

**ALCOHOL AND GAMING COMMISSION OF
ONTARIO**

REVISED RULES OF PRACTICE

Effective: October 31, 2008

AGCO Revised Rules of Practice

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PREAMBLE

The Board of the Alcohol and Gaming Commission of Ontario is empowered by the *Alcohol and Gaming Regulation and Public Protection Act, 1996* to hear and decide matters under the *Liquor Licence Act, Gaming Control Act, 1992, Wine Content and Labelling Act*, and *Vintners Quality Alliance Act, 1999*.

These Rules DO NOT apply to arbitrations of lottery disputes. Separate Lottery Arbitration Rules are available from the Hearings Department or the AGCO website

AGCO Hearings Department staff can provide general information about the hearing process and procedures but cannot give legal advice or complete documents for you. Contact the Hearings Department at 416-326-0363 or by fax at 416-326-5566.

How to Use the Rules

The Rules list general, procedural, and administrative matters that apply to hearings before the Board of the Alcohol and Gaming Commission of Ontario. All participants in proceedings before the Board are expected to comply with the Rules. There are consequences for non-compliance.

These Rules have six Parts. The Table of Contents sets out the Parts and identifies the individual rules within each Part. Parts I, II, III, IV and VI apply generally to all proceedings before the Board except Public Meetings. Part V contains Rules which apply to specific types of proceedings: Public Meetings, Public Interest Hearings, Discipline Hearings and Combined Public Interest and Discipline Hearings. After reading the general Rules, read the Rules which apply to your specific type of proceeding.

In addition, some words used in the Rules have specialized meanings. The definitions for these words are found at the beginning of the Rules. The Board has also prepared Information Bulletins and Guides to our proceedings. Check them for more detailed explanations and information.

The Board has prepared Forms for use in hearings before it. The Rules identify where a particular Form is required.

Copies of all the Board's hearing related documents, including Forms, Rules, Guides, and Information Bulletins, may be obtained from the AGCO Hearings Department, located on the 3rd floor at 90 Sheppard Avenue East, Toronto, Ontario, M2N 0A4 or downloaded from the AGCO website at www.agco.gov.on.ca.

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PART I – GENERAL MATTERS

Rule 1 Application, Interpretation, Definitions

1.1 These Rules are made pursuant to section 25.1 of the *Statutory Powers Procedure Act* (“*SPPA*”) and shall be liberally construed to secure a just, expeditious and cost-effective determination of every proceeding on its merits in accordance with fairness and natural justice.

1.2 These Rules apply to all proceedings before the Board of the Alcohol and Gaming Commission of Ontario. The Board may waive or vary any Rule where appropriate.

1.3 Where matters are not specifically covered by these Rules, the practice will be decided by analogy to the Rules.

1.4 Where a Rule conflicts with a statute or regulation, the statute or regulation prevails.

1.5 No proceeding is invalid by reason only of a defect or other irregularity in form.

Definitions

1.7 In these Rules:

“AGCO” means the Alcohol and Gaming Commission of Ontario;

“appellant” is a person who appeals from the Registrar’s decision to impose a monetary penalty;

“applicant” includes an applicant for a liquor licence or liquor delivery licence, change in licence, a license to represent a manufacturer, or a special occasion permit under the *Liquor Licence Act*, an applicant for registration as a gaming assistant or gaming supplier under the *Gaming Control Act, 1992*, and an applicant for product approval or a membership approval under the *Vintners Quality Alliance Act, 1999*;

“Board” means the Board of Directors of the AGCO and may include a panel of the Board;

“certificate of delivery” is the Board’s Form 2 used by a party in a proceeding to confirm the manner and time of delivery of a document on another party;

“Chair” means the Chair of the AGCO as designated by the Lieutenant Governor in Council;

“combined public interest and discipline hearing” means a proceeding where the Board considers both disciplinary and public interest issues;

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“day” means any day of the week from Monday to Friday excluding a statutory or civic holiday and any other day the Board’s office is closed;

“deliver” means to provide a document to a party or their representative;

“discipline hearing” means a hearing where the Board considers a notice of proposal or notice of proposed order to revoke or suspend a liquor licence or gaming registration, a notice of proposed order to refuse a gaming registration, a notice of proposal to refuse a liquor license or transfer application, a notice of proposal or proposed order to refuse to remove a condition on a liquor license or gaming registration, or an appeal from a monetary penalty imposed by the Registrar;

