

# DISCIPLINE COMMITTEE HEARING PROCEDURES



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## INTRODUCTION

The Nova Scotia Real Estate Commission is an independent, non-government agency, responsible for regulating the real estate industry in Nova Scotia. Founded in 1997 under the Nova Scotia Real Estate Trading Act, its mission is to ensure consumer confidence in the real estate industry by supervising the professional activities of all real estate brokers and salespeople practicing in Nova Scotia.

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## DEFINITIONS

**Act**—*Nova Scotia Real Estate Trading Act*

**Allegation Statement**—document that specifies the alleged breaches of *the Act*, the *By-Law*, or the *Policies and Procedures*.

**By-Law**—*Commission By-Law* as established under the *Real Estate Trading Act*

**Commission**—the Nova Scotia Real Estate Commission

**Committee**—Discipline Committee

**Complainant**—person making a complaint to the Commission

**Panel**—Hearing Panel, which is a sub-committee of the Discipline Committee

**Prosecutor**—person who, on behalf of the Commission, prosecutes the case

**Policies and Procedures**—guidelines that supplement the *Act* and *By-Law*

**Respondent**—Industry Member about which a complaint has been made

## PRE-HEARING MATTERS

Section 17 of the *Act* and Part 8 of the *Commission By-Law* define the preliminary procedural requirements for Discipline Hearings. The requirements are:

### HEARING PANEL APPOINTMENT

Upon receipt of the *Allegation Statement*, the Discipline Committee Chairperson appoints a Hearing Panel to conduct the hearing. The Panel contains a minimum of three people (must be an odd number), one of whom is appointed as the Chairperson. The Discipline Committee Chairperson can appoint themselves as a Panellist and also as Panel Chairperson. An alternate Panellist is typically named in the event a replacement is necessary.

### HEARING PANEL AUTHORITY

The Hearing Panel has the authority, under the *Act*, wherever Discipline Committee is specified. For the purposes of the *Act* and *Commission By-law*, the Hearing Panel is considered a sub-committee of the Discipline Committee. In addition, the Hearing Panel has all the powers, privileges and immunities of a Commissioner appointed pursuant to the *Public Inquiries Act*. The Discipline Committee can establish the Discipline Hearing procedure rules.

The Hearing Panel does not have the authority to try cases of alleged civil negligence against Industry Members, nor can it award damages.

### HEARING PANEL QUALIFICATIONS

When choosing Panellists, the Discipline Committee Chairperson must be aware of bias and conflict of interest. A person is automatically disqualified as a Panellist if he/she:

1. participates in discussions or the investigation of the complaint prior to the hearing
2. is related by blood or marriage to the respondent, the complainant, the investigator or any person on the Hearing Panel
3. is an employer, an employee, a partner, or associated in business with any of the persons noted in (2) above
4. is a party or a witness to the hearing or a party or witness in any other pending case involving any of the persons in (2) above.

Before sitting in any case, each Panellist must sign a statement that declares that they are not disqualified for any of the reasons noted above; and that they do not know of any reason that might prevent them from rendering an impartial/unbiased decision.

The *Notice of Hearing*, which includes the names of the Panellists, is then sent to the respondent.

### BIAS ALLEGATIONS—CHALLENGING THE PANEL

A party is deemed to have waived grounds for disqualification unless they file an objection within ten business days of receiving the names of the appointed Panellists.

However, a Panellist may be disqualified at any time if the remaining Panellists become aware of any grounds of disqualification or discover any information that might prevent the Panellist from rendering an impartial decision or appearing to do so.

The Panel Chairperson is responsible for evaluating any challenges that are submitted. If the challenge is against the Chairperson, the Discipline Committee Chairperson must make the evaluation.

To comply with the principle that justice must not only be done, but must be seen to be done, the following examples serve to clarify what constitutes proof of bias:

1. Previous litigation—if the respondent and a Panellist were involved in a lawsuit that is settled or finalized, there is no immediate disqualification unless the respondent can prove continued ill-will or malice.
2. Respondent's former employees, partners and business associates —the respondent must provide evidence of ill-will or malice as a result of the relationship.
3. Close personal friendship—a close personal friendship disqualifies a Panellist.
4. Financial benefit—financial benefit disqualifies a Panellist.
5. Witness is a close relative: if a Panellist knows that a close relative will be called as a witness, they cannot be a Panellist. When judging whether a relation is close, judgment and common sense prevails, i.e. if there is any doubt as to bias, the Panellist is disqualified.
6. Respondent is debtor or creditor of Panellist— if the respondent is a debtor or creditor of one of the Panellists, the Panellist is disqualified.

