

## Table of Contents

Rule 1 - INTERPRETATION AND APPLICATION .....	1
1.01 Definitions .....	1
“Days” refer to rule 3.07 .....	1
1.02 Interpretation of Rules.....	3
1.03 Application of Rules .....	3
1.04 Substantial Compliance .....	3
Rule 2 - PROCEDURES PRIOR TO HEARING .....	4
Notice of Hearing.....	4
Setting Hearing Dates .....	4
Adjournments .....	5
Location of Hearings.....	5
Serving or Delivering Documents .....	5
Filing of Documents.....	6
Rule 3 - GENERAL RULES.....	7
Powers of the Discipline Committee .....	7
Accommodation of <i>Human Rights Code</i> -related needs.....	8
Language of Proceedings.....	8
Communications with the Discipline Committee and other parties .....	8
Attendance at Hearing.....	9
Representatives.....	9
Calculation of Time .....	9
Recording Proceedings .....	10
Rule 4 - WAIVER OF A RULE.....	10
Methods of Waiving a Rule.....	10
Rule 5 - MOTIONS.....	10
<b>5.01</b> Process for Bringing a Motion.....	10
<b>5.02</b> Limitations on Bringing a Motion in Advance of the Hearing.....	11
<b>5.03</b> Scheduling a Motion Before the Hearing .....	11
<b>5.04</b> Assigning a Motion Panel for Pre-Hearing Motions .....	12
<b>5.05</b> Limits on Submissions on Motions.....	12
<b>5.06</b> Evidence on Motions.....	12
<b>5.07</b> Hearing Motions Electronically.....	13
<b>5.08</b> Written Order .....	13

Rule 6 - DISCLOSURE AND PRODUCTION OF DOCUMENTS .....	13
<b>6.01</b> Disclosure .....	13
<b>6.02</b> Motions for Production of Documents from a Third Party .....	15
Rule 7 - WRITTEN AND ELECTRONIC HEARINGS .....	15
<b>7.01</b> Ability to Conduct a Hearing in Writing or Electronically .....	15
<b>7.02</b> Electronic Hearings.....	15
<b>7.03</b> Written Hearings .....	16
Rule 8 - PROCEDURE DURING THE HEARING.....	16
<b>8.01</b> Public Access to Hearing .....	17
<b>8.02</b> Electronic Devices and Publication of Proceedings .....	18
<b>8.03</b> Oral and Written Arguments .....	19
<b>8.04</b> Use of Evidence by Hearing Panel .....	19
<b>8.05</b> Evidence of Executive Director .....	19
<b>8.06</b> Withdrawal of Allegations.....	19
8.07 Witnesses .....	19
Rule 9 - DECISIONS .....	21
<b>9.01</b> General .....	21
<b>9.02</b> Corrections .....	21
Rule 10 - COSTS .....	21
<b>10.01</b> Ability to order costs.....	21
<b>10.02</b> Submissions regarding costs .....	22

**RULES OF PROCEDURE OF THE DISCIPLINE COMMITTEE OF THE  
BOARD OF CANADIAN REGISTERED SAFETY PROFESSIONALS**

**Preamble**

Throughout these Rules, commentary is provided to assist counsel, BCRSP staff, Committee members and Certificants in interpreting and applying these Rules.

The intent of these Rules is to bring formality, certainty and clarity to the hearing process while allowing Discipline Panels to retain flexibility in the process. The Rules are meant to be understood by lay persons and apply to all Discipline proceedings.

**RULE 1 - INTERPRETATION AND APPLICATION**

**1.01 Definitions**

(1) In these Rules, unless the context requires otherwise,

"Appeals Committee" means the Appeals Committee of the BCRSP;

"BCRSP" means the Board of Canadian Registered Safety Professionals/Conseil canadien des professionnels en sécurité agréés;

"By-laws" means the by-laws of the BCRSP;

"Certificant" means a member of the BCRSP who is the subject of a hearing before the Discipline Committee; a Certificant includes a person whose certificate has been suspended; a person who has had their certificate of registration revoked or who allowed it to expire; and a person who has resigned from the BCRSP .