“document” includes forms, including the Board’s Forms, correspondence, memoranda, files, books of account, agreements, reports, charts, graphs, and any other written or pictorial communication, a sound recording, videotape, photograph, map, plan, film, survey or like thing, and information recorded or stored by means of any device;

“file” means to file with the Board and “filing” is anything that is filed;

“hearing” means a hearing before the Board and includes oral hearings, written hearings (conducted by exchange of written materials), electronic hearings (conducted by telephone conference or some other form of electronic technology allowing persons to hear one another), or any combination of these three forms;

“intervener” is a party granted standing, on terms the Board considers appropriate, to participate in a proceeding;

“licensee” means a person to whom a liquor licence has been issued;

“Manager of Hearings” means the person designated as Manager of Hearings by the Chair and includes their delegate;

“Member” means a person appointed as a Member of the Board by the Lieutenant Governor in Council;

“objector” means a resident of a municipality, a group of residents, or a residents’ association participating in a public meeting or public interest hearing;

“panel” means one or more Members of the Board designated by the Chair to conduct a hearing;

“party” includes the Registrar, Vintners Quality Alliance Ontario, an applicant, a registrant, a licensee, an objector, a person asking to participate in a proceeding, a person added as a party or an intervener by the Board, but does not include a person who the Board has decided is not a party;

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“person” includes a partnership, company, neighbourhood business association and neighbourhood residents’ association;

“pre-hearing conference” is a step within a proceeding where the parties meet with a Board member to identify issues in dispute, attempt to resolve or settle some or all issues in dispute, decide procedural issues, and prepare for the hearing;

“proceeding” means the proceeding before the Board and includes all steps in the disposition of a matter after the receipt of the request for hearing;

“public interest hearing” means a proceeding in which one of the issues the Board must decide is whether the approval, renewal, suspension or revocation of a liquor licence or changing a condition on a liquor licence is in the public interest having regard to the needs and wishes of the residents of the municipality in which the licensed premises, or proposed premises, are located;

“public meeting” is a meeting conducted by a Member between an applicant for a liquor licence and objectors;

“registrant” means a gaming assistant, gaming supplier, lottery retailer, lottery retailer manager, or lottery equipment supplier registered by the AGCO;

“Registrar” means the Registrar of the AGCO and includes the Deputy Registrar(s);

“representative” means a person who provides legal services, and “unlicensed representative” means a person who falls within the categories of persons permitted to provide legal services without a licence.

Rule 2 Board Powers

2.1 The Board may exercise any of its powers under these Rules on its own initiative or at the request of a party. A panel may relieve against the strict application of these Rules as it considers appropriate.

2.2 The Board may amend its Rules from time to time as it considers appropriate. The Board may issue general or specific directions at any time.

2.3 The Board may apply any Rule applicable to a party in a proceeding to a person who has an interest in a proceeding but who is not yet a party to the proceeding.

2.4 Where the Board considers necessary or advisable, the Board may, on its own motion or the motion of any party, limit or revoke a party’s right to participate in the proceeding. This Rule shall not apply to an applicant, licensee, registrant, the Registrar or other persons entitled by law to be a party to the proceedings.

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2.5 The Board may, on its own motion or the motion of any party, dismiss a proceeding for unreasonable delay or for non-compliance with Orders, directions, conditions, undertakings, or written requests from the Board or the Manager of Hearings.

2.6 A panel may, at any time and without prior notice to the parties, correct a typographical error, transcription error, error of calculation, calendar error, or other technical error made in its decision or order.

2.7 A panel may, at any time and without prior notice to the parties, clarify its decision or order where it contains a misstatement, ambiguity, or otherwise requires clarification.

2.8 Where the Board has begun hearing evidence on the merits of the proceeding, the Registrar may not withdraw a Notice of Proposal, Supplementary Notice of Proposal or Notice of Proposed Order, an Applicant may not withdraw its application, a Licensee or Registrant may not withdraw a request for hearing without the Board's approval.

2.9 The Manager of Hearings may establish the format of documents and set the number of copies of documents and other materials to be filed with the Board and at hearings.

Rule 3 Non-Compliance

3.1 Where a party fails to comply with the Rules or a Board Order, the Board may exercise its discretion to make orders, including imposing conditions to ensure future compliance, to achieve fairness for all parties.

3.2 Where a party fails to disclose evidence in accordance with these Rules or a Board Order, the party may not refer or rely upon the evidence in the hearing without the consent of the Board which may be granted on any conditions the Board considers appropriate.

