

## **DISCIPLINE TRIBUNAL AND APPEALS TRIBUNAL - TERMS OF REFERENCE**

**Approved by the OMVIC Board of Directors: June 19, 2024**

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### **PURPOSE**

The Discipline Tribunal is established in accordance with the *Motor Vehicle Dealers Act (2002)* (the "MVDA"), subsection 17 (1) to hear and determine issues concerning whether registrants have failed to comply with the Code of Ethics, as set out in Ontario Regulation 332/08. The Appeals Tribunal is established to consider appeals from the Discipline Tribunal, in accordance with the MVDA, subsection 17 (2).

The Discipline Tribunal and the Appeals Tribunal may also be asked by the OMVIC Board of Directors (the "Board of Directors") to consider and make recommendations regarding changes to applicable legislation, regulations, by-laws, policies, and programs that fall within the scope and purpose of those tribunals, or any other special projects, as are appropriate to their function.

These Terms of Reference are subject to the MVDA, Ontario Regulation 332/08, other regulations made under the MVDA, the *Statutory Powers Procedures Act*, and other applicable statutes and regulations.

### **COMPOSITION**

For the purposes of subsection 17 (3) of the MVDA, the Discipline Tribunal and the Appeals Tribunal shall each consist of at least five members, at least one of whom is a public member.

A public member is defined as:

- a) an individual who has never been a registrant, former registrant nor a person registered at any time under the MVDA;
- b) an individual other than a shareholder, officer, director or employee of a registrant;
- c) an individual other than an officer, director or employee of a trade association that represents registrants or the interests of registrants.

A registrant member is defined as:

- a) an individual registered as a salesperson, officer or director of a dealer pursuant to the MVDA, whose registration is not suspended, and whose registration is not currently subject to conditions imposed by the License Appeals Tribunal;
- b) not currently the subject of a proposal issued by the Registrar pursuant to section 9 of the MVDA;
- c) registered under the MVDA for at least two years prior to the appointment to the Discipline Tribunal or Appeals Tribunal;
- d) an individual not previously found by the Discipline Tribunal to have violated the Code of Ethics, had his or her registration refused or revoked, or convicted or found guilty of an industry-related offence under any law; and
- e) fully co-operative with an inspection of his or her business premises and/or books and records, for the purpose of ensuring compliance with the MVDA and the regulations and eligibility for appointment to the Discipline Tribunal or Appeals Tribunal.

## **APPOINTMENTS**

Members of the Discipline Tribunal and the Appeals Tribunal are appointed by the Board of Directors. Members of the Board of Directors cannot be appointed to either the Discipline Tribunal or the Appeals Tribunal.

When appointments are made, individuals are appointed to serve on both tribunals, unless otherwise indicated.

The Board of Directors shall appoint one member of the Discipline Tribunal to serve as the Chair of that tribunal, and two additional members of the tribunal, to serve as its Vice Chairs. The Board of Directors shall appoint one member of the Appeals Tribunal to serve as the Chair of that tribunal, and two additional members of the tribunal to serve as its Vice Chairs.

## **TERMS**

Tribunal members are appointed by the Board of Directors for three-year terms and can be reappointed as directed by the Board of Directors. Tribunal member terms may be shortened or extended under exceptional circumstances or in accordance with succession planning, at the discretion of the Board of Directors. Membership changes can occur during the year, but typically changes occur in November of any given year.

All tribunal members, if otherwise qualified, are eligible for reappointment, provided that the tribunal member has not served an aggregate of nine (9) years on the tribunals, except where the Board of Directors deems it appropriate to extend a members' maximum term due to extraordinary circumstances.

The Chair of the Discipline Tribunal shall be appointed for a three-year term. The Chair of the Appeals Tribunal as well as the Vice Chairs of both the Appeals Tribunal and the Discipline Tribunal shall be appointed for one-year terms.

Members who have previously served or are currently serving as Vice-Chairs of the Discipline Tribunal or the Appeals Tribunal may be recommended to succeed the Chair of either tribunal.

The appointment of a member of either tribunal can be terminated at any time for cause.

## **SUCCESSION PLANNING**

The Governance and Nominating Committee of the Board of Directors will meet to make recommendations on member, Chair and Vice-Chair appointments and re-appointments to the Board of Directors in anticipation of upcoming vacancies.

This section of the Terms of Reference is applicable exclusively to the 2024 recruitment process.

## **REQUIRED COMPETENCIES**

Members of the Discipline Tribunal and the Appeals Tribunal must be persons of good character, honesty, integrity and financial responsibility. They must agree to comply, and co-operate with, any reasonable background check, and must successfully complete the OMVIC certification course within three months of appointment. They must also possess the skills, knowledge, education and experience as outlined in the Discipline Tribunal and Appeals Tribunal Skills Matrix.

Members must possess superior analytical, written and verbal communication skills. Members must be Ontario residents at least eighteen (18) years of age.

Members should have a working knowledge of the MVDA, the Rules of Practice, and have other relevant experience and/or education reasonably necessary to conduct an administrative hearing.

Members who serve as Chairs, Vice Chairs and/or who prepare decisions and orders on behalf of their tribunals, must be skilled in performing these roles.

## **DUTIES AND RESPONSIBILITIES**

Tribunal members will:

- a. Review discipline hearing materials in a timely manner;
- b. Attend all tribunal meetings to the best of their abilities;
- c. Abide by the Board of Director's conflict of interest policies;
- d. Treat deliberations and considerations upon which discipline proceedings and decisions are based as confidential.
- e. Disclose real, potential or perceived conflicts of interest in advance of tribunal discussions and refrain from discussion or voting if necessary.