If a challenge is successful, then another Hearing Panel member is appointed to replace the disqualified Panellist. The parties have the same rights to challenge the replacement appointee.

## NOTICE OF HEARING

The Registrar sets a hearing date and notifies the respondent and the Panel Chairperson in writing. When selecting the hearing date, the Registrar can speak with the parties to the hearing to determine a date that is mutually convenient and acceptable. This avoids requests for postponement at a later date.

The *Notice of Hearing* includes an *Allegation Statement*, the documents to be presented as evidence, and the names of the witnesses to appear at the hearing, as well as the names of the Panellists. The *Hearing Panel Process* (this document) is also included with the *Notice of Hearing*.

The *Notice of Hearing* must be served a minimum of thirty days prior to the hearing date.

## RIGHT OF COUNSEL

All parties to the hearing have the right to legal counsel.

If the respondent chooses to be represented by a lawyer at the hearing, *By-Law 826 (c)* requires them to notify the Commission in writing a minimum of five days before the hearing date.

## HEARING PANEL COUNSEL

The Panel can also have legal counsel at the hearing, or consult with legal counsel, to give them advice on issues of procedure and law. The role of counsel in this regard is purely advisory. The lawyer is not a member of the Panel and cannot take an active role in the conduct of the hearing, including examination and cross-examination of the witnesses. For conflict-of-interest reasons, the Commission cannot have the same lawyer representing both Panel and prosecution.

The Panel and the prosecutor are not required to notify the parties if they choose to have counsel present.

## PREPARING FOR THE HEARING

The Panel does not gather the evidence. Accordingly, both parties (the Commission prosecutor and the respondent) must develop and prepare their cases for the Panel to consider at the hearing.

The Commission has the onus of establishing that the respondent engaged in conduct contrary to the *Act*, the *By-Law*, and the *Policies and Procedures*, as described in the *Allegation Statement*. This means that the investigator must gather all the evidence needed to prove the charges and ensure the evidence is available on the date set for the hearing.

If a party plans to present documentation at the hearing, sufficient copies for each Panellist and the other party need to be made prior to the start of the hearing to avoid delays.

## AGREED STATEMENT OF FACTS

If the parties both agree with some or all of the facts in the *Allegation Statement*, they are encouraged to sign and submit an *Agreed Statement of Facts* to the Panel. This avoids lengthening the hearing, and permits the parties and the Panel to focus their attention solely on the issues.

The Registrar can help the parties prepare this statement.

## WITNESSES

Each party has the right to have witnesses at the hearing to testify on the party's behalf. With few exceptions, only people who have personal knowledge of the matter in question can be called as witnesses.

The party calling the witness is responsible for notifying the witness of the hearing date and time and making arrangements for their attendance at the hearing. If the Commission calls the complainant as a witness, the prosecutor must explain to the complainant that they are a witness and not a party to the hearing. The complainant also needs to know that as a witness they may be excluded from the hearing except when giving testimony.

The prosecutor must notify the respondent of all witnesses to testify at the hearing.



As well, any party who intends to rely on affidavit evidence (a sworn statement of fact, signed by the author) must provide the other party with a copy of the affidavit well in advance of the hearing to give the other party an opportunity to cross-examine the witness about their statement.

Failing to provide witness names a minimum of 10 days before the hearing may constitute a waiver of the right to call those witnesses, unless the other party agrees to allow their testimony. Likewise, a party cannot introduce affidavit evidence at a hearing without prior notice to the other party, unless that party agrees to allow the evidence. However, where the Panel believes that the testimony of a witness is essential to ensure due process, their testimony (either oral or written) can be permitted. If this occurs, the other party can request a recess and resume the hearing at a later date.