3.3 Where a party receives notice of a hearing or pre-hearing conference in accordance with these Rules and fails to attend the hearing or pre-hearing conference, the hearing may proceed without that party's participation and the party will not be entitled to any further notice.

Rule 4 Time

4.1 Where these Rules refer to a period of time, that period of time does not include Saturdays, Sundays, statutory holidays and any other day the Board's office is closed.

4.2 In computing time periods in these Rules or a Board order, when:

- a) there is a reference to a number of days between two events, the days shall be counted by excluding the day on which

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the first event happens and including the day on which the second event happens;

- b) the time period is less than 7 days holidays shall not be counted;
- c) the time for doing anything expires on a holiday, the act may be done on the next day which is not a holiday; and,
- d) a document would be deemed delivered on a holiday, the document will be deemed delivered on the next day that is not a holiday.

4.3 The Board may lengthen or shorten any time period in these Rules.

Rule 5 Communications with the Board

5.1 Any communication with a panel occurring outside the hearing shall be in writing, addressed to the Manager of Hearings, and copied to all parties or their representatives.

5.2 With the exception of notices of hearing which shall be delivered to all parties and their representatives, communication between the Board and a represented party shall be through the representative.

5.3 Correspondence and documents exchanged by parties shall not be copied or filed with the Board unless the Rules require, the Board directs, or the Manager of Hearings requests copies.

5.4 Parties, representatives and witnesses are entitled to communicate and receive available services in French from the Board in accord with the *French Language Services Act*. The Manager of Hearings must be notified as soon as possible where service in French is required.

5.5 Parties requiring interpretation in other languages at the hearing or pre-hearing conference, other than French and American Sign Language (ASL), must provide a qualified interpreter at their own cost. Where a party wishes some or all the hearing or pre-hearing in French or requires ASL interpretation the Manager of Hearings must be notified as soon as possible.

Rule 6 Representatives

6.1 With the exception of the Registrar's representative, licensed and unlicensed representatives appearing in a proceeding must complete a Declaration of Representative (Form 1), deliver a copy to all parties within three days of being named as a representative and file it with the Manager of Hearings.

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6.2 Where a representative ceases to represent a party or wishes to withdraw from representing a party, the representative shall immediately give written notice to the Manager of Hearings and all other parties.

Rule 7 Hearings to be Public

7.1 Oral hearings shall be open to the public except where the Board is of the opinion the evidence may disclose:

- (a) matters involving public security; or
- (b) intimate financial or personal matters of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

7.2 Where a party asserts some or all of a document discloses intimate financial or personal matters or matters involving public security, it must promptly make a motion to the Board seeking an Order to seal the document or otherwise restricting public access to the document. The motion materials will not be available to the public until the Board makes its decision on the motion.

PART II – HEARING ADMINISTRATION AND PREPARATION

Rule 8 Notice of Proceedings

8.1 With the exception of public meetings, proceedings commence when the Board receives a request for hearing.

8.2 The Board shall give written notice of dates, time and location of all hearings and any pre-hearing conferences to the parties and any other persons as required by law or whom the Board considers interested in the proceeding.

8.3 Unless the Board orders otherwise, notice is effective when delivered in accordance with these Rules.

Rule 9 Delivery and Filing

9.1 A document may be delivered by

- (a) personal delivery to the person;
- (b) regular first class mail, registered mail, or courier, including priority post;
- (c) email; or

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(d) facsimile transmission.

9.2 Delivery of a document is deemed effective:

- (a) when delivered directly to a person, on the date and time of actual delivery of the document;
- (b) when delivered by regular first class mail, registered mail to the person's last known mailing address, on the fifth day after the day of mailing;
- (c) when delivered by courier, including priority post to the person's last known mailing address, on the date of delivery;
- (d) when delivered by facsimile transmission to the person's last known facsimile telephone number, on the date and time of the transmission;
- (e) when delivered by email to the person's last known email address, on the date and time of actual delivery of the document; or
- (f) where the Board directs delivery by another manner, on the date specified by the Board in its direction.

9.3 Notwithstanding Rule 9.2 above, a document delivered personally, by facsimile, or email after 5:00 p.m. is deemed delivered on the next business day.

9.4 Where the person to whom the document is addressed, acting in good faith and through absence, accident, illness or other causes beyond his or her control, establishes to the Board's satisfaction the date of actual receipt of the document, delivery shall be deemed effective on the date of actual receipt.

