J.5 – Hearing Guidelines

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In accordance with the *Financial Institutions Act* (the "Act"), Council conducts hearings on matters pertaining to discipline, licence conditions, and in situations where Council has refused to issue a licence to an applicant. These guidelines form the basis upon which hearings are conducted.

1. Requesting a Hearing

If Council intends to make a decision respecting a licensee, former licensee or an applicant (the "Party"), such as taking disciplinary action, imposing licence conditions, or refusing to issue a licence, Council will provide written notice of the decision it intends to make and its reasons for the decision (the "Intended Decision"). Upon receipt of an Intended Decision, the Party affected by the Intended Decision can request a hearing within 14 days from receiving the Intended Decision, pursuant to section 237(3) of the Act.

2. Scheduling the Hearing

Pursuant to section 237(4), a hearing must be held within a reasonable time after request.

3. Assessment of Costs

Pursuant to section 241.1 of the Act, Council will usually seek to recover its hearing and investigation costs. See Council policy *J.21: Assessing Investigation Costs and Hearing Costs* for more information about costs.

In most cases, at the conclusion of a hearing, the Hearing Committee (the "Committee") will invite oral or written submissions on the issue of costs. Alternatively, the Party and/or Council's lawyer can request permission to make cost submissions from the Committee.

4. Composition of the Hearing Committee

The Committee is appointed by Council. The Committee must consist of at least three Council members. The Chair of the Committee must be a voting Council member and the other members may be voting or non-voting Council members.

A Council member may not serve on a Committee if:

- the Council member participated in a review of the matter that is the subject of the hearing, except where the Council member was involved with deliberations at a voting Council meeting that resulted in an intended decision.

- the Council member has a conflict of interest, for example:
    - the Council member has accepted gifts or gratuities or any offer, payment, promise to pay, or authorization to pay any money, or anything of value that could be interpreted to adversely affect the Council member's decisions or likely to compromise their personal or professional integrity;
- there is a real or perceived apprehension of bias with the Council member serving on the Committee, for example:
    - if the member has a direct financial or personal interest in the outcome of the hearing;
    - if the member has pre-judged the issue;
    - the conduct of the member during the hearing shows a lack of impartiality;
    - the member meets privately with one of the parties involved in the hearing; and
    - the member has prior involvement in the investigation.

5. Location of the Hearing

Hearings are usually held at the offices of Council in Vancouver; however, they may be conducted elsewhere in the province, or virtually, at the discretion of the Council.

6. Representation

The Party may be represented by legal counsel at the Party's own expense. Council and the Committee each retain separate, independent legal counsel for the hearing. Neither Council's nor the Committee's lawyers can represent or provide legal advice to the Party.

The Party may be represented by someone other than legal counsel. However, the Committee can exclude third-parties if:

- the third party is not competent to advocate on behalf of the Party;
- the third party is acting contrary to the Law Society of British Columbia requirements;
- the third party is not complying with the duties and responsibilities of an advocate or advisor at the hearing; or
- for any other reason as determined by the Committee.

7. Pre-Hearing Matters

7.1 Notice of Hearing

At least 14 days before the date set for the hearing, the Party will be provided with a Notice of Hearing that sets out the matter under consideration. The Notice of Hearing is published on Council's website.

7.2 Record of a Hearing

A court reporter records the proceedings of the hearing. A record of the proceeding is available to a Party at the Party's own cost. The hearing may also be audio-video recorded.

7.3 Subpoenas

Under section 240 of the Act, the Committee may subpoena witnesses to give evidence under oath at a hearing, or to produce records as evidence. A witness who fails or refuses to comply with these requirements may be found in contempt in accordance with the procedures set out in the Act.

Council's legal counsel will prepare a subpoena for any person Council wishes to call as a witness at the hearing. If the Party wishes to place witnesses under subpoena for the hearing, the Party must request a subpoena from Council's legal counsel prior to the date on which the witness will give evidence. The Party is responsible for obtaining and serving subpoenas on their own witnesses. The Party is also responsible for ensuring their witnesses attend the hearing as necessary.

7.4. Disclosure

The Party will be provided an opportunity before the hearing to review any information Council intends to rely on at the hearing.

8. The Hearing

At the hearing, the Chair will call the hearing to order, followed by an introduction of the Committee members. Council's legal counsel, the Party and their accompanying representative, if any, will then introduce themselves to the Committee.

The Chair will make an introductory statement setting out the issues and the procedures to be followed at the hearing.

8.1 Council's Opening Statement

Council's legal counsel will present Council's case to the Committee first. The Committee will invite Council's legal counsel to make an opening statement. The opening statement is not evidence. Usually, it consists of an overview of the issues as set out in the Notice of Hearing and a summary of the evidence Council expects to present to the Committee through its witnesses and documents.