## REFUSAL OR FAILURE TO APPEAR

All Industry Members, including the Industry Member subject to the hearing, are considered compellable witnesses (lawfully required to give evidence) and must give evidence as requested by the Panel.

An Industry Member named in a *Notice of Hearing* who cannot attend the hearing, for valid reasons, must immediately contact the Commission office so that an application can be made to reschedule the hearing. Provided the *Notice of Hearing* provisions were followed, the Panel can proceed with a hearing in the absence of the respondent, as per By-law 826.

To ensure all possible efforts to protect the respondent's rights, if the respondent does not appear at the start of the hearing, they need to be phoned to see if they are detained on the way to the hearing. Following this call, the Panel can decide whether to continue the hearing or postpone to a later date.

If a witness a member of the public who refuses or is unable to testify at the hearing, the person should be asked to submit an affidavit.

It needs to be understood, however, that a witness' affidavit is acceptable as evidence only if the other party is permitted to cross-examine the witness on their statement (or waives this right). If the other party elects to cross-examine a witness on their affidavit, the cross-examination must be done prior to the hearing.

If a witness has prior engagements and cannot attend on the hearing date, the party calling the witness can request a postponement until the witness is available.

## POSTPONEMENTS

When dealing with requests for postponements, the Chairperson needs consider whether the other party is adversely affected or prejudiced by the decision to permit the request. If both parties agree to a postponement, the Chairperson should not object.

## CONDUCTING THE HEARING

### ROOM AND SEATING ARRANGEMENTS

The hearing room is set up to reflect the formal nature of the proceeding.

The Panel holds the hearing in camera unless the respondent requests a public hearing and the Discipline Committee is satisfied that a public hearing is in the public interest.

Witnesses are typically excluded from the hearing room until called to give testimony. The Commission is responsible for ensuring that a comfortable waiting area is available for witnesses.

Witnesses can remain in the hearing room after they have testified, but they should be seated in a designated observer area and not with the parties.

### RECORDING

The Commission tape-records the proceeding and/or has a recording secretary present. Copies of the recording or the transcript are typically only used for appeal purposes.

The tapes, the evidence, and the transcripts are maintained in a confidential hearing file until all rights of appeal have expired or until an appeal is completed.

Video-taping is permitted only with the advance written consent of all parties and the Panellists.

### PRELIMINARY MATTERS

Each Panellist should carefully read and be familiar with the *Act*, the *By-Law*, the *Policies and Procedures* as well as the hearing procedures. The Panel meets shortly before hearing to discuss any preliminary matters.

### COMMENCING THE HEARING

The hearing commences with the tape recorder, if used, being turned on and the Chairperson calling the hearing to order. The Chairperson then outlines the hearing proceedings.

The Chairperson's opening remarks include asking both parties if they have any objection to the Panel's composition or jurisdiction to hear and determine the matter before it. The response of the parties is on the record in the event a party claims, on appeal, that a Panellist was biased or that the Panel did not have jurisdiction to hear the matter.

Witnesses that choose not to be sworn under oath because of personal beliefs may have their testimony affirmed (a solemn and formal declaration).

Witnesses are excluded from the hearing room until needed to give testimony. This ensures that the testimony of each witness is not influenced by another's testimony.

## OUTLINE OF THE HEARING PROCEDURE

1. The Chairperson gives opening remarks.
2. The allegations are read into the record.
3. All parties and witnesses are sworn under oath or affirmed.
4. The parties are given the opportunity to present evidence, testify on their own behalf, and call witnesses.
5. The parties and their representatives are given the opportunity to examine and cross-examine.
6. The closing statements are given.
7. The hearing is adjourned.
8. The Panel deliberates and renders a decision.

After introducing the counsel and the people present, the Chairperson asks the prosecutor to introduce the matter. The prosecutor introduces the *Notice of Hearing*, which is the document that was served to the respondent.

The Chairperson then asks if there are any preliminary or jurisdictional motions or matters. If there are none, the Commission proceeds with its case, calling witnesses and introducing exhibits (documents or evidence).