9.5 Correspondence from a party to the Board must be copied to all other parties in the proceeding. Documents filed with the Board must be delivered to all other parties in the proceeding. When filing a document with the Board the party must attach a Certificate of Delivery (Form 2) setting out the date and manner of delivery on the other parties.

9.6 All documents must be filed with the Board during normal business hours (8:30 a.m. to 5:00 p.m.). A filing received after close of business hours is deemed filed on the next day the Board's office is open unless the Board directs otherwise.

Rule 10 Disclosure

10.1 Disclosure to a party's representative is deemed disclosure to the party.

10.2 Unless the Board orders otherwise, at least 10 days before the pre-hearing conference, if any, or at least 10 days before the first day of the hearing, all parties shall:

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- (a) deliver a copy of every document the party will refer to in evidence at the hearing to all parties;
- (b) disclose the existence of and make available for inspection all things, other than documents, the party will refer to in evidence at the hearing; and,
- (c) deliver a list of witnesses whom the party intends to produce at the hearing.

10.3 At a pre-hearing conference or any other stage in the proceeding, the Board may order:

- (a) the oral or written examination of a party or person;
- (b) the disclosure and delivery of further information or documents the Board considers necessary for a full and satisfactory understanding of the issues in the proceeding on any conditions the Board considers appropriate;
- (c) the exchange of summaries of witness(es)' proposed evidence; and/or,
- (d) any other action the Board considers just or appropriate in the circumstances.

10.4 Subject to Rules 10.2 and 22, parties must promptly disclose and produce any relevant documents or things on an on-going basis.

10.5 Information and documents provided on a without prejudice basis by a party may not be relied on or referred to in any subsequent proceeding without the party's consent.

10.6 Where a party considers the disclosure incomplete or inadequate for a full and fair adjudication of the issues in dispute, the party may bring a motion, in accordance with Rule 16, for further particulars or disclosure.

Rule 11 Summons to Witness

11.1 The Board may issue a summons to a witness on its own initiative or on the request of a party. The summons may require the witness to give evidence under oath or affirmation and to produce such documents or things specified in the summons.

11.2 A person summoned to give evidence or to produce documents and things at a hearing is not compellable before the Board unless served personally with the summons and paid the same fees or allowances for attending at or otherwise participating in the hearing as paid to a person summoned to attend before the Superior Court of Justice.

11.3 Where a person fails to attend a hearing or to remain in attendance at the hearing in accordance with a summons served in accordance with this Rule, the party requiring the attendance may ask the Board to exercise its discretion to ask a Justice of competent jurisdiction to issue an arrest warrant. The requesting party must make its request in writing and file it with the Manager of Hearings together with:

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- (a) a sworn affidavit of service of the summons; and
- (b) a sworn affidavit describing how the participation of the person summoned is material to the ends of justice.

Rule 12 Experts

12.1 Unless the Board orders otherwise, a party intending to rely on an expert witness or refer to an expert's written report shall, at least 10 days before the first day of hearing, deliver to the other parties a copy of the expert's report, if any, and a document containing:

- (a) the name and qualifications of the proposed expert, and,
- (b) identifying the area(s) of expertise relevant to issues in the proceeding.

12.2 A party who fails to comply with these rules may not rely on the expert witness or expert's report without the Board's consent which may be granted on conditions.

12.3 Where a party intends to challenge the introduction of all or part of a proposed expert's evidence, the party must deliver to the other parties a written notice containing the reasons for objecting as soon as possible and, in any event, within three days of receiving the documents. The notice shall be filed with the Manager of Hearings.

12.4 The Board may, on its own initiative or at the request of a party, retain any person having professional, technical or other special knowledge and expertise to give evidence to assist the Board. Where the Board retains an expert, the nature of the expert's evidence shall be disclosed to the parties and the parties may cross-examine and make submissions with respect to the evidence.

Rule 13 Allegations of Improper Conduct, Challenges to Good Character

13.1 Where a party alleges improper conduct by any person or challenges the good character of a person, the party must provide a detailed statement including a description of what happened, when and where it happened, and the name(s) of the person(s) against whom the allegations are made as soon as the circumstances upon which the allegations are based come to the party's attention. The statement must be delivered to all parties and the person against whom the allegations are made and filed with the Manager of Hearings at least five days in advance of the pre-hearing conference, if any, or five days in advance of the hearing.

