02(2) The Discipline Committee or Appeals Committee may Order that a vulnerable witness testify outside the Hearing room or behind a screen or other device that would allow the vulnerable witness not to see the Registrant if the Discipline Committee or Appeals Committee is of the opinion that the exclusion is necessary to obtain a full and candid account of the matter.

- 15.02(3) The Discipline Committee or Appeals Committee shall not make an Order under subrule (2) unless arrangements are made for the Registrant, the Discipline Committee or Appeals Committee and Lawyers for the parties to watch the testimony of the vulnerable witness by means of closed-circuit television or otherwise and the Registrant is permitted to communicate with Defence Counsel or agent while watching the testimony.
- 15.02(4) The Discipline Committee or Appeals Committee may Order that a Registrant not personally conduct the cross-examination of a vulnerable witness if the Discipline Committee or Appeals Committee is of the opinion that the Order is necessary to obtain a full and candid account of the vulnerable witness's testimony.

### **15.03 Access to Hearing Record by the Public**

- 15.03(1) If a member of the public wishes to have access to all or part of the record of the Discipline Committee or Appeals Committee, he or she shall bring a Motion to the Panel upon notice to the Parties, and such Motion shall be made, considered and decided in writing by the Panel or, if the Hearing is completed or the Panel is otherwise unable to deal with the issue expeditiously, the Chair.
- 15.03(2) In considering a Motion under this rule, the Panel or the Chair shall balance the privacy interests of those identified in the record with the interest in public access to the disciplinary process.

### **15.04 Oral and Written Argument**

- 15.04(1) The Discipline Committee or Appeals Committee may place reasonable limits on the length of oral submissions.
- 15.04(2) The Discipline Committee or Appeals Committee may, after obtaining submissions on the point if practical, Order the Parties to submit written arguments on some or all of the issues at the Hearing and may give Directions as to the form, length and timing of such written arguments.

### **15.05 Procedure on Disciplinary Orders**

- 15.05(1) Before it determines whether a Registrant has failed to comply with the Code of Ethics, and if one of the following apply:
- (a) the Registrant does not contest the determination,
  - (b) the Registrant does not attend the Hearing, or
  - (c) no Party opposes the procedure,
- the Discipline Committee may receive evidence and submissions on what disciplinary Order to make under ss. 21(4) of the *Act*.
- 15.05(2) The Discipline Committee may Direct that the evidence and submissions on what disciplinary Order to make under ss. 21(4) of the *Act* be made by means of a written Hearing under these rules.
- 15.05(3) The Discipline Committee may Direct that the evidence and submissions on what disciplinary Order to make under ss. 21(4) of the *Act* be made Electronically.

## **RULE 16 - GIVING NOTICE OF FINAL DECISION**

### **16.01 Methods of Giving Notice of Final Decision<sup>13</sup>**

- 16.01(1) In addition to the methods described in section 18 of the *Statutory Powers Procedure Act*, the Discipline Committee or Appeals Committee may send each Party a copy of its final decision or Order, including the reasons if any have been given,
- (a) by registered or certified mail;
  - (b) by courier;
  - (c) by personal service; or
  - (d) by another means Ordered by the Discipline Committee or Appeals Committee.
- 16.01(2) If a copy is sent by registered or certified mail or courier, it shall be sent to the most recent address known to the Hearings Coordinator or as Ordered by the Discipline Committee or Appeals Committee.
- 16.01(3) The final decision or Order shall also be published on RECO's website and in one other manner in accordance with the Regulations<sup>14</sup> and the Hearings Coordinator shall provide one copy to anyone who requests it if the applicable fee is paid.

## **RULE 17 - COSTS**

### **17.01 When Costs May Be Ordered**

- 17.01 The Discipline Committee or Appeals Committee may Order a Party to pay the costs if paragraph 5 of subsection 21(4) of the *Act* applies (i.e., where the Registrant can be ordered to pay costs to RECO) or if the conduct or course of conduct of a Party has been unreasonable, frivolous or vexatious or a Party has acted in bad faith.<sup>15</sup>

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<sup>13</sup> Sections 48 and 53 of Ontario Regulation 580/05 require that a copy of the decision and reasons be given to any complainant. Section 49 of Ontario Regulation 580/05 requires that a discipline decision and reasons be accompanied by a notice of appeal rights.

<sup>14</sup> See section 42 of Ontario Regulation 567/05.

<sup>15</sup> Paragraph 5 of subsection 21(4) reads as follows:

21(4) If the discipline committee makes a determination under subsection (1) that a registrant has failed to comply with the code of ethics, it may order any of the following as appropriate:...

5. Fix and impose costs to be paid by the registrant to the administrative authority or to the Minister of Finance if there is no designated administrative authority.