"Chair" means the Chair of the Discipline Committee or his or her designate;

"Counsel for the BCRSP" means the lawyer or lawyers retained by the BCRSP to prosecute allegations against one or more Certificants before the Discipline Committee;

"Days" refer to rule 3.07

"Discipline Committee" means the Discipline Committee of the BCRSP , and includes a panel of the Discipline Committee selected by the Chair, pursuant to the By-laws;

"Discipline Panel" means a panel of the Discipline Committee as selected by the Chair or the Vice-Chair of the Discipline Committee in compliance with the by-laws of the BCRSP;

"Electronic Hearing" means a Hearing held under Rule 7 by conference telephone call or videoconference or some other form of electronic technology allowing persons to hear and communicate with one another simultaneously, and can include a pre-hearing conference, a motion, a Discipline Hearing, the rendering of an oral reprimand and a Hearing for reinstatement.

"Executive Director" means the Executive Director of the BCRSP;

"Hearing" means a hearing in any proceeding before the Discipline Committee, including in-person, electronic or written hearings

"Independent legal counsel" means the lawyer or lawyers appointed by the BCRSP to provide legal advice to the Discipline Committee;

"Motion" means a request made to the Discipline Committee to make an order in a particular proceeding;

"Notice of Hearing" means a document issued by the BCRSP which contains one or more allegations of professional misconduct against a Certificant;

"Oral hearing" means a Hearing in which the parties attend before a Discipline Panel in person;

"Order" means any decision made by the Discipline Committee or the Chair and includes a direction given by the Discipline Committee or the Chair;

"Party" means any person that the Discipline Committee specifies as a party under which the proceeding arises; in the event that the Professional Conduct Committee has referred more than one Certificant to the Discipline Committee with respect to the same complaint, the Discipline Committee may specify whether more than one Certificant will be a party;

"Proceeding" means any step in the discipline hearing process and includes a motion and the hearing itself;

“Professional Conduct Committee” means the Professional Conduct Committee of the BCRSP;

“Rules” means these Rules of Procedures.

#### 1.02 Interpretation of Rules

- (1) These Rules should be interpreted fairly and, where fairness for the Certificant would not be compromised, in a way that protects the public interest and the interests of witnesses.
- (2) These Rules apply to all processes, procedures and proceedings of the Discipline Committee, unless a Rule specifically states otherwise.
- (3) These Rules will be liberally interpreted and applied by the Discipline Committee to facilitate a fair, open and accessible process and to ensure the fair, proportional and timely resolution of the merits of the proceedings before the Discipline Committee.
- (4) If it considers it appropriate in the particular circumstances, the Discipline Committee may depart from these Rules or may waive or vary any provision of these Rules.
- (5) If the Discipline Committee issues a procedural order that conflicts with these Rules, the order shall prevail over these Rules.
- (6) The BCRSP may issue practice directions or guidelines to explain or clarify these Rules.

#### 1.03 Application of Rules

- (2) These Rules apply to all proceedings before the Discipline Committee of the BCRSP.

#### 1.04 Substantial Compliance

- (1) Substantial compliance with a form or notice required by or under these Rules is sufficient.
- (2) No proceeding is invalid only because of a defect or other irregularity in form.

## **RULE 2 - PROCEDURES PRIOR TO HEARING**

### Notice of Hearing

- (1) A Notice of Hearing must include:
  - (a) the time and place on which the parties must appear before a Discipline Panel to set a date for the Hearing;
  - (b) the purpose of the Hearing, including details about the allegations of professional misconduct and/or incompetence;
  - (c) a statement that if the Certificant does not attend at the Hearing, the Discipline Panel may proceed in the Member's absence and the Member will not be entitled to any further notice in the proceeding; and
  - (d) a statement that a copy of these Rules will be provided to the Member upon request.
- (2) Subject to sub-rule 2.01(3), a Notice of Hearing must be served upon the Certificant personally or by sending a copy by mail addressed to the Certificant at the Certificant's last known residence or business address as shown in the records of the BCRSP. If sent by mail to the Certificant's last known residence or business address there is a rebuttable presumption that it was received by the Certificant on the fifth day after mailing.
- (3) Where a Certificant has retained counsel or a representative, the Notice of Hearing may be served on the Certificant's counsel or representative.
- (4) A Discipline Panel may at any time permit a Notice of Hearing to be amended to correct minor errors or omissions if it is of the opinion that it is fair to do so, and the Discipline Panel may make any order it considers necessary to prevent prejudice to the Certificant.