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PART III – PRE-HEARING CONFERENCES

Rule 14 Pre-Hearing Conference

14.1 The Board, on its own initiative or in response to a party's written request, may direct the parties to participate in a pre-hearing conference to decide:

- (a) adding parties and defining the scope of the added party's participation in the hearing;
- (b) agreement on some, or all, facts;
- (c) disclosure and the exchange of documents, summaries of witness(es)'s proposed evidence, expert reports; oral or written examination of a witness or party;
- (d) identification and simplification of the issues and whether further particulars are required;
- (e) the estimated duration of the hearing, setting hearing dates and dates for taking any steps in the proceeding;
- (f) the settlement of any, or all, of the issues in dispute;
- (g) whether some or part of the hearing should be held in the absence of the public and/or whether to seal some part of the Board's record;
- (h) requests to join or sever Notice of Proposals, Supplementary Notice of Proposals or Notice of Proposed Orders;
- (i) any pre-hearing motions; and
- (j) any other matter that may assist in a just, expeditious and cost-effective disposition of the issues in the proceeding.

14.2 At least five days in advance of the pre-hearing conference, the parties shall deliver a Pre-Hearing Statement of Issues (Form 3) to each other and file it with the Manager of Hearings. Where a party has made disclosure in accordance with the Rules and is of the opinion that review of some or all those documents would assist the pre-hearing Member to better achieve the purposes of the pre-hearing conference, the party may file those documents with the Manager of Hearings.

14.3 The Pre-Hearing Statement of Issues and documents disclosed for the purposes of the pre-hearing, if any, will be provided to the pre-hearing Member only. Unless the party consents, its Pre-Hearing Statement of Issues does not form part of the Board's Record, will be returned at the completion of the conference and may not be referred to or used at the hearing before the Board including for the purpose of impeaching the credibility of a witness. Documents provided to the pre-hearing Member are not part of the Board record until admitted as exhibits at the hearing before the Board.

14.4 The pre-hearing Member may direct the parties to exchange and file further documents or submissions prior to the pre-hearing conference or any subsequent pre-hearing conferences.

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14.5 Parties or their representatives are expected to attend the pre-hearing conference. Where a party does not attend, their representative must have instructions with respect to the party's position on settlement of some or all of the issues in dispute and the authority to make agreements, and give undertakings.

14.6 Unless the parties consent, the pre-hearing Member shall not be a member of the hearing panel but may preside at any subsequent pre-hearing conferences. The pre-hearing Member's notes and records are confidential and are not compellable in the hearing before the Board or in any other proceeding.

14.7 The Board has discretion to hold the pre-hearing conference, and any continuation of the pre-hearing conference, in person, in writing, by telephone, or by any combination of these forms. Rules 15.2 and 15.3 do not apply to pre-hearing conferences.

14.8 At the conclusion of the pre-hearing conference, the Member may make orders and give directions respecting the proceeding. Pre-hearing orders form part of the Board's record and are binding on all parties, unless the panel conducting the hearing orders otherwise. Undertakings given by a representative and agreements made between the parties at the pre-hearing shall be in writing and may be incorporated into a pre-hearing order on consent.

14.9 Communications made during the pre-hearing conference are confidential and without prejudice and shall not be relied on in the hearing before the Board for any purpose, including impeaching the credibility of a witness, unless in writing and contained in a Pre-hearing Order or with the parties' written agreement.

PART IV – HEARING PROCEDURES

Rule 15 Form of Hearings

15.1 Any part of a hearing may be conducted in person, by way of a written hearing, or electronically, by video or telephone conference, subject to the provisions of the *Statutory Powers Procedure Act*.

15.2 The Board may direct the hearing or a portion of the hearing be in writing unless a party satisfies the Board there is good reason not to hold a written hearing. A party may not object to a written hearing where the only purpose of the hearing is to deal with procedural matters.

15.3 The Board may direct that a hearing or portion of a hearing be held as an electronic hearing unless a party satisfies the Board that holding an electronic hearing is likely to cause the party significant prejudice. A party may not object to an electronic hearing where the only purpose of the hearing is to deal with procedural matters.

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Rule 16 Motions

16.1 A motion shall be made by a Notice of Motion (Form 4) to the Board at any time in a proceeding. The party bringing the motion shall first obtain a date for its hearing from the Manager of Hearings or the panel.

