



Preparing for an Adjudicating Hearing

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When an Appraisal Institute of Canada (AIC) Member has been complained against and a Hearing has been requisitioned, that Member can defend his or her position at the Hearing. The matter is heard by an Adjudicating Hearing Panel, typically made up of three members of the Adjudicating Sub-Committee. The Panel is empowered to weigh allegations of misconduct, make findings, direct the Member and impose sanctions.

Before the Hearing takes place, the Member being complained against has typically been involved with several levels of the Professional Practice group. It is the AIC Regulations which govern the administration of a complaint matter. Certain aspects of these Regulations are worth noting when preparing for a Hearing.

For example, when a Complaint is initiated, the Complaint itself is the initial focus of the investigation.¹ However, during the Complaint Investigation, any other issues arising, that are not otherwise part of a Consumer Complaint, will be addressed separate and apart from the Consumer Complaint.² The allegations in the Complaint and any issues that arise from the investigation will all be addressed at a hearing.

The Adjudicating Hearing

The Adjudicating Hearing is held in-camera, except on rare occasions when, upon request or on its own initiative, the Panel or the Panel Chair may direct that all or part of the Hearing be open, unless concerns about public security or the possible disclosure of intimate financial or personal matters, etc. outweigh the benefit of holding a Hearing open to the public.³

At the Adjudicating Hearing, on behalf of the AIC, the AIC Professional Practice Advocate will summarize the findings of the investigation and outline any alleged breaches to the *Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP)*. The Member will then be given a chance to respond to the allegations of breaches to CUSPAP.

Preparing for a Hearing

The most important part of a Member's preparation for a Hearing is planning what evidence will be needed to support his or her response to the allegations of CUSPAP breaches.

A Member's evidence can be:

- **Oral testimony:** The Member or the Member's witness answers questions in person, or by teleconference. The Member must provide notice of his or her intention to bring a witness to

a hearing not less than 30 days before the date of the hearing.

- **Documents:** Documents can include the report, the Member's notes, photos, written or emailed correspondence, or anything of relevance in the Member's workfile.
- **Affidavits or other statements:** A witness' evidence can be given to the Panel in writing. This can be a statement such as a letter or affidavit.
- **Expert evidence:** Evidence from an expert may be oral testimony, an affidavit, or a written report.

The Adjudicating Panel can accept almost any evidence that it deems relevant, which means that it must relate to the complaint or to the Member's response.

New evidence, not previously provided to the AIC through the course of its investigation, may not be accepted.

There are several steps that a Member should take to prepare a response for the Hearing.

a. Make an outline

The best way to plan what evidence will be needed is to make an outline. The Member should start by re-reading the Complaint, their responses to a Counsellor, an Advocate, and/or an Investigator, etc., and the Hearing Requisition. The Member should list the allegations of breaches in

the Hearing Requisition that they feel should be challenged and list the facts and evidence to rebut them.

b. Prepare the story

Tell the story in the order that the events actually occurred. Explain the story as though it was being told to another person who does not know the people involved. Make a list of the points to be covered.

c. Prepare witnesses

The Member can call and examine witnesses, present evidence and submissions, and conduct cross-examination of witnesses as reasonably required for a full and fair disclosure of all matters relevant to the issues in the Complaint Investigation⁴ and the allegations of breaches in the Hearing Requisition.

A witness may be a person who participated in the preparation of the report. There may be people who can confirm the Member's version of events, or who wrote letters or notes that support the Member's position. Witnesses with direct knowledge of the facts will provide evidence that is more reliable. This will help the Member more than evidence from people who can only tell what they heard from someone else.

At the Hearing, the witness should be asked the questions that help support the Member's response to the allegation of breaches. This is called **direct examination**. The Member should think carefully about the questions to be asked and write them down.

Questions that suggest the 'right' answer are called 'leading questions,' and the other party can object. Instead, ask 'open questions' that allow the witness to put their evidence in their own words.

For example, do not ask, "Did you hear the complainant tell me that she would not agree to any solutions I suggested to deal with her concerns?" It calls for a simple yes or no answer and does not provide an opportunity for further explanation. Instead ask, "Did you hear the complainant say anything to me when we met at the office?" If the answer is "yes," then ask, "What did she say?"

Once the witness questions have been decided, the Member should go over them with the witness before the Hearing.

d. Prepare and submit documents for inclusion in the Hearing Brief

A Member will be provided with a copy of the Hearing Brief at least 60 days prior to the Hearing and will be invited to make submissions for inclusion in the Hearing Brief not less than 30 days before the Hearing date. A Member should decide what documents to submit.

There may be documents such as a letters or memos that will support the Member's response, and the best person to tell the Panel about them is the person who wrote or received them. That person can identify the document by saying they wrote it, signed it, or received it.

The documents submitted by the Member will be included in the Hearing Brief that the Panel considers.

e. Decide if legal representation is wanted/needed

A Member may decide that he or she wishes to be represented by a lawyer at a hearing. If the Member chooses to have legal representation, notice of such intention must be must provided not less than 30 days before the date of the hearing.

An Advocate may then choose to bring a lawyer to a Hearing as well.

f. Decide if expert evidence is required

A Member may want to have an expert witness give evidence. The Panel will accept a witness as an expert if they have specialized knowledge because of their education or experience.

If an expert witness is needed, the Member must provide notice of the intention to have an expert witness at the Hearing not less than 30 days prior to the scheduled Hearing.⁵

g. Write out an opening statement

Before the evidence, the Panel Chair will give the Advocate and the Member a chance to make an opening statement. In the **opening statement**, tell what witnesses will be called and what facts are to be proven.

h. Do additional CUSPAP research, if necessary

Professional Practice Committees focus on *CUSPAP*. A Member should make sure he or she fully understands the Standard Rules and Comments on the areas that are being challenged.