### Setting Hearing Dates

- (5) Where the BCRSP and the Certificant are not able to agree in advance on a Hearing date, the certificant must attend before a Member of the Discipline Committee appointed by the Chair of the Discipline Committee on the date indicated in the Notice of Hearing to set a date for a Hearing.

## Adjournments

- (6) Where a party requests an adjournment, a Discipline Panel will, in making its decision on whether or not to grant it (and, if so, on what terms), attempt to balance the right of the parties to a fair hearing against the desirability of an expeditious hearing. In so doing, the panel should take into account the following considerations:
- (a) prejudice to a person;
  - (b) how far in advance of the hearing the requesting party was notified of the Hearing date ;
  - (c) whether the request for an adjournment was made promptly;
  - (d) the efforts made to avoid requiring an adjournment;
  - (e) the number of prior requests for an adjournment;
  - (f) the proposed length of the adjournment;
  - (g) the costs of an adjournment;
  - (h) the public interest; and
  - (i) any other factor it deems relevant to determine whether it should adjourn the Hearing.
- (7) A Discipline Panel may impose reasonable terms of the adjournment.

## Location of Hearings

- (8) Hearings will be held at the offices of the BCRSP at 6700 Century Ave., Ste. 100 in Mississauga, Ontario L5N 6A4, unless held in writing or electronically pursuant to Rule 7 or as otherwise ordered by the Discipline Committee.

## Serving or Delivering Documents

- (9) A document is deemed to be served or delivered if it is:
- (a) Served personally;

- (b) Sent by registered mail;
- (c) Sent by regular mail on the 5th day after being mailed;
- (d) Sent by e-mail on the same day the e-mail was sent, if receipt of the e-mail is confirmed by the recipient (and every recipient has a duty to confirm receipt of all e-mail messages in proceedings covered by these Rules);
- (e) Delivered by courier on the 2nd day after the document was given to the courier; or
- (f) Sent as directed by the Discipline Committee;

unless the person to whom the notice is to be given establishes that he or she, acting in good faith and through absence, accident, illness or other causes beyond his or her or its control, failed to receive the notice in a timely way.

- (10) Subject to sub-rule 2.05(1), documents served or delivered after 4:00 p.m. will be deemed to have been received on the next day that is not a holiday.

#### Filing of Documents

- (11) Any document may be filed with the Discipline Committee by:
  - (a) leaving it with the receptionist at the BCRSP offices;
  - (b) sending it by courier to the BCRSP offices;
  - (c) if it is less than 20 pages, by fax to the BCRSP at 1-855-351-9221; or
  - (d) sending it by email to the BCRSP at <BCRSPNotification@bcrsp.ca> if prior approval for email exchange is given in writing by the Chair of the Discipline Committee or a representative of the Discipline Committee designated by the Chair.
- (12) A document to be filed with the Discipline Committee must be clearly marked, "Attention: Discipline Committee".



### **RULE 3 - GENERAL RULES**

#### Powers of the Discipline Committee

- (1) The Discipline Committee may exercise any of its powers under these Rules at the request of a party or on its own initiative, except where the Rules state otherwise.
- (2) The Discipline Committee may:
  - (a) lengthen or shorten any time limit in these Rules;
  - (b) add or remove a party;
  - (c) allow any filing to be amended;
  - (d) schedule a proceeding, with or without consultation with the parties;
  - (e) direct that a proceeding be expedited;
  - (f) make orders and recommendations regarding the scheduling of proceedings where two or more proceedings involve the same or similar questions of fact, law or policy;
  - (g) determine the location of a proceeding;
  - (h) determine whether an in-person, electronic or written proceeding will be held;
  - (i) convert the form of a proceeding at any stage;
  - (j) direct the order in which issues in a proceeding will be considered and determined;
  - (k) define and narrow the issues;
  - (l) determine and direct the order in which evidence or submissions will be presented;
  - (m) call any witnesses it deems necessary, except the Certificant who is the subject of the proceeding;
  - (n) question a witness;

