



CMRAO Discipline Hearings: Information for Licensees

The following information is intended to provide an overview of the discipline process of the Condominium Management Regulatory Authority of Ontario (CMRAO). This document is not legal advice. If there is any conflict between this document and the applicable legislation or rules, the legislation or rules take precedence.



Condominium Management
Regulatory Authority of Ontario

www.cmrao.ca | info@cmrao.ca

Introduction

As part of the CMRAO's mandate to license and regulate condominium management providers and condominium managers in the public interest, CMRAO's Registrar may refer allegations of violations of the Code of Ethics to the CMRAO's Discipline Committee for a hearing.

A hearing is a formal proceeding, similar to a trial in a court, conducted by a panel of members of the Discipline Committee. The Discipline Committee will consider evidence and determine if, based on the evidence, the licensee failed to comply with the Code of Ethics. If the Discipline Committee finds that the licensee failed to comply with the Code of Ethics, it will then determine what penalty should be imposed. In hearings before the Discipline Committee, the parties are the CMRAO and the licensee.

Notice of Hearing

The Notice of Hearing contains the alleged violations of the Code of Ethics. The Discipline Committee provides at least 45 days of notice before any hearing commences.

Hearings are typically held in person, but the Discipline Committee may order a hearing to be held electronically (by video or teleconference) or in writing.

Right to Legal Representation

A discipline hearing is a serious matter. When licensees face allegations before CMRAO's Discipline Committee, they should consider whether they want to retain a lawyer, a paralegal, or an agent (in compliance with the requirements of the *Law Society Act*). There is no requirement for licensees to retain a legal practitioner (licensees can represent themselves), but the CMRAO is represented by a lawyer at hearings.



Disclosure

Any party that wants to rely on evidence at the hearing must disclose the evidence to the other side and must provide the other side with a reasonable opportunity to examine the evidence before the hearing.

Where a party wants to call a witness at the hearing to provide oral testimony, they must disclose the identity of the witness and a written statement containing the substance of the witness's anticipated oral evidence to the other party. Where a party wants to rely on an expert witness, the party must disclose the identity of the expert and a copy of a written report signed by the expert containing the substance of the expert's anticipated oral evidence. Where the evidence a party wants to call is not oral, written, or documentary evidence, the party must provide a written description of the evidence.

The CMRAO must disclose its evidence to the licensee at least 30 days before the date the hearing begins. The licensee must disclose its evidence to the CMRAO at least 15 days before the date the hearing starts.

These rules of disclosure ensure that each party is prepared for the hearing.



Pre-Hearing Conference

Any party to a hearing may request a pre-hearing conference, which can be ordered by the Discipline Committee. Pre-hearing conferences are closed to the public and all discussions at a pre-hearing conference occur on a “without prejudice” basis. This means that nothing discussed at the pre-hearing conference can be disclosed at the hearing. The purpose of the pre-hearing conference is to plan for the hearing and to determine if any of the issues can be settled. The person who chairs the pre-hearing conference will not be a member of the Discipline Committee panel at the hearing.

Hearings

A hearing is a formal proceeding before an independent panel of the Discipline Committee comprised of members of the condominium management industry and the public. At the hearing, the CMRAO has the onus of proving that the licensee failed to comply with the Code of Ethics.

If a licensee has been given notice and fails to attend the hearing, the hearing may proceed in the licensee’s absence.

Panel Composition

The Discipline Committee is led by the Chair. The Chair of the Discipline Committee will assign a panel of at least three members to preside at a hearing and consider the allegations contained in the Notice of Hearing. At least two members of the panel will be licensees or officers or directors of a licensed condominium management provider, and at least one of the members of the panel must be a member of the public who has never been a licensee or a shareholder, officer, director, or employee of a licensed condominium management provider or of a former licensed condominium management provider. Depending on the nature of the licensee subject to the disciplinary proceeding, there may be additional individuals on the panel (for example, if a principal condominium manager is the subject of the proceeding, at least one of the panel members must be a principal condominium manager).



The Discipline Committee panel will also have its own lawyer, commonly referred to as “independent legal counsel.” This lawyer does not work for the CMRAO and is not a member of the panel. The role of independent legal counsel is to provide legal advice to the panel as may be required and to assist the panel with procedural matters.