Evidence is introduced through witness. Any documents submitted are marked, in order of introduction, as exhibits. Evidence is given under oath or affirmation and the Chairperson swears in each witness when they are introduced. The script is as follows:

*CHAIRPERSON: "In this matter before the Discipline Hearing Panel of the Nova Scotia Real Estate Commission, do you swear that the evidence you shall give shall be the truth, the whole truth and nothing but the truth".*

*WITNESS: "I do"*

The Chairperson asks the witness to be seated and to state their name. The prosecutor then examines (ask questions and receives testimony) the witness. The respondent or the respondent's counsel is given the right to cross-examine any witness called by the Commission. The cross-examination occurs immediately after the prosecutor's direct examination of the witness. The Panellist should feel free to ask questions at any time as the matter proceeds, but unless the questions are important at that point in the proceeding, they should be held until the end of the examination and cross-examination. Panellists can direct questions to the witnesses, the counsellors, and the respondent.

The respondent then presents their case, if any, following the same process as the prosecutor. That is, the witnesses are called and sworn. They are first examined by the respondent or the respondent's counsel and then the prosecutor is given the opportunity to cross-examine. The Panellists can ask questions, but when possible, should wait until the examination and cross-examination are over.

The Panel, like other statutory tribunals, is not required to follow the strict rules of evidence that govern courts. Accordingly, the Panellists are entitled to accept any material presented, so long as it is relevant

to the matter before it. The Panellists must, however, only consider the evidence presented at the hearing. Any information that comes to the Panellists through other sources must be ignored when making their decision. This is because the respondent must be able to challenge all of the evidence against them, whether it is through cross-examination or through the introduction their own evidence.

The Commission and its prosecutor have the onus of establishing the case and proving misconduct. The respondent is not required to present any evidence, but they have the right to do so.

The prosecutor must establish the case on “a balance of probabilities,” which means it is more likely than not that the alleged matters did take place. This is interpreted by the counts to mean a clear and convincing balance of probabilities.

If evidence was presented by both parties, the prosecutor sums up their case first followed by the respondent. The prosecutor can reply to the respondent's summation. The purpose of respondent's and prosecutor's summations is to prove or disprove the allegations in the *Notice of Hearing*.

Any questions the Panellists have for the prosecutor must be asked in the presence of the Industry Member and their counsel if present (open forum).

The Panellists then retire to deliberate. The Registrar is not a part of the Panellists' deliberation. If the Panellists are unclear about something that was introduced into evidence, they can return to the open forum to ask questions or to request clarification.

The Panellists' initial decision is whether the *Notice of Hearing* allegations were proven. The Panel can retire to consider, reconvene, and render its decision or it can reserve its decision to a later date. If the Panel finds the respondent guilty of any charges, the hearing reconvenes to permit both parties to speak to penalties. The panel then retires to decide on penalties. By-law 835 requires the Panel to notify the respondent of the decision within ten days of the decision being made.

## PANEL CHAIRPERSON ROLE

The Panel Chairperson ensures the hearing is conducted in a proper and orderly fashion. The Chairperson is responsible for controlling witness questioning to ensure that a witness is not badgered and that both parties have an opportunity to ask questions. Questions, other than those for examination, cross-examination, and re-examination must be directed through the Chairperson or as otherwise permitted by the Chairperson.

## HEARING PANEL ROLE

The Hearing Panel makes decisions based only on the evidence presented at the hearing. It is not the role of the Panel to prove or disprove either party's position. The Panel can and should ask questions of witnesses and parties.

## EXAMINATION, CROSS-EXAMINATION AND RE-EXAMINATION

The prosecution has the onus of establishing its position through documentation, submissions and testimony given under oath or affirmation. All evidence, whether documented or verbal, must be given in the presence of the respondent.

The respondent has the right to object to the admissibility of any evidence and to cross-examine any prosecution witnesses. After cross-examination, the prosecutor can question the witness to clarify matters raised in the cross-examination, but cannot introduce any new evidence through the witness.

If the prosecutor uses affidavit evidence (previously filed), they must read the parts of the affidavit and the transcripts that support the Commission's case to the Panel.

After the prosecutor presents its case, the respondent presents their position through submissions, documentation, and testimony given under oath or affirmation. The prosecutor has the same right to object to evidence and cross-examine witnesses. Following cross-examination, the respondent can re-examine their witness, but only to clarify points from cross-examination; they cannot introduce any new evidence.