Subsection 17.1(2) of the *Statutory Powers Procedure Act* reads as follows:

(2) A tribunal shall not make an order to pay costs under this section unless,

- (a) the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith; and
- (b) the tribunal has made rules under subsection (4).

## **17.02 Amount of Costs**

- 17.02(1) The amount of costs that may be ordered include the following:
- (a) the actual reasonable disbursements or expenses, excluding legal or agent's fees, of the Party related to the Proceeding to a maximum of \$1,000;
  - (b) an amount representing legal fees of the Party equal to a maximum of \$3,000 per Hearing day (inclusive of preparation) by the Party's Lawyers; and
  - (c) an amount representing agent's fees of the Party equal to a maximum of \$1,000 per Hearing day (inclusive of preparation) by the Party's agent if the Party does not have a Lawyer for that Hearing day.
- 17.02(2) A Panel may Order that a Party receive a proportion of the amount of costs described in this rule.
- 17.02(3) A Panel may fix costs after providing an opportunity for submissions on the amount.
- 17.02(4) In this rule, legal fees include deemed fees for in-house Lawyers and agent's fees include deemed fees for in-house agents.
- 17.02(5) In this rule, Hearing days include Motions and pre-hearing conferences and similar Proceedings.
- 17.02(6) Where the request for costs includes disbursements or expenses and they are challenged, they may be proved by an Affidavit attaching a copy of any invoice or receipt.

## **RULE 18 - APPEALS**

### **18.01 Procedure on Appeals**

- 18.01(1) An appeal to the Appeals Committee shall be commenced in accordance with the Regulations using the Notice of Appeal, found at Form 18A.<sup>16</sup> Despite the definition of Party under these rules, only a person granted Party status in accordance with the Regulations may commence an appeal.
- 18.01(2) A Party appealing a final Order of the Discipline Committee shall order a transcript by contacting the Hearings Coordinator, obtain the contact name of the approved transcription service, make the financial and contractual arrangements required by the approved transcription service, obtain written confirmation that the transcript has been ordered from the approved transcription service and Deliver the written confirmation.
- 18.01(3) A Party appealing a final Order of the Discipline Committee shall not cancel an order for the transcript unless the Party has first withdrawn its appeal.

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<sup>16</sup> Under ss. 21(5) of the *Act*, only a final decision of the Discipline Committee can be appealed. Under s. 52 of Ontario Regulation 580/05 it is normally only the Registrant and RECO, as represented by the Registrar, that are Parties to an appeal. Section 50 of Ontario Regulation 580/05 sets out the requirements for commencing an appeal which includes the following:

1. a Notice of Appeal which must set out the grounds for the appeal and the relief sought, and
2. the fee for commencing the appeal.

- 18.01(4) A Party appealing a final Order of the Discipline Committee shall ensure that the required number of paper and electronic copies of the transcript are filed with the Hearings Coordinator, at the Party's cost, within ten days of the transcript becoming ready. The Party appealing shall file with the Hearings Coordinator a paper and electronic copy of the transcript for each Party, one for Independent Legal Counsel and three copies for the Appeals Committee. If more than three members of the Appeal Committee will sit on the Panel, the Party appealing shall file sufficient additional paper and electronic copies of the transcript immediately upon the request of the Hearings Coordinator.
- 18.01(5) The Hearings Coordinator shall provide one copy of the record<sup>17</sup>, including the transcript, of the proceedings before the Discipline Committee to each member of the panel of the Appeals Committee in accordance with the Regulations, to each other Party to the appeal and to Independent Legal Counsel.<sup>18</sup>
- 18.01(6) The Hearings Coordinator shall also provide a copy of the record, excluding the transcript, of the proceedings before the Discipline Committee to the Party appealing.<sup>19</sup>
- 18.01(7) The Party commencing the appeal shall Deliver a Factum<sup>20</sup> and a Book of Authorities<sup>21</sup> within 30 days of the transcript being ready or, if there is no transcript, within 30 days of Delivering the Party's Notice of Appeal.
- 18.01(8) The Parties responding to an appeal shall Deliver a Factum and Book of Authorities within 30 days of receipt of the commencing Party's Factum and Book of Authorities.
- 18.01(9) A Factum shall follow Form 18B with appropriate modifications.
- 18.01(10) No additional or fresh evidence may be used on the appeal unless an Order is obtained from the Appeals Committee.
- 18.01(11) The Appeals Committee shall not grant an Order permitting additional or fresh evidence unless the additional or fresh evidence:
- (a) is apparently credible
  - (b) if admitted it would probably have an important influence on the result and
  - (c) it could not have been obtained by reasonable diligence at the time of the original Hearing.

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<sup>17</sup> Unless otherwise stated a "record" of a proceeding includes all exhibits, the transcript, if any, of any oral evidence and the decision and reasons for all Orders given.

<sup>18</sup> This is required by ss. 50(3) of Ontario Regulation 580/05.