- (o) limit the evidence or submissions on any issue;
- (p) advise when additional evidence, submissions or witnesses may assist the Discipline Committee;
- (q) make such further orders as are necessary to give effect to an order or direction under these Rules;
- (r) make such orders or give such directions as are necessary to prevent abuse of its processes and ensure that the conduct of participants in Discipline Committee proceedings is courteous and respectful of the Discipline Committee, parties and others; and
- (s) take any other action the Discipline Committee determines is appropriate.

#### Accommodation of *Human Rights Code*-related needs

- (1) Parties, representatives and witnesses are entitled to accommodation of *Human Rights Code*-related needs by the Discipline Committee and should notify the Chair as soon as possible if accommodation is required.
- (2) These Rules will be interpreted and applied in a manner that is consistent with the Ontario *Human Rights Code*.
- (3) The Discipline Committee may make such orders as are required to ensure the accessibility of the Discipline Committee's processes to persons requiring accommodation.

#### Language of Proceedings

- (4) Discipline Committee proceedings may be conducted in English, in French or both.

#### Communications with the Discipline Committee and other parties

- (5) Unless otherwise required by the Discipline Committee, all written communications with the Discipline Committee, including email correspondence, must be addressed to the Executive Director of the BCRSP and the Discipline Committee may direct the delivery of additional copies to other parties.

- (6) A party or a party's representative must notify the Discipline Committee, in writing, of any change in the person's contact information as soon as possible.
- (7) No member of a panel holding a hearing shall communicate outside the hearing, in relation to the subject-matter of the hearing, with a party or the party's representative unless the other party has been given notice of the subject-matter of the communication and an opportunity to be present during the communication.

#### Attendance at Hearing

- (8) Failure by a Certificant who is a party to attend a hearing may result in an adverse inference being drawn against the Certificant by the Discipline Committee.

#### Representatives

- (1) A party may represent himself/herself in a proceeding or be represented by a representative, including legal counsel.
- (2) The Discipline Committee does not assign or pay for the costs of retaining a representative.
- (3) If a party is represented, the party or his or her representative must notify the Discipline Committee of that fact in writing in advance of the hearing.
- (4) A representative must notify the Discipline Committee immediately if he or she ceases to represent the party and must provide the Discipline Committee with the party's most current contact information.

#### Calculation of Time

- (1) Where an order of the Discipline Committee or a Rule refers to a number of days, the reference is to calendar days.
- (2) Where an action is to be done within a specified number of days, the days are counted by excluding the first day and including the last day.
- (3) When the time for doing something expires on a holiday, a Saturday or a Sunday, that thing may be done on the next day that is not a holiday.

## Recording Proceedings

- (1) Discipline proceedings will be recorded, either by tape recording or by a court stenographer approved by the Discipline Committee.

## **RULE 4 - WAIVER OF A RULE**

### Methods of Waiving a Rule

- (1) Any provision of these Rules may be waived on the consent of the parties or upon an order of the Discipline Committee.
- (2) A party requesting that a provision of these Rules be waived, who does not have the consent of the parties shall bring a motion to the Discipline Committee permitting the waiver.
- (3) A motion under this Rule may be made before or after a failure to comply with these Rules has occurred.
- (4) The Discipline Committee may refuse to grant a motion for a waiver from a provision of these Rules where a party does not act in a timely manner.
- (5) The Discipline Committee may waive a provision of these rules on its own initiative if it first gives notice to the parties and provides an opportunity for submissions to be made in writing or, if at a hearing, orally.

## **RULE 5 - MOTIONS**

### **5.01** Process for Bringing a Motion

- (1) Motions brought in advance of the Hearing must be brought by way of a notice of motion. If the motion is brought at any other time, a notice of motion should be used when practicable.
- (2) Any notice of motion must set out the grounds for the motion and the relief requested, and include copies of any evidence upon which the moving party wishes to rely.