The respondent can also introduce and refer to affidavit and transcript evidence at the hearing, and must read the relevant parts to the Panel.

The Panel does not identify or present evidence on behalf of either party. The Panel can ask witnesses questions. Witnesses cannot refuse to respond to requests for information or Hearing Panel questions, except on the grounds of self-incrimination. Industry Members are compellable witnesses and must answer all questions, as per By-law 827.

## ROLE OF THE RESPONDENT'S COUNSEL

The role of the respondent's counsel is to advise and consult with their client and to speak on their behalf, subject to Panel rulings. The chairman maintains control of the hearing and ensure that all hearing participants conduct themselves properly and fairly.

Any disruptive actions or any effort to harass, intimidate, coerce or confuse Panellists or the hearing parties are grounds for the exclusion of counsel (by a majority vote of the Panel). If this occurs, the hearing must be adjourned and another hearing date set to allow the respondent to obtain alternate counsel, unless the respondent agrees to proceed without counsel (this is noted in the record). An adjournment is not authorized if it appears that the counsellor's conduct was undertaken for the purpose of postponing or delaying the hearing.

## REGISTRAR ROLE

It is important to remember that the Registrar is not a member of the Panel. If the Registrar or appointed representative is present during a hearing, their role is to coordinate all administrative matters (i.e. receiving and identifying exhibits, calling witnesses, etc.) for the efficient and orderly conduct of the hearing.

The Registrar can also act as the recording secretary if the Panel has not employed someone else for this purpose.

## **RULES OF EVIDENCE**

The Hearing Panel can rule at any time on the admissibility of evidence. The Hearing Panel does not deal with questions of law and is not governed by the technical rules of evidence that apply in courts of law.

The Panel's decision is based on the best available evidence. In this regard, an original is preferred over a photocopy; direct testimony of a party to a conversation/document is preferred over hearsay evidence.

## **HEARSAY EVIDENCE**

Hearsay evidence is written or oral statements made by people that are not testifying. For example, a letter is hearsay unless the author testifies to the allegations and statements contained in the letter. In addition, evidence given by a witness about what someone else said is typically considered hearsay evidence.

The reason there are rules against hearsay evidence is that this type of evidence does not permit a party to cross-examine the person who allegedly made the statements.

Because of this, the Hearing Panel should not rely on hearsay evidence to establish a question of fact or as proof of a factual allegation. Direct testimony is always preferred over hearsay evidence.

## **REAL AND DOCUMENTARY EVIDENCE**

Any evidence in the form of documents, agreements, letters, notes, objects, etc., should be introduced into evidence as an exhibit through a witness. The witness should be able to identify, describe and explain the material being introduced, including its origin, relevance and significance.

Any real or documentary evidence introduced at a hearing is marked with an exhibit number and date.

## **WRITTEN STATEMENTS AND AFFIDAVIT EVIDENCE**

An affidavit is a written statement made under oath or affirmation. Affidavits can be submitted into evidence in lieu of witness' direct testimony provided the other party has been given the opportunity to cross-examine the witness or their allegations.

The Panel should not permit any other written statements to be admitted into evidence in lieu of a witness' direct testimony.

## **RESPONDENT ADMISSIONS**

Admissions made by the respondent are an exception to the hearsay rule. If the respondent admits to a person that they engaged in the alleged unethical conduct, then that person can be called to testify to this fact. The Panel can rely on this evidence in reaching its decision, subject to the respondent's own evidence as to whether they made the statement.

## PRIVILEGED COMMUNICATIONS

Most communications between a person and their lawyer are subject to the solicitor-client privilege and cannot be compelled or introduced into evidence.

## EXPERTS

Expert witnesses are an exception to the rule that requires witnesses to have personal knowledge of the facts and circumstances surrounding an investigation.

An "ordinary" witness cannot give their opinion as to the significance of the facts to which they testify and cannot suggest inferences be drawn from those facts. An expert witness, on the other hand, can give opinions on matters within their subject of expertise. An expert witness first testifies about to their qualifications and skills, which then establishes the basis for their opinion on the evidence.

## CHARACTER WITNESSES

Before permitting testimony relating to the character and general reputation of any person, the Panel must ensure that the testimony has a direct bearing on the matter at hand.