Contested versus Uncontested Hearings

Hearings occur in two stages. The first stage of the hearing is focused on whether the licensee failed to comply with the Code of Ethics. If the Discipline Committee finds that a licensee has failed to comply with the Code of Ethics, the second stage of the hearing is focused on what penalty is appropriate.



Either or both stages of the hearing can proceed on a contested basis or uncontested basis.

Where a hearing occurs on a fully contested basis, the licensee disputes the allegations. Following opening statements of each party's general position regarding the allegations, the panel will hear evidence. The CMRAO will call its evidence first, and then the licensee will have an opportunity to call their evidence. Evidence may be in the form of documents or in the form of oral testimony given by witnesses. Each side will have an opportunity to ask questions of their witnesses and the other side's witnesses. Each party is responsible for ensuring that its witnesses attend the hearing, and if necessary, witnesses can be served with a summons to require their attendance at the hearing.

After each side has presented their evidence, they will have an opportunity to provide closing submissions summarizing their arguments.

The Discipline Committee will then decide whether or not the licensee failed to comply with the Code of Ethics.

If the Discipline Committee decides that a licensee has failed to comply with the Code of Ethics, the panel will then consider what penalty is appropriate. Each side will have an opportunity to make submissions and present evidence during the penalty phase of the hearing.

Where a hearing proceeds on an uncontested basis, the licensee agrees that they have failed to comply with the Code of Ethics and enters into an Agreed Statement of Facts. The Agreed Statement of Facts sets out the facts that are agreed to between the parties. Where hearings proceed on an uncontested basis, there is no need to present oral evidence; all the evidence is contained in the Agreed Statement of Facts.

In uncontested hearings, if the Discipline Committee finds that there has been a breach of the Code of Ethics based on the Agreed Statement of Facts, at the penalty phase of the hearing the parties typically present a Joint Submission on Penalty that sets out the penalty that has been agreed to.

Agreed Statement of Facts and Joint Submissions on Penalty are generally accepted by the Discipline Committee unless to do so would be contrary to the public interest and would bring the administration of justice into disrepute.

Matters on Consent without a Hearing

If the parties consent, they can settle all or part of a matter without a hearing by presenting the proposed settlement to the Discipline Committee Chair. The Discipline Committee Chair may either accept the proposed settlement or, if the Chair has concerns, refer the matter to a full panel.



Penalties

If the Discipline Committee determines that a licensee has failed to comply with the Code of Ethics, it may order any of the following penalties:

- Require the condominium manager of the licensee to take educational courses if the licensee is a condominium management provider.
- Require the licensee to take further educational courses if the licensee is a condominium manager.
- If the licensee is a condominium management provider, require the licensee to fund educational courses for condominium managers employed by the licensee or to arrange and fund the courses.
- If the licensee is a condominium manager, require the condominium management provider that employs the licensee to fund educational courses for condominium managers that the provider employs or to arrange and fund the courses.
- Impose a fine to a maximum of \$25,000.
- Suspend or postpone the taking of further educational courses, the funding or the funding and arranging of educational courses, or the imposition of the fine for the period and upon the terms that the Discipline Committee designates.
- Fix and impose costs.

Open to the Public

Discipline hearings are open to the public except in rare cases where the Discipline Committee determines the hearing should be closed pursuant to the *Statutory Powers Procedure Act*. The decisions of the Discipline Committee are also made public.



Motions

A motion is a request to the Discipline Committee to obtain a ruling or decision on a specific matter relevant to a case. Parties must notify the Discipline Committee of any intention to file a motion so that a motion date can be scheduled. The party bringing the motion must serve and file a copy of the written notice of motion on each party and file it with the Discipline Committee at least 15 days prior to the date of the motion hearing. A party who wishes to respond to the motion must serve and file their response to each party and file a copy with the Discipline Committee at least 5 days before the motion hearing.

Appeals

After the decision of the Discipline Committee is released, either party can appeal the decision to the Appeals Committee by serving and filing a Notice of Appeal within 30 days. The Appeals Committee may overturn, affirm, or modify the order of the Discipline Committee.

Resources

Licensees are encouraged to consult the following resources for more information:

- *Condominium Management Services Act, 2015*, S.O. 2015, c. 28, Sched. 2
- Ontario Regulation 3/18 (Code of Ethics and Discipline and Appeals Committees) under the *Condominium Management Services Act, 2015*
- *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22
- CMRAO Rules of Practice before the Discipline Committee and the Appeals Committee