<sup>19</sup> While the Party appealing should already have a copy of the record, this ensures that he or she is not missing anything and that everyone has the record in the same format, to facilitate references to the record during the arguing of the appeal.

<sup>20</sup> A "Factum" is a written summary of one's argument or position. It is usually divided into three major parts, the first dealing with the facts / evidence, the second dealing with the law and the third setting out the Order that is being requested. A formal definition is found in rule 1.01. See Form 18B for the format of a typical Factum.

<sup>21</sup> A "Book of Authorities" is a copy of the legal cases and legislation that a Party wants the Discipline Committee or Appeals Committee to consider. Each case or legislative provision is put in separately numbered tabs. The Book begins with an index. A formal definition is found in rule 1.01.

## **18.02 Lifting of Stay of Order of the Discipline Committee**

18.02(1) The Appeals Committee may, on a Motion, Order that the stay of the Order of the Discipline Committee provided for in s. 25 of the *Statutory Powers Procedure Act* be lifted where it is in the public interest to do so.

## **18.03 Decision Not to Process Appeal Documents<sup>22</sup>**

18.03(1) The Hearings Coordinator shall not process an appeal where:

- (a) the documents are incomplete;
- (b) the documents are received after the time required for commencing the proceeding has elapsed;
- (c) the fee required for commencing the proceeding is not paid; or
- (d) there is some other technical defect in the commencement of the proceeding including a failure to provide proof of ordering the transcript of the Hearing before the Discipline Committee.

and in those circumstances the appeal shall not be deemed to have been commenced.

18.03(2) Where the Hearings Coordinator makes a decision under subrule (1), he or she must give the person seeking to commence an appeal notice of the reasons for the decision and of the requirements for resuming the processing of the documents.

18.03(3) The requirements for resuming the processing of the documents once a decision is made under subrule (1) are as follows:

- (a) to complete any incomplete documents;
- (b) to obtain a Direction from the Chair or, failing that, an Order from a Panel of the Appeals Committee extending the time for commencing an appeal (a Panel's Order on such a Motion being final);
- (c) payment of any fee that is not paid; and
- (d) curing any other technical defect including, where applicable, providing proof of ordering the transcript of the Hearing before the Discipline Committee.

18.03(4) If a requirement for resuming the processing of the documents in clauses (a), (c) or (d) of subrule (3) is not achieved within 15 days of the notice of the decision of the Hearings Coordinator being given, then the Party must also obtain a Direction from the Chair or, failing that, an Order from a Panel of the Appeals Committee extending the time for commencing an appeal (a Panel's Order on such a Motion being final).

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<sup>22</sup> Under s. 4.5 of the *Statutory Powers Procedure Act*, a rule must be made in order to decline to process the appeal documents.

FORM 7A - NOTICE OF MOTION

File No. \_\_\_\_\_

DISCIPLINE COMMITTEE *[or Appeals Committee]* OF THE  
REAL ESTATE COUNCIL OF ONTARIO

BETWEEN:

REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

- and -

*[NAME OF REGISTRANT]*

**NOTICE OF MOTION**

**THE *[IDENTIFY MOVING MOTION PARTICIPANT]* WILL** make a Motion to the Discipline Committee *[or Appeals Committee as the case may be]* of RECO on *[day]*, *[date]*, at *[time]*, or as soon after that time as the Motion can be heard. The Motion will be heard Electronically under the Rules of Practice *[unless a Direction or Order has been obtained to hear it in person]*. The details for participating in the Motion are as follows: *[insert details]*. If you do not participate in the Motion in accordance with this notice, the Discipline Committee *[or Appeals Committee]* may proceed without you and you will not be entitled to any further notice in the Proceeding.

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

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

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

*[Date]*

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

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

FORM 7B - ORDER

File No. \_\_\_\_\_

DISCIPLINE COMMITTEE *[or Appeals Committee]* OF THE  
REAL ESTATE COUNCIL OF ONTARIO

*[Names of Panel Members]* )  
 ) *[day and date of Order]*  
 )

BETWEEN:

REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

- and -

*[NAME OF REGISTRANT]*

**ORDER**

**THIS MOTION**, made by *[identify moving Motion Participant]* for *[state the relief sought in the Notice of Motion, except to the extent that it appears in the operative part of the Order]*, was heard this day *[or heard on (date)]*, by conference call *[or insert address if heard in person]*.

**ON READING** the *[give particulars of the material filed on the Motion]* and on hearing the submissions of counsel for *[identify Motion Participants]*, *[where applicable, add "(identify Motion Participant) appearing in person" or "no one appearing for (identify Motion Participant), although properly served as appears from (indicate proof of service)"]*,

1. **THE DISCIPLINE COMMITTEE ORDERS** that ...
2. **THE DISCIPLINE COMMITTEE ORDERS** that ...