## STANDARD OF PROOF

The term "standard of proof" refers to the degree to which the evidence and testimony presented at the hearing demonstrates the facts set forth in the *Allegation Statement*. Due process requires that decisions be based on proof, not assumptions.

The standard of proof in a hearing is "clear, strong, and convincing", which means the measure or degree of proof that produces a firm belief or conviction that the allegation occurred. This does not require the virtual certainty of "beyond a reasonable doubt" applied in criminal prosecutions.

## OBJECTIONS

Throughout the hearing, either party can object to a procedure or the introduction of evidence. The Panel should allow each party to speak to the objection, consider each side, rule on the objection with reasons, and proceed with the hearing.

The Chairperson can choose to rule on routine objections as they are made, but more complicated objections may require a recess to confer with the other Panellists.

## RECESSES

The Panel should not hesitate to recess/adjourn the hearing at any time to protect due process guarantees, i.e. to ensure right of counsel, to allow the respondent time to prepare a defence in light of new evidence, etc. If a recess is necessary, a witness who is in the middle of their testimony needs to be cautioned against discussing their evidence with anyone during the recess. Because of this, the Panel must ensure that it does not adjourn a hearing for several days in the course of the witness's testimony.

When dealing with a request for a recess, the Chairperson needs to consider whether the other party could be adversely affected or prejudiced by the decision to allow the request.

## HEARING PANELLIST ABSENCE

If a Panellist is unable to continue serving on the Panel after the hearing starts, the remaining Panellists can proceed with the hearing with the consent of the parties. The remaining Panellists participate in the hearing and render a decision in the end.

If all parties do not agree to proceed without the full Panel, the Chairperson adjourns the hearing to a date when all Panellists can be present or a new person can be appointed to replace the original Panellist.

## TESTIMONY INDICATING VIOLATION OF ARTICLE(S) NOT CHARGED

If testimony is given that indicates possible violations of the *Act* or *By-Law* not specified in the *Allegation Statement*, the respondent should not be "put on the spot" to defend themselves against new or additional allegations.

If the respondent does not consent to amending the *Allegation Statement* at the hearing, the hearing should be adjourned until an amended *Allegation Statement* is prepared. In such event, the hearing should be continued to a date typically not less than fifteen and not more than thirty days from adjournment.

## ALL POTENTIAL RESPONDENTS NOT NAMED

If, during a hearing, testimony indicates that additional respondents should have been named in connection with the charge, the hearing needs to be recessed to permit the preparation of new *Allegation Statements*. The new respondents need time to prepare their defence, and the hearing should be continued to a date typically not less than thirty days from the adjournment.

If any of the respondents have opposing interests, or if a single hearing would be too complicated, then separate hearings should be held.

## FINAL STATEMENTS AND ADJOURNMENT

Before adjourning the hearing, the Chairperson asks each party if they wish to make a final statement for the record. The prosecutor makes the opening summary and the respondent makes the closing summary. The prosecutor may then be granted the right to reply.

The Chairperson then asks both parties if they acknowledge for the record that the hearing was conducted fairly and that they had adequate opportunity to present their positions. The Hearing is then adjourned and any recorder is turned off.



## PROCEDURES FOLLOWING THE HEARING

### MAKING THE DECISION

After the hearing is adjourned, the Panel meets to deliberate and make its decision. This is typically done immediately following the hearing while the evidence is still fresh in the Panellists' minds and to ensure that the Panel members render their decision based solely on the evidence presented at the hearing,

The presence of Hearing Panel counsel at this time is a matter of discretion. Although Commission counsel cannot write the decision for the Panel, they should review the decision prior to affecting any sanctions.

The Panel can determine:

1. There is insufficient evidence to substantiate the allegations.
2. The allegations that are substantiated constitute professional misconduct.
3. The allegations that are substantiated constitute a breach of the Act, the *Commission By-Law*, or the *Policies and Procedures*.
4. The allegations that are substantiated constitute both professional misconduct and a breach of the Act, the *Commission By-Law*, or the *Policies and Procedures*.

The onus is on the prosecutor to prove the respondent engaged in the behaviour in question. If the evidence introduced by the prosecutor fails to accomplish this, the respondent is found not guilty.