## **5.02** Limitations on Bringing a Motion in Advance of the Hearing

- (1) Subject to sub-rule 5.02(2), only motions which are procedural or temporary may be brought by a person in advance of the Hearing. This may include motions for:
  - (a) the exchange of documents;
  - (b) the oral or written examination of a party;
  - (c) the exchange of witness statements and reports of expert witnesses;
  - (d) the provision of additional details (particulars) about the allegations;
  - (e) disclosure;
  - (f) adjourning the Hearing; and/or
  - (g) waiving a Rule.
- (2) A motion with respect to the following matters must be heard at the Hearing:
  - (a) the exclusion of the public from all or part of a Hearing;
  - (b) whether two or more matters directed or referred to the Committee, whether or not involving the same member, should be heard together;
  - (c) the exclusion of witnesses from the Hearing;
  - (d) orders respecting the accommodation of witnesses;
  - (e) orders relating to the production of documents from third parties; and
  - (f) any matter that a panel hearing a motion adjourns to the Discipline Panel presiding over the Hearing.

## **5.03** Scheduling a Motion Before the Hearing

- (1) Where the parties are able to agree in advance to the date and time to be scheduled for the hearing of the motion, the hearing of the motion will proceed on the date and time agreed to by the parties.

- (2) If the person bringing the motion cannot, after reasonable efforts, obtain agreement for the date and time for the hearing of the motion, the person must contact the Executive Director of the BCRSP. The Director will fix a date and time for a telephone conference with the Chair for the purpose of fixing the date and time for the hearing of the motion.
- (3) All pre-hearing motions will be heard not less than 15 days before the Hearing unless the motion must be heard during the Hearing.
- (4) A person bringing a pre-hearing motion must provide to all parties a copy of the Notice of Motion and materials in support of the motion not less than 15 days before the motion is to be heard.
- (5) The parties responding to the motion must provide their materials to all parties not less than 7 days before the motion is to be heard.

#### **5.04 Assigning a Motion Panel for Pre-Hearing Motions**

- (1) The Chair must assign a Discipline Panel to hear each pre-hearing motion.
- (2) A request to have a motion heard by a person who will not sit on the Discipline Panel presiding over the Hearing must be brought to the attention of the BCRSP at the time the party files his or her notice of motion.

#### **5.05 Limits on Submissions on Motions**

- (1) The Discipline Panel may set reasonable limits on oral and written submissions by the parties.

#### **5.06 Evidence on Motions**

- (1) Evidence on a motion shall be given by affidavit unless the Discipline Committee directs that it be given in some other form.
- (2) All affidavits used on a motion shall,
  - (a) be confined to the statement of facts within the personal knowledge of the deponent, except that the affidavit may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit; and

- (b) be signed by the deponent and sworn or affirmed before a person authorized to administer oaths or affirmations, which person shall also mark all exhibits as such to the affidavit.
- (3) A motion participant may not cross-examine the deponent of an affidavit filed by another motion participant unless the Discipline Committee directs otherwise.
- (4) The Discipline Committee shall not direct that the deponent of an affidavit be cross-examined unless the interests of the case require otherwise.
- (5) Subrules 5.06(3) and 5.06(4) do not prevent a deponent from being cross-examined on an affidavit during the hearing itself.

#### **5.07 Hearing Motions Electronically**

- (1) Motions shall be heard electronically in accordance with these Rules unless the Chair or the Discipline Committee directs otherwise.

#### **5.08 Written Order**

- (1) After a motion has been determined, the Chair shall provide a written order and deliver it to each party.
- (2) Rule 5.08(1) does not apply to orders made on the record during the hearing.

### **RULE 6 - DISCLOSURE AND PRODUCTION OF DOCUMENTS**

#### **6.01 Disclosure**

- (1) The BCRSP must provide the Certificant with disclosure of all relevant material that is not privileged not less than 10 days before the Hearing. This must include disclosure of the identity of any witnesses the BCRSP intends to rely upon, and the opportunity to examine any documentary evidence.
- (2) Any person who receives disclosure must only use the information for the purposes of the proceedings, and must not use it for any other reason. The person must also ensure that any other person to whom he or she gives the information undertakes to similarly restrict the use of the information.