16.2 The motion shall:

- (a) state the precise relief sought;
- (b) state the grounds to be argued and identify any statutory provision, rule, or case law relied on; and,
- (c) attach all documents to be used on the motion.

Evidence shall be presented through sworn statements unless the Board permits otherwise.

16.3 The motion, with all supporting materials, shall be delivered to all parties at least 4 days before the motion is to be heard. The notice of motion shall be filed, with a Certificate of Delivery (Form 2) on each party, with the Manager of Hearings at least 3 days before the motion is to be heard.

16.4 A responding party shall deliver any materials it intends to rely on in response to the motion to all parties and file them, together with a Certificate of Delivery on each party, with the Manager of Hearings at least 2 days before the motion is to be heard.

Rule 17 Constitutional Challenges

17.1 A party intending to challenge the constitutional validity or applicability of any law, regulation or rule must as soon as the circumstances requiring the challenge become known and, in any event, at least 15 days before the day on which the question is to be argued:

- (i) obtain a date for argument of the challenge from the Manager of Hearings;
- (ii) complete and deliver a Notice of Constitutional Question (Form 5) to the parties and the Attorneys General for Ontario and Canada; and,
- (iii) file the Notice of Constitutional Question with a Certificate of Delivery on each party and the Attorneys General.

Rule 18 Adjournments

18.1 A request for an adjournment must be in writing and must include the following:

- (a) written consent to the adjournment from any, or all, other parties or their representative;

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- (b) the reasons for the request; and,
- (c) at least 2 alternative hearing dates within 60 days of the date to be adjourned.

18.2 The Board may exercise its discretion to consider the request at the commencement of the hearing.

18.3 In granting an adjournment, the Board shall consider whether an adjournment is necessary to permit an adequate hearing to be held, and may impose any conditions the Board considers appropriate. The adjournment shall be to a fixed date or to a date to be fixed by the Manager of Hearings.

Rule 19 Evidence

19.1 The Board may direct the form in which evidence shall be filed at a hearing and may admit any evidence, including hearsay evidence, relevant to the subject matter of the proceeding.

19.2 The Board may receive and act on any facts agreed on by the parties without proof or evidence.

19.3 A person intending to use a document as evidence in a hearing shall provide one copy for each party, one copy for the witness, and two copies for the panel.

PART V – SPECIFIC PROCEEDINGS

Rule 20 Public Meetings

20.1 Where the Registrar decides to call a public meeting to consider an application for a liquor licence, the Registrar shall obtain a date and time for the meeting from the Hearings Department and give written notice, including telephone contact numbers for all participants, to the applicant, the applicant's representative, if any, the objector(s) and the objector's representative, if any. A copy of the notice shall be filed with the Hearings Department.

20.2 Public meetings shall be conducted by telephone hearing except when the Member directs otherwise.

20.3 At the public meeting the Member will hear representations from residents and the applicant to consider the public interest concerns and may review possible conditions on the licence with the participants. After the public meeting the Member may approve the application, approve the application with conditions on consent of the applicant, or direct that a proposal to review the application be issued by the Registrar. The Member shall not dismiss the application.

20.4 Parts II, III, IV and VI of these Rules do not apply to public meetings.

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20.5 Where the Member directs the Registrar to issue a notice of proposal to review the application, that Member shall not preside at the hearing of the notice of proposal, except where the parties consent in writing.

Rule 21 Public Interest Hearings

Resident Objectors

21.1 Residents' groups and associations, including residential condominium corporations, wishing to participate in a public interest hearing shall designate a representative as soon as possible prior to the pre-hearing conference, if any, or the hearing. The representative shall comply with the requirements of Rule 6.1.

21.2 An individual objector or the representative of a group of objectors may ask to be made a party in a public interest hearing by filing a written request with the Manager of Hearings and delivering it to all parties. The request should be made in advance of the pre-hearing conference, if any, or the commencement of the hearing. The Board may grant the request on any conditions it considers appropriate including amending the time for disclosure of documents between parties.

21.3 An objector who is not a party may participate in a public interest hearing with the consent of the Board and on any conditions the Board considers appropriate.

Interveners

21.4 Where a Municipality, another person, corporation, or organization wishes to intervene as a party in a public interest hearing, its representative shall as soon as possible, and in any event no later than 10 days prior to the pre-hearing, if any, or no later than 10 days prior to the commencement of the hearing, deliver a written request to all parties and file it, together with Certificates of Delivery, with the Manager of Hearings. Any party opposing the request must deliver a written response setting out their reasons for opposing the request to all parties and the proposed Intervener no later than 3 days after receiving the request and file it, together with Certificates of Delivery, with the Manager of Hearings.