If the Panel finds that the respondent did engage in the conduct alleged in the *Allegation Statement*, the Panel must then determine an appropriate penalty.

When imposing sanctions, the Panel must consider the consistency of the penalty imposed based on the nature of the substantiated allegations. Considerations include:

- deterrent to the Industry Member whose conduct is the subject of the hearing
- deterrent to the profession generally
- best interest of the public

### FORMULATING THE DECISION

The decision is made in writing and signed by the Panellists or the Chairperson. The document includes the reasons for the decision based on the findings of fact; any discipline imposed, and indicates if the decision was by a majority or unanimous.

### WRITING THE DECISION

A Panellist is assigned to write the decision. It is important to remember that the Registrar cannot write the decision for the Panel.

## DISCIPLINE

The discipline imposed must fit the offense and must involve every consideration of fairness and equity.

If the respondent is found in violation of the *Act*, the *By-Law*, or the *Policies and Procedures*, the Panel can review the records of previous violations and sanctions to determine the discipline to be imposed.

The Hearing Panel may impose one or more penalties set out in Section 19 of the *Act* if the allegations substantiated constitute professional misconduct and/or a breach of the *Act*, the *By-Law*, or the *Policies and Procedures*.

The penalties in Section 19 of the *Act* are:

- a) cancel the person's licence
- b) suspend the licence for a specified period
- c) suspend the licence pending the satisfaction and completion of any conditions specified by the Panel
- d) permit the person to be licensed, but only under conditions specified by the Panel, which may include, but are not restricted to, a condition that the person:
  - i) successfully complete specified classes or courses of instruction
  - ii) obtain treatment or counselling, or both
- e) make the person pay a fine
- f) reprimand the person
- g) make a recommendation to the Commission that an amount, set by the Panel, be paid from the Recovery Fund in accordance with the *By-Law*, to a person to compensate them for loss or damage suffered as a result of fraud or breach of trust.

In addition to the previously listed penalties, the Panel can make any other order it considers just as per *Act* Section 19 (2).

The Hearing Panel can also order the person found guilty to pay the Commission, within a fixed period, the costs of the investigation and the hearing, including the Panel's expenses and the costs of legal services and witnesses, as per *Act* Section 19 (3).

Licence suspensions or cancellations are only for serious violations or repeating patterns of conduct violations. When an Industry Member's licence is suspended or cancelled, the Registrar is required to advertise the suspension/ cancellation in a provincial newspaper.

In the written decision, the Panel must clear about the details of any penalty imposed. If a fine is ordered, the decision specifies when the fine must be paid. If a suspension is imposed, the suspension start and end dates must be specified and accommodate the respondent's right of appeal. If the respondent is ordered to take an educational course, the Panel needs to determine when the course is available and specify how long the Industry Member has to successfully complete the course.

The decision must include:

1. The Panel's findings of fact
2. The conclusions made at the hearing
3. The reasons for the decision
4. The penalties, if any, imposed

## **COMMUNICATING THE DECISION**

When all Panellists approve of the decision, the decision is given to the Registrar for forwarding to the parties to the hearing. The Panel decision must be sent to the respondent or the respondent's lawyer within ten days of the decision. A cover letter is also sent to the respondent, advising of their rights of appeal.

The decision is also sent to the complainant after the decision is final, i.e. after the time limit for an appeal has expired, or after an appeal is disposed.

## **ENFORCING THE DECISION AND THE DECISION EFFECTIVE DATE**

Decisions are enforced after the time limit for an appeal expires or until an appeal disposed. The appeal period is thirty days from the date of the Panel's decision (the effective date), and the respondent must be clearly advised of the right to appeal the decision to the Nova Scotia Court of Appeal, as per *Act* Section 24.

The decision's effective date is the date the decision is given, unless the terms of the decision provide otherwise.

## **FAILURE TO COMPLY WITH THE DECISION**

When a respondent does not file an appeal and fails to comply with the Panel's decision, the Registrar can suspend the respondent's licence. Further, the Commission can also apply for a Supreme Court judgment and have the decision enforced as if it was a court decision, as per *Act*, Section 19 (6).