- (3) Where the Discipline Panel orders additional disclosure or production of documents in the possession of a third party, it may, to protect the privacy of any person, impose terms or conditions upon the extent and method of disclosure or the use of the information.
- (4) This Rule does not prevent the BCRSP from using the information obtained for other regulatory purposes.

**Commentary: Disclosure by BCRSP**

The timely disclosure of all relevant information in the BCRSP's possession is important to the fairness of discipline proceedings. The BCRSP's disclosure obligation is a continuing one. After initial disclosure has been made, the BCRSP must provide timely disclosure of relevant information subsequently coming into its possession or knowledge. There are, however, circumstances where the BCRSP is not required to disclose information because it is privileged.

These principles have been described by the Ontario Court of Justice (General Division) in *Markandey v. Board of Ophthalmic Dispensers*, [1994] O.J. No. 484. In that case, the Court stated, "the importance of full disclosure to the fairness of...disciplinary proceedings...cannot be overstated". The Court went on to explain that:

...tribunals should disclose all information relevant to the conduct of the case, whether it be damaging to or supportive of a respondent's position in a timely manner unless it is privileged as a matter of law. Minimally, this should include copies of all witness statements and notes of the investigators. The disclosure should be made by counsel to the Board after a diligent review of the course of the investigation. Where information is withheld on the basis of its irrelevance or a claim of legal privilege, counsel should facilitate [a] review of these decisions, if necessary. The absence of a request for disclosure, whether it be for additional disclosure or otherwise, is of no significance. The obligation to make disclosure is a continuing one. The Board has a positive obligation to ensure the fairness of its own processes. The failure to make proper disclosure impacts significantly on the appearance of justice and the fairness of the hearing itself. Seldom will relief not be granted for a failure to make proper disclosure.

In recognizing the importance of these principles to the fairness of proceedings before it, the BCRSP considers that, barring exceptional circumstances, disclosure should take



place no later than 30 days prior to the pre-hearing conference and, in the case of documents that subsequently come into the BCRSP's possession, on a timely basis.

## **6.02 Motions for Production of Documents from a Third Party**

- (1) A motion by a party relating to the production of documents in the possession of a third party cannot be brought before the Hearing begins. The notice of motion relating to the production of documents must be provided to the person possessing the documents and to any other person having a significant interest, including a privacy interest, in the documents.
- (2) In considering such a motion, the Discipline Panel must take into account:
  - (a) the relevance of the document to a significant issue in the Hearing;
  - (b) whether it would be unfair to require the party bringing the motion to proceed to the Hearing without the document;
  - (c) any claim that the document is privileged; and
  - (d) whether any person has a significant interest in the document, including a privacy interest.

## **RULE 7 - WRITTEN AND ELECTRONIC HEARINGS**

### **7.01 Ability to Conduct a Hearing in Writing or Electronically**

- (1) A Discipline Panel may allow all or part of a Hearing to be heard in writing and/or electronically if:
  - (a) the parties consent; or
  - (b) the parties do not consent, and the Discipline Panel, after hearing submissions from the parties, makes an order that the Hearing should be heard in this way.

### **7.02 Electronic Hearings**

- (1) A party must be served with a Notice of Hearing indicating that all or part of the Hearing is going to be heard electronically, unless the hearing has been

converted to an electronic hearing after a Notice of Hearing indicating an oral or written hearing was previously issued.

- (2) Unless otherwise provided in these Rules, every person participating in the Electronic Hearing must deliver every document that he or she intends to rely upon not less than 3 days before the Hearing.
- (3) Not less than 48 hours before an Electronic Hearing is scheduled to begin, every person participating in the Hearing must give notice to the Director, Professional Conduct, of the BCRSP of the telephone number and location where he or she can be reached for the Hearing.
- (4) Every person participating in the Electronic Hearing must ensure that he or she can be reached at the telephone number provided to the Director, Professional Conduct, of the BCRSP not less than 5 minutes before the beginning of the Hearing.