### **Determinations by the Discipline Tribunal**

Pursuant to section 17(4) of the MVDA, the Discipline Tribunal may make a determination that a registrant has failed to comply with the Code of Ethics and order any of the following:

- Require the registrant to take further educational courses
- Require the dealer to arrange and/or fund education courses for salespersons employed by the dealer
- Impose such fine the panel considers appropriate 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 such period and upon such terms as the tribunal designates.
- Fix and impose costs to be paid by the registrant to OMVIC.

### **Discipline Dispositions without a Hearing**

Where the parties to a discipline proceeding consent to a disposition, the Discipline Tribunal Chair (or designated Vice-Chair) shall chair an assigned three person Review Panel to consider the proposed disposition in accordance with Rule 1.07 of the Rules of Practice. The Review Panel shall review the proposed disposition in a fair, impartial and expeditious fashion. If the Review Panel agrees with the proposed disposition, it will issue an order to this effect to the parties. In the event that a proposed disposition is not accepted by the Review Panel, the matter will proceed to a Discipline Hearing.

### **Discipline Hearings**

When a matter is referred to the Discipline Tribunal for a Hearing to be conducted, the Tribunal Chair (or designated Vice-Chair):

- a) Shall assign a panel of at least three members whereby at least two of the members of the panel must be registrants or officers or directors of a registered motor vehicle dealer; and at least one panel member must be a public member.

- b) Shall ensure that if a registered motor vehicle dealer is the subject of the proceeding, at least one of the registrants who is a member of the panel must be a registered motor vehicle dealer or an officer or director of a registered motor vehicle dealer.
- c) Shall ensure that if a registered salesperson is the subject of the proceeding, at least one of the registrants who is a member of the panel must be a registered salesperson.
- d) Shall designate one panel member to act as Chair of the panel.
- e) Through the panel's Chair, shall ensure that one member (typically the panel's public member) is appointed to prepare the first draft of the panel's Decision and Reasons;
- f) Shall ensure that discipline decisions are provided to OMVIC for publication on its website and elsewhere.
- g) Shall ensure that the calendar of upcoming discipline matters is kept updated and forwarded to OMVIC for publication on its website or elsewhere.

### **Closed Hearings**

If a hearing before the Discipline Tribunal or Appeals Tribunal is closed to the public, the tribunals may also order that evidence given and submissions made at the hearing not be disclosed to any member of the public.

### **Appeals of Discipline Decisions**

In connection with appeals related to Discipline Tribunal decisions, the Appeals Tribunal Chair (or designated Vice-Chair):

- a) Shall assign an appeals panel to consider the appeal, along with any submissions from the parties. The panel has all the jurisdiction and powers of the Appeals Tribunal with respect to hearing and determining the appeal.
- b) Shall ensure the panel is comprised of at least three members whereby at least two of the members of the panel must be registrants or officers or directors of a registered motor vehicle dealer; and at least one panel member must be a public member.
- c) Shall ensure that if a registered motor vehicle dealer is the subject of the proceeding, at least one of the registrants who is a member of the panel must be a registered motor vehicle dealer or an officer or director of a registered motor vehicle dealer.
- d) Shall ensure that if a registered salesperson is the subject of the proceeding, at least one of the registrants who is a member of the panel must be a registered salesperson.
- e) Shall ensure that a person who was a member of the panel of the Discipline Tribunal that made the order being appealed must not be assigned to the panel of the Appeals Tribunal that hears and determines the appeal.
- f) Shall ensure the decision of the Appeals Panel is forwarded to OMVIC for publication published on its website or elsewhere.

The Appeals Tribunal may by order overturn, affirm or modify the order of the Discipline Tribunal and may make an order as directed by the MVDA.

## **ADMINISTRATIVE MATTERS**

### **MEETINGS**

The Tribunals may meet on an ad hoc basis throughout the year as requested by their respective Chairs. Meetings may be held in person, by teleconference, videoconference, or other such communication method.

## **MINUTES**

Tribunals should maintain minutes of its meetings in which should be recorded all decisions and actions taken by it.

## **REPORTING**

Each Tribunal is accountable to the Board of Directors. The Chair submits a report on the activities of the Tribunal(s) to the Board of Directors annually. Reports are typically provided during the April Board of Directors meeting but the timing is subject to the discretion of the Board of Directors Chair.

## **ADMINISTRATIVE SUPPORT**

The Manager, Discipline/Appeals Tribunals and the Chief Administrative Officer provide senior administrative support to each Tribunal.

## **INDEPENDENT LEGAL COUNSEL**

In connection with matters about which any member of each tribunal would value independent legal counsel, the Tribunal Chair (or designated vice-chair), or Panel Chair will consult with the Tribunal's independent legal counsel on an as needed basis. Associated costs are borne by OMVIC.

## **TRAINING**

Every member of each tribunal is given an opportunity to participate in at least one training session per year. All Tribunal Chairs and Vice Chairs must complete SOAR (Society of Ontario Adjudicators and Regulators) training during their first term in that position (if not already completed). The cost for such training will be borne by OMVIC.

## **EXPENSES**

Expenses incurred by tribunal members will be reimbursed in accordance with OMVIC's prevailing Board Remuneration Policy and Travel and Meal Expense Policy.

## **RESPONSIBILITY FOR POLICIES/DOCUMENT REVIEW**

Each Tribunal is responsible for reviewing at least annually:

- a) Tribunal Terms of Reference
- b) Code of Ethics
- c) Discipline Tribunal Rules of Practice
- d) Discipline Tribunal and Appeals Tribunal Skills Matrix

## **AMENDMENTS**

These Terms of Reference may be amended, varied or modified by agreement of the Board of Directors.