The Hearing

The Panel Chair will start by explaining the process to be followed, as outlined below:

Introductions: The Panel Chair will ask the participants to introduce themselves.

Preliminary matters: The Panel will deal with any preliminary matters that the participants raise.

Opening statements: The Chair will ask the participants to make their opening statements. The Advocate goes first. The Member may go next, or may want to wait until the Advocate's evidence is finished.

The evidence: The Chair will ask the Advocate to present the AIC's position. The Advocate may call witnesses. After each witness is finished, the Member can cross-examine them.

When the Advocate has finished, the Chair will ask the Member to start. The Member will usually be the first witness and they may call other witnesses.

If the Member has raised something new, the Chair may give the Advocate a chance to respond or submit another relevant document (called **rebuttal evidence**).

Witnesses wait outside: Except for the Advocate and Member, witnesses usually wait outside the hearing room until they give their evidence.

Solemn promise: The Chair will ask the witness to sit in the witness chair and a Commissioner of Oaths will ask them to solemnly swear an oath or affirm to tell the truth.

The witnesses' evidence: If the Member has a lawyer, the lawyer usually asks question of both the Member and any witnesses. If unrepresented, the Member gives evidence by telling the Panel their story. If a witness is called, they give evidence by answering the Member's questions. This is the **direct examination**.

Documents: The Member will have submitted any documents that are relevant to the case for inclusion in the Hearing Brief. If a witness is the best person to tell the Panel about a document, the witness is asked to identify the document and then answer questions about it.

Where the documents appear in the Hearing Brief should be noted so that the participants can quickly refer to them.

Cross-examination: After a witness tells his or her story, a Panel member may ask them to answer questions asked by the other participant or their lawyer or agent. This is called cross-examination. Leading questions that suggest the right answer are allowed in cross-examination.

Reply: A Panel member will ask if there are any more questions about new matters raised in cross-examination. These questions are called the reply, at which time additional comments can be made.

Panel questions: A Panel member may also ask the witness questions to make sure they understood the evidence. Then, the participants will be given a chance to ask any questions that are connected to these questions.

Objections: If a participant believes that the Panel should not accept certain evidence, they can object by interrupting the proceedings. The most common reason for an objection is that the information is not relevant to the case.

Both participants will have an opportunity to explain the reasons for an objection, and will both have an

opportunity to respond to what the other party has said.

After listening to what the participants have to say, the Adjudicating Panel will 'rule' on the objection, i.e., decide whether to accept or reject the evidence.

Closing argument: After all the witnesses are finished, the Panel Chair will ask each participant to make a closing argument.

A **closing argument** briefly summarizes the evidence that the Panel has heard at the hearing that supports their position.

A closing argument can be written out and read to the Panel or it can be handed-in.

If you are representing yourself at a hearing, the Panel will understand that you cannot be expected to present a legal argument that would typically be presented by a lawyer.

Tell the Panel why you think the AIC has not proved an allegation of a *CUSPAP* breach. Finish by re-stating your position on the complaint matter.

The Decision

After the closing arguments, the Adjudicating Panel will likely adjourn to write a decision setting out reasons for the decision. Wherever possible, the decision must be issued within 60 days of the Hearing. The Adjudicating Sub-Committee is empowered to impose any one or more sanctions and make an award of costs.

The standard of review to be applied when considering alleged breaches of *CUSPAP* is that of the Reasonable Appraiser.⁶ The standard of review to be applied when considering alleged breaches of the Institute Bylaws, Regulations and Policies is Reasonable Belief.⁷

The Adjudicating Sub-Committee can dismiss the Complaint on the basis that the grounds of the Complaint have not been established. It should be noted that, in the case of a complaint made by a Member against another Member, if the complaint is dismissed, the Panel may refer the matter to the Advocate for review and further action as deemed appropriate.⁸

Outcome to the Complainant: A Complainant will receive a notice of the outcome of a complaint file only if they have signed and submitted a Consent Form to AIC. The notice of outcome will address only the complaint allegations.

Summary

Preparing for an Adjudicating Hearing can be stressful. To ease that burden, a Member can do his or her utmost to be prepared. A hearing can often be a collaborative event with all participants striving to uncover the facts of the matter and to reach the most productive outcome. During the Hearing, present the case thoughtfully, speaking as clearly and concisely as possible. On questioning, be co-operative and, above all else, be honest.

Remember, one of the hallmarks of a respected and trusted self-regulated organization is the professional conduct and competence of its members. To ensure those standards are met, we must be prepared to deal with the eventuality of complaints against Members – and to remedy shortfalls in a Member's conduct and competence.

The Adjudicating Sub-Committee acts as an independent tribunal. It will weigh information from all participants involved. Their decisions are made to protect the public, the reputation of the Institute and its Members.

End notes

- ¹ Consolidated Regulations (2014) of the Appraisal Institute of Canada – 5.7
- ² Consolidated Regulations (2014) of the Appraisal Institute of Canada – 5.8
- ³ Consolidated Regulations (2014) of the Appraisal Institute of Canada – 5.111
- ⁴ Consolidated Regulations (2014) of the Appraisal Institute of Canada – 5.96.1
- ⁵ Consolidated Regulations (2014) of the Appraisal Institute of Canada – 5.97.1
- ⁶ Consolidated Regulations (2014) of the Appraisal Institute of Canada – 5.56.1
- ⁷ Consolidated Regulations (2014) of the Appraisal Institute of Canada – 5.96.2
- ⁸ Consolidated Regulations (2014) of the Appraisal Institute of Canada – 5.9.1