### **7.03 Written Hearings**

- (1) If all or part of a Hearing is to be held in writing, a party must be served with a Notice of Hearing indicating this, unless the hearing has been converted to a written hearing after a Notice of Hearing indicating an oral or electronic hearing was previously issued.
- (2) Where a Written Hearing is to be held, the Discipline Panel must fix the dates and times by which submissions and/or evidence must be exchanged by the parties, and provided to the panel.

## **RULE 8 - PROCEDURE DURING THE HEARING**

### **Commentary: Procedure at Discipline Hearing**

A Discipline Hearing is a formal proceeding. It is an adversarial process in which two competing parties, the BCRSP and the Certificant, present their sides of the case. The role of the Discipline Panel is:

- (a) to ensure that both parties present their cases fairly;
- (b) to listen impartially to the evidence and arguments; and,

- (c) after the parties have completed their presentations, to decide the issues.

The Hearing is usually conducted in the same order used in the civil courts. This means that, generally, the party initiating a segment of the Hearing goes both first and last in that segment. Thus, at the beginning of a Hearing, the BCRSP (which initiated the Hearing) will lead evidence first, the Certificant will call his or her evidence second, and the BCRSP will then call any reply witnesses.

The party who calls a witness leads that witness's evidence first, the other party cross-examines next, and then the party calling the witness re-examines. In closing argument, the BCRSP usually goes first, the Certificant goes second and the BCRSP may reply last.

When a party brings a motion, that party (whether the BCRSP or the Certificant) goes first, the responder second, then the party who brought the motion replies.

#### **8.01 Public Access to Hearing**

- (1) Subject to sub-rule 8.01(2), a Hearing shall be open to the public.
- (2) A Discipline Panel may make an order that the public be excluded from all or part of a Hearing if the panel is satisfied that,
  - (a) a witness or party may disclose matters involving public security;
  - (b) a witness or party may disclose financial or personal or other matters of such a nature that the harm created by disclosure would outweigh the benefits of an open hearing;
  - (c) a person involved in a criminal, civil or other proceeding may be prejudiced; or
  - (d) the safety of a person may be jeopardized.
- (3) In situations where the Discipline Panel makes an order excluding the public from the Hearing, it may make other orders that it considers necessary to prevent the matters disclosed at the hearing from being disclosed to the public, if harm created by disclosure would outweigh the benefits of an open hearing. This may include orders banning the publication or broadcasting of those matters.

- (4) A Discipline Panel may make an order that the public be excluded from the part of a Hearing dealing with a motion for an order under sub-rule 8.01(2). It may also make other orders it considers necessary to prevent the public disclosure of matters disclosed in the submissions relating to such any motion, including prohibiting the publication or broadcasting of those matters.
- (5) Before the Discipline Panel makes an order under sub-rule 8.01(2), the panel may allow a person to whom the order relates and his or her representative to attend the Hearing and to make submissions. The Discipline Panel also has the discretion to allow another person to attend if, in the opinion of the Discipline Panel, to do so does not undermine the reasons for making the order and does not cause undue prejudice to a party.
- (6) The Discipline Panel must ensure that any order it makes under this Rule, and its reasons, are available to the public in writing.

#### **8.02 Electronic Devices and Publication of Proceedings**

- (1) No person may:
  - (a) take or attempt to take a photograph, audio or video recording or other record by any means at a proceeding; or
  - (b) publish, broadcast, reproduce or otherwise disseminate a photograph, audio or video recording or other record taken in contravention of this sub-rule.
- (2) Sub-rule 8.02(1) does not apply to:
  - (a) a person unobtrusively making handwritten or typed notes, or sketches at a proceeding;
  - (b) a person taking a photograph, audio or video recording or other record with the prior written authorization of the Discipline Panel; or
  - (c) a disabled person using a device to compensate for a disability.

### **8.03 Oral and Written Arguments**

- (1) A Discipline Panel may place reasonable limits on the length of oral and/or written submissions.
- (2) A Discipline Panel may, after hearing submissions, order the parties to submit written arguments on some or all of the issues at the Hearing, and may give directions as to the form and timing of such written arguments.