8.2 Council's Presentation of Evidence

8.2.1 Documents

After the opening statement, Council's legal counsel may enter documents as evidence for the Committee's consideration. Once entered as evidence, documents are referred to by the Committee as exhibits for the duration of the hearing.

Typically, Council's legal counsel will prepare a joint book of documents prior to the hearing, which contains the documents Council intends to rely on and, if agreed to by the Party, documents the Party intends to rely on. Council's book of documents (or the joint book of documents) is usually marked as a single exhibit at the start of the hearing. Council's legal counsel will provide one copy of all the documents Council intends to rely on to each of the Committee members, the court reporter, the Party and their advocate, if any.

If no agreement is reached about a joint book of documents, the Party is responsible for preparing their own documents to be entered as exhibits. The Party must provide one copy of each document they intend to rely on to each of the Committee members, the court reporter and Council's legal counsel. The Party may seek to have a book of documents, or any loose documents, entered as evidence at the hearing.

8.2.2 Agreed Statement of Facts

Generally, in advance of a hearing, Council's legal counsel and the Party will try to reach an agreement on the key facts of the matter. If an agreement on facts is reached, the signed agreement is entered as an exhibit at the hearing. The agreed-upon facts are read into the record by Council's legal counsel as evidence on which the Committee can rely in reaching a determination on the matters at issue.

8.2.3 Witness Testimony

Any witness giving evidence or appearing on behalf of Council will be directly examined by Council's legal counsel after the witness has sworn or affirmed to tell the truth at the hearing (see section 11.2 below). In this type of direct examination, leading questions (questions which suggest the answer) are not permitted except with respect to non-contentious matters.

After Council's legal counsel completes the direct examination, the Party is provided an opportunity to cross-examine the witness. In cross-examination, considerably more latitude is permitted to ask leading questions.

After any cross-examination is completed, Council's legal counsel is given a further opportunity to re-examine the witness, but only on matters raised in cross-examination. Leading questions are not permitted in a re-examination.

The Committee may limit cross-examination where it is satisfied that the cross-examination has been sufficient to disclose fully and fairly the facts in relation to which evidence has been given.

When Council's legal counsel has presented all of Council's evidence to the Committee, Council's case will be closed, meaning that further evidence cannot be entered by Council's legal counsel for the Committee's consideration, except in reply to the Party's case. At all times, the Committee retains discretion to permit documents and witness testimony to be entered as evidence.

8.3 The Party's Opening Statement and Presentation of Evidence

After Council has finished entering its case, the Party is permitted to make an opening statement. The opening statement is the Party's opportunity to provide the Committee with an overview of their position as well as to advise the Committee about any witnesses they intend to call as part of their case. After the opening statement, the Party is expected to lead any evidence it wants the Committee to consider in making a determination on the matters at issue. If the Party has called witnesses to give evidence, Council's legal counsel may cross-examine the Party's witnesses after they are directly examined by the Party. If necessary, the Party may re-examine their witness.

When the Party has presented all of their evidence to the Committee, the Party's case will be closed, meaning that further evidence cannot be entered for the Committee's consideration.

At all times, the Committee retains discretion to permit documents and witness testimony to be entered as evidence.

8.4 Council's Reply Evidence

After the Party has closed their case, Council's legal counsel may be permitted to produce further evidence in reply. The evidence presented must strictly reply to issues raised by the Party that Council did not address during its case. Council's legal counsel is not entitled to raise any new issues by way of reply or to supplement evidence given earlier at the hearing.

8.5 Objections and Clarifying Questions

If, during the introduction of evidence, either Council's legal counsel or the Party objects to the admissibility of a document, evidence given by a witness or the suitability of a question put to a witness, the Committee will decide on the admissibility of the evidence or the suitability of the line of questioning. During the proceedings, the Committee may also ask the witnesses questions to clarify or expand on evidence introduced in the matter.

8.6 Disputes over Admissibility of Evidence

For evidence to be admissible, it must be relevant to the matter and must not be subject to exclusion under some other principle of law.

During a hearing, when a dispute arises as to the admissibility of evidence, the Chair will ask the party objecting to state the basis in law for the objection. The Committee will then hear any submissions on the issue of the objection. If necessary, the Chair can ask for supporting case law or other authority on the issue of admissibility of the evidence.

The Committee may adjourn the hearing to consider the admissibility of any evidence. If submissions are requested by the Committee, following the parties' submissions, the Committee may rule on the admissibility of the evidence, giving reasons for their decision, if requested at that time.

Alternatively, the Committee can agree to hear the evidence and decide later on whether the evidence is admissible.

