



J.5 – HEARING GUIDELINES

In accordance with the Financial Institutions Act (the “Act”), the Insurance Council of British Columbia (“Council”) conducts hearings on matters pertaining to discipline, licence conditions, and where Council has refused to issue a licence to an applicant. These guidelines form the basis upon which hearings are conducted.

REQUESTING a HEARING

If Council intends to make a decision respecting a licensee or an applicant (the “Party”), such as taking disciplinary action, imposing licence conditions, or refusing to issue a licence, the Party can request a hearing at no cost. However, the Party must request the hearing within a certain timeframe, as set out under the Act.

COMPOSITION of the HEARING COMMITTEE

A 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.

A Council member may not serve on a Committee if:

- he or she was involved with a review of the matter that is the subject of the hearing, except where his or her involvement was in deliberations which resulted in an intended decision.
- he or she is in a conflict of interest.
- there is a real or perceived apprehension of bias with the member serving on the Committee.

LOCATION of a HEARING

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

REPRESENTATION

The Party may be represented by legal counsel at the Party’s own expense. Council retains its own legal counsel.

The Party may be represented by someone other than legal counsel. However, the Committee can exclude this third party if it determines that the third party is not competent to advocate on behalf of the Party, is acting contrary to The Law Society of British Columbia requirements, or is not complying at the hearing with the duties and responsibilities of an advocate or advisor.



PROCEDURE of the HEARING

Notice of Hearing

At least 14 days in advance of a hearing, the Party is provided with a Notice of Hearing which sets out the matter under consideration. The Party is also provided an opportunity before the hearing to review any information that will be produced at the hearing by Council.

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.

Subpoenas

The Committee may subpoena witnesses to give evidence under oath at a hearing, or to produce records. A witness who fails or refuses to comply with these requirements may be liable to be committed for contempt.

Council's legal counsel will prepare a subpoena for any witness that is required to attend a hearing. The subpoena is signed by the Committee's Chair. The Party and Council's legal counsel are responsible for serving subpoenas on their own witnesses. They are also responsible for the attendance of their own witnesses.

The Committee will not reveal the names of any witnesses without the consent of the Party or Council's legal counsel, as the case may be.

COMMENCEMENT of a HEARING

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

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

AGREED STATEMENT of FACTS

Generally, in advance of a hearing, Council's legal counsel and the Party will try to reach an agreement with each other on any facts of the matter.

If an agreement on facts is reached, it is introduced at the hearing by Council's legal counsel.

COUNCIL'S OPENING STATEMENT and PRESENTATION OF EVIDENCE

Council's evidence is presented first, beginning with an opening statement by Council's legal counsel and an outline of any witnesses.



Any witness giving evidence or appearing on behalf of Council will be directly examined by Council's legal counsel after the witness is sworn or affirmed. 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 reasonably limit some cross-examination of a witness where it is satisfied that the cross-examination of the witness has been sufficient to disclose fully and fairly the facts in relation to which evidence has been given.

THE PARTY'S OPENING STATEMENT and PRESENTATION of EVIDENCE

After Council rests its case, the Party is permitted to make an opening statement and to provide an outline of any witnesses, following which the Party should lead evidence in the same manner, procedurally, as Council's legal counsel. Each of the Party's witnesses will be examined directly by the Party, cross-examined by Council's legal counsel, and re-examined by the Party.

COUNCIL'S REPLY EVIDENCE

At the conclusion of evidence presented by the Party, Council's legal counsel may be permitted to produce further evidence in reply. The evidence presented must be strictly in reply to any issues raised by the Party. Council's legal counsel is not entitled to raise any new issues by way of reply, or to supplement evidence given in the opening part of the case.

OBJECTIONS and CLARIFYING QUESTIONS

If, during the introduction of evidence, either Council's legal counsel or the Party objects to a question, the Committee will decide on the suitability of the line of questioning.

During the proceedings, the Committee may also ask questions to clarify or expand on evidence introduced in the matter.

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 for the basis in law for the objection to be stated. The Committee will then hear any arguments or submissions on the issue of the objection to the evidence. If necessary, the Chair can ask for supporting legal authority (case law or other) on the issue of admissibility of the evidence.

The Committee may adjourn the hearing briefly to consider the issue of admissibility of any evidence. Following all arguments and submissions, the Committee may rule on the admissibility of the evidence, giving reasons for their decision, if requested at that time.

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

OTHER EVIDENTIARY MATTERS

Documentary evidence may be introduced into evidence but need not be introduced through a witness. However, to avoid objections to certain evidence, the documentary evidence should be made available well in advance of the hearing to either Council's legal counsel or the Party, whichever is applicable. If documentary evidence is introduced by affidavit, it is appropriate to have the affiant 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.

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.

OVERSIGHT

If, at the end of a hearing, Council's legal counsel or the Party discover that an important piece of evidence has been inadvertently left out of the hearing, the Committee should allow the evidence to be introduced, providing that an opportunity is given for a proper examination of the evidence.

SUMMATIONS

After all the evidence has been introduced, Council's legal counsel and the Party are given opportunities to present arguments with respect to the Committee's findings and any proposed decision of the Committee.



Council's legal counsel presents arguments first, following which the Party is given an opportunity to make arguments. Finally, Council's legal counsel can reply to matters raised in argument by the Party if it is required. As with reply examination, Council's legal counsel cannot raise any new matters in reply, but may simply address the arguments of the Party.

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

REPORT of the HEARING COMMITTEE

The Committee makes findings of fact and may make recommendations as to the disposition of the case. Any findings and recommendations must have the agreement of a majority of the Committee members.

The Committee reports its findings and recommendations to Council in *a Report of the Hearing Committee*.

DECISION of COUNCIL

Council considers the *Report of the Hearing Committee* and reaches a final decision on the matter. Council is not bound to accept the Committee's recommendations in making its decision.

Council's final decision is provided to the Party in writing.

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 Council's decision with the Financial Services Tribunal.

GENERAL MATTERS RESPECTING HEARINGS

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. The Committee will hear submissions from any person before ruling on the matter.

Administration of Oaths

The Committee has the power to administer oaths and affirmations for the purpose of any of its proceedings and 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].

OFFICIAL NOTICE of FACTS and OPINIONS

The Committee may also rely on facts that may be “officially noticed.” These are facts that are so well known and indisputable among reasonable persons, or which are capable of such immediate and easy verification, that the Committee can waive the submission of evidence to prove such facts. 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 can frequently take notice of facts within their field of general knowledge.

ADJOURNMENTS

If a request for an adjournment is agreed to by Council’s legal counsel and the Party, an attempt is made to agree upon a mutually convenient date to proceed with the hearing, which is then presented to the Committee.

If a request for an adjournment is not consented to (the Party or Council’s legal counsel does not agree to an adjournment), the person requesting the adjournment can present arguments to the Committee as to why the adjournment should be granted. The person opposing the adjournment should then be allowed to submit argument, following which the originating person should be allowed an opportunity to reply.



Adjournments are generally granted where it is shown to the satisfaction of the Committee that the adjournment is required to permit an adequate hearing to be held. The Committee, when deciding whether or not 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. Adjournment requests will be considered by the Committee on their own facts bearing in mind these interests.

The Hearing Committee may adjourn on its own motion.