### **8.04 Use of Evidence by Hearing Panel**

- (1) Evidence that is admissible pursuant to sections 15 and 15.1 of the *Statutory Powers Procedure Act* (Ontario) is admissible in a hearing before the Discipline Committee.
- (2) The findings of a Discipline Panel must be based exclusively on evidence it has admitted at the hearing.

### **8.05 Evidence of Executive Director**

- (1) The Executive Director may provide evidence to a Discipline Panel by giving a statement certifying information obtained from the records kept by the Executive Director in the course of his or her duties.

### **8.06 Withdrawal of Allegations**

- (1) Allegations may be withdrawn at the request of the BCRSP with leave of a panel of the Discipline Committee.

### **8.07 Witnesses**

- (2) The Discipline Committee may require that a witness give testimony under oath or affirmation.
- (3) Subject to any directions of the Discipline Committee, a party may:
  - (a) call persons as witnesses and ask them questions;
  - (b) submit written reports, statements, documents or recordings of any kind; and
  - (c) ask questions of any persons called as witnesses by another party.

- (4) The Discipline Panel may limit further examination or cross-examination of a witness if it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issue in the hearing.

**Commentary: Conduct of Hearings**

The BCRSP expects that proceedings taking place before Discipline Panels will be conducted with civility and courtesy. All submissions should be directed to the Chair and members of the Discipline Panel.

From time to time, members of the Discipline Panel may participate in Hearings by asking questions of witnesses. In so doing, however, panel members will be careful not to usurp the role of the parties and their representatives. The BCRSP adopts the principles expressed by the Ontario Court of Appeal in *R. v. Stucky*, [2009] O.J. No. 600 and, specifically, the following passages when determining when and under what circumstances a Discipline Panel member may ask questions of a witness:

...a trial judge may intervene to ask questions, and, where necessary, he or she has a duty to ask questions where justice requires it. ... [There are] three situations in which questions... may be justified, namely: to clear up ambiguities and call a witness to order to explore some matter which the witnesses' answers have left vague; or, to put questions which should have been asked by counsel in order to bring out some relevant matter, but which were nonetheless omitted. ...The third situation... is not an open-ended invitation to the trial judge to usurp the role of Crown counsel. The judge cannot leave his or her position of neutrality as a fact-finder and become the cross-examiner.

And later:

[Questions] to a witness should generally be put after counsel has completed his or her examination of the witness and, further, that the witness should not be cross-examined by the trial judge during examination-in-chief.

Should a member of the Discipline Panel ask a witness a question, he or she should then provide the BCRSP, the Certificant or his or her representative an opportunity to

ask further or follow-up questions that may arise out of the panel's queries.

## **RULE 9 - DECISIONS**

### **9.01 General**

- (1) Within 30 days of the conclusion of a hearing a decision of the Discipline Committee (except an interim decision or a ruling on procedural or other similar matters) will be issued in writing and written reasons for the decision may be released at a later date.
- (2) The decision will take effect 30 days after the date it is issued unless it is appealed to the Appeals Committee, in which case the final decision or order is stayed unless the Appeals Committee directs otherwise.
- (3) All written decisions concluding a proceeding before the Discipline Committee will be made available to the public.

### **9.02 Corrections**

- (1) After rendering a decision or order, the Discipline Committee may at any time correct a typographical error, an error of calculation, an omission or any other similar error in its decision without prior notice to the parties. The Discipline Committee shall notify the parties in writing of its correction to the decision or order.

## **RULE 10 - COSTS**

### **10.01 Ability to order costs**

- (1) If, after a hearing, the Discipline Committee finds that a Certificant engaged in Professional Misconduct the Discipline Committee may make an order that the Certificant pay all or part of the costs and expenses of the BCRSP in investigating and prosecuting the complaint, including the costs and expenses of the hearing.

**10.02** Submissions regarding costs

- (1) A request for costs by the BCRSP shall be made in writing to the Discipline Committee.
- (2) Supporting invoices or receipts for the expenses being claimed must be filed with the Discipline Committee as soon as possible after the end of the hearing and served on all parties.