8.7 Other Evidentiary Matters

Documentary evidence may be introduced into evidence but need not be introduced through a witness. If the Party intends to rely on documentary evidence that has not been disclosed to Council, the Party may wish to provide the documents to Council's legal counsel in advance of the hearing to avoid objections relating to the admissibility and/or relevance of the document at the hearing.

8.8 Affidavit Evidence

If documentary evidence is introduced by affidavit, it is appropriate to have the person who swore or affirmed the affidavit available to be called as a witness should the Party or Council's legal counsel wish to cross-examine the person on the contents of the affidavit.

8.9 Rules of Evidence

The Committee is not bound by the strict rules of evidence. However, objections may be made in accordance with the rules of evidence. The Committee may consider the objections in

deciding if evidence should be considered by the Committee. Where evidence is allowed subject to an objection, the weight to be attached to the evidence will be considered by the Committee during its deliberations.

8.10 Submissions

After each of the parties has closed their case, Council's legal counsel and the Party are given opportunities to present closing submissions.

Council's legal counsel presents Council's submissions first, after which the Party is permitted to present their submissions. Council's legal counsel may reply to the Party's closing submissions. As with reply examination, counsel cannot raise any new matters, but may simply address the closing submissions of the Party.

Council's legal counsel will typically provide the Committee with written submissions along with any cases or other legal authority on which Council relies. If written submissions are provided, Council's legal counsel will bring copies for each of the Committee members, the Party and their advocate, if any.

Once all closing submissions have been made, the Chair will adjourn the hearing and the Committee will retire to consider their findings and proposed decision.

9. Decision of the Hearing Committee

After the hearing concludes, the Committee deliberates to make findings of fact and law, and to reach a determination as to the disposition of the matters at issue at the hearing. Findings of fact and law and Committee decisions must have the agreement of a majority of the Committee members.

The Committee reports its findings and determinations in writing by way of a report to Council titled *Reasons for Decision of the Hearing Committee ("Reasons for Decision").* The disciplinary action imposed on the Party, if any, will be issued in writing to the Party in the form of an order, which constitutes Council's final decision. The Party is provided with a copy of the Reasons for Decision and the order, and they are published on Council's website and on the Canadian Insurance Regulators Disciplinary Actions (CIRDA) website.

10. Appeal to the Financial Services Tribunal

The Party has 30 days from the date of Council's final decision (as set out in section 24 of the *Administrative Tribunals Act,* SBC 2004, c.45.) to file an appeal of the decision at the Financial Services Tribunal.

11. General Matters Respecting Hearings

11.1 Public Hearings

A hearing before Council is open to the public. However, if the Committee considers that a public hearing would be unduly prejudicial to any person, the Committee may order that the public be excluded from all or part of the hearing.

11.2 Administration of Oaths

The Committee has the power to administer oaths and affirmations for the purpose of any of its proceedings. All evidence heard or taken by the Committee should be taken under oath or affirmation.

The standard form of Oaths used is set out below:

Form of Oath for Witness

Please state your full name.

Do you solemnly swear that the evidence that you shall give touching on the matters in this proceeding shall be the truth, the whole truth and nothing but the truth so help you God?

OR

Do you solemnly affirm that the evidence that you shall give touching on the matters in this proceeding shall be the truth, the whole truth and nothing but the truth?

[Witness must verbally state "YES" for the record].

11.3 Official Notice of Facts and Opinions

The Committee is entitled to rely on facts that may be "officially noticed" (i.e. facts that are so well known and indisputable among reasonable persons, or that are capable of immediate and easy verification).

Official notice, in the ordinary sense of the phrase, may not be taken of matters which merely happen to be within the personal knowledge of the Committee; rather, these must be matters that are well known to the population as a whole.

In addition, because the members of the Committee are expected to have some expertise of their own, they are entitled to take notice of facts within their field of general knowledge.

11.4. Adjournments

If, at the request of either party, Council's legal counsel and the Party, agree to adjourn a hearing, Council will attempt to reschedule the hearing. However, the Committee has sole discretion to allow or deny the adjournment.

If one or more party does not consent to an adjournment upon request, the person requesting the adjournment will be asked to tell the Committee why the adjournment should be granted. The person opposing the adjournment will then be allowed to tell the Committee why the adjournment should not be granted. Finally, the person requesting the adjournment will have an opportunity of reply.

Adjournments are generally granted where the Committee finds that the adjournment is required to permit an adequate hearing to be held. The Committee, when deciding whether to grant an adjournment, must balance the interests of ensuring that a fair hearing is held with the protection of the public interest by means of an expedient resolution to the matter.

The Committee may adjourn a hearing on its own motion.