\_\_\_\_\_  
*[signature of Panel Chair]*

**FORM 8A - SUMMONS**

File No. \_\_\_\_\_

DISCIPLINE COMMITTEE *[or Appeals Committee]* OF THE  
REAL ESTATE COUNCIL OF ONTARIO

BETWEEN:

REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

- and -

*[NAME OF REGISTRANT]*

**SUMMONS**

TO:

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

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

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

Date: \_\_\_\_\_

THE DISCIPLINE COMMITTEE  
*[OR APPEALS COMMITTEE]* OF THE REAL  
ESTATE COUNCIL OF ONTARIO

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

\_\_\_\_\_  
Chair

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

**FORM 9A - REPORT OF PRESIDING OFFICER**

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File No. \_\_\_\_\_

DISCIPLINE COMMITTEE *[or Appeals Committee]* OF THE  
REAL ESTATE COUNCIL OF ONTARIO

[Names of Presiding Officer] )  
 ) [day and date of Conference]  
 )

B E T W E E N :

REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

- and -

[NAME OF REGISTRANT]

**REPORT OF PRESIDING OFFICER**

A pre-hearing conference was held in this matter on [date]. In attendance were [list people and their capacity].

**Agreements**

The Parties agreed that the following facts can be assumed to be correct for the purpose of the Hearing:  
[list facts]

The Parties agreed that the following documents can be admitted in the Hearing on consent:  
[list documents]

**Directions and Orders**

The outstanding pre-hearing Motions and the dates that they will be heard are as follows:

<u>Number</u>	<u>Nature of Motion</u>	<u>Date to be Heard</u>
1.		

The following Motions will be argued at the Hearing itself:

<u>Number</u>	<u>Nature of Motion</u>	<u>Estimated Length of Argument</u>
1.		

Other than for information that is discovered after the conference, disclosure is now complete [or will be completed by (date)].

The following documents brief(s) will be Delivered before the Hearing:

<u>Number</u>	<u>Description</u>	<u>Party Preparing</u>	<u>Date to be Delivered</u>
1.			

The following Factums and Book of Authorities will be Delivered before the Hearing:

<u>Number</u>	<u>Description</u>	<u>Party Preparing</u>	<u>Date to be Delivered</u>
1.			

The Hearing is scheduled to begin on [date] for [number] day(s).

The proposed schedule for the Hearing is as follows:

<u>Date</u>	<u>Motions/Arguments/Witnesses</u>	<u>Estimated Length of Time</u>
-------------	------------------------------------	---------------------------------

The witnesses will be immediately available when their evidence is reached on the day scheduled for their testimony and will be available on any following days. There are no other matters anticipated to occur during the Hearing itself.

**Other Matters**

*[Insert any other matters the Parties should be aware of]*

The Parties are reminded of the provisions of subrule 9.02(4) regarding notifying the Presiding Officer of any circumstances that would materially affect the conduct of the Hearing.

[Date]

[Signature of Presiding Officer]

To: *[list Parties' Lawyers / agents]*

FORM 18A - NOTICE OF APPEAL

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File No. \_\_\_\_\_

APPEALS COMMITTEE OF THE  
REAL ESTATE COUNCIL OF ONTARIO

BETWEEN:

REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

- and -

[NAME OF REGISTRANT]

**NOTICE OF APPEAL**

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

**THE GROUNDS OF THE APPEAL** are as follows:

1. [set out grounds in numbered paragraphs]

**THE RELIEF SOUGHT** is as follows:

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

[Date]

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

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

**FORM 18B - FACTUM**

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File No. \_\_\_\_\_

APPEALS COMMITTEE OF THE  
REAL ESTATE COUNCIL OF ONTARIO

B E T W E E N :

REGISTRAR UNDER THE *REAL ESTATE AND BUSINESS BROKERS ACT, 2002*

- and -

[NAME OF REGISTRANT]

**FACTUM OF [identify Party]**

**Statement of Facts**

1. *[Set out facts followed by references to where in the evidence that fact is found similar to the following example:*

*Transcript, Day 1, p. 108, Lines 4-9  
Exhibit 1, Tab 4, p. 2]*

**Statement of Law**

2. *[Set out statements of law followed by reference to where in the Book of Authorities the statement is supported similar to the following example:*

*College of Physicians and Surgeons of Ontario v. Payne (2002), 219 D.L.R. (4<sup>th</sup>)  
350 (Ont. Div. Ct.), [identify Party]'s Authorities, Tab 1, p. 12.]*

**Order Sought**

3. The [identify Party] respectfully submits that the Appeals committee make the following Order:

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

Respectfully submitted:

[Date]

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

TO: *[Name, address, telephone and*

*facsimile numbers of responding  
Party's Lawyer / agent or responding Party]*