21.5 Where the request is opposed the Board will exercise its discretion to decide the request at a pre-hearing conference or at the commencement of the hearing. The Board may grant the request on any conditions it considers appropriate including amending the time for disclosure of documents between parties.

21.6 Where an objector, group of objectors or an intervener is made a party the Registrar shall disclose all documents and things previously produced or disclosed to the Applicant or Licensee to the intervener, objector or representative of the group of objectors within 10 days of the Board's order unless this disclosure has already been provided subject to any order made pursuant to Rule 23.

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Rule 22 Discipline Hearings

22.1 Unless the Board orders otherwise, no later than 10 days before the pre-hearing conference, if any, or no later than 10 days before the first day of hearing, the Registrar shall disclose to all parties any documents or things in the Registrar's possession, power or control not previously disclosed which are relevant to its investigation of the allegations contained in the Notice of Proposal, any Supplementary Notice of Proposal, or Notice of Proposed Order which form the subject matter of the disciplinary proceeding. This obligation does not include disclosure of any documents over which privilege is asserted.

22.2 At the same time, where the Registrar is aware of documents or things relevant to the allegations contained in the Notice of Proposal, any Supplementary Notice of Proposal, or Notice of Proposed Order which form the subject matter of the disciplinary proceeding which are not in the Registrar's possession, power or control, the Registrar's representative will identify the nature of the documents or things and their location to the other parties.

22.3 Where the Registrar asserts privilege over any document or thing in Rules 22.1 or 22.2, the Registrar's representative will provide a brief description of the document or thing and the basis on which privilege is asserted.

22.4 Notwithstanding Rules 10, 22.1 and 22.2, the Registrar is not required to identify or disclose confidential information where there is a serious and significant public interest, including issues of security or safety, investigations by law enforcement or investigative agencies or any other common law exceptions to usual disclosure practices.

Rule 23 Combined Public Interest and Discipline Hearings

23.1 The Board will determine the scope of any involvement by objectors or public interest interveners in the discipline portions of the proceeding including the scope of disclosure on the disciplinary issues to be decided.

PART VI – OTHER MATTERS

Rule 24 Appeals and Judicial Review

24.1 Notice of Application for judicial review must be served on the Manager of Hearings within 5 days of the Notice being issued by the Court.

24.2 A Notice of Appeal as issued by the Superior Court must be filed with the Manager of Hearings. Upon its receipt, the Manager of Hearings will make arrangements to provide a copy of the recording of the hearing or, where the hearing was held outside the Board's Toronto office, the court reporter's contact information. The parties to the appeal are responsible for filing a transcript of the hearing with the Court.

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Rule 25 Transition Provisions

25.1 The Rules came into force October 3, 2005 and were revised July 30, 2008. The revised Rules come into force on October 31, 2008.

25.2 The Revised Rules shall apply to all proceedings before the Board on the date the Revised Rules come into force, except those proceedings where a pre-hearing has been completed or a hearing has commenced prior to the date the Revised Rules come into force.

25.3 Any proceeding commenced or document filed before the coming into force of the Revised Rules is not invalidated merely because the act or filing does not conform to the Revised Rules.

Rule 26 Costs

[To come into force on a day to be fixed by the Board]

26.1 Upon notice, the Board may make an order for costs against a party for failure to comply with the Rules or a Board Order.

26.2 Where in a proceeding, other than in a public interest hearing, a pre-hearing conference in a public interest hearing, or a public meeting, the conduct or the course of conduct pursued by a party or person is unreasonable, frivolous, vexatious or in bad faith, the Board may order that party or person to pay the costs of another party or person which have been incurred as a result of such conduct.

26.3 The Board may award costs against a party on its own initiative or at the request of a party upon notice and after requesting submissions from the parties.

26.4 A representative's conduct on behalf of a party is deemed to be the conduct of the party for the purpose of this Rule.

26.5 A request for an award of costs may be made at any time but no later than 30 days after a final order or decision has been made in a proceeding.

26.6 If a request for an award of costs is made after a hearing, the panel shall remain seized of the matter to decide the request for costs and shall give an opportunity to the other parties to file written submissions or to make oral argument on the issue of costs.

26.7 A request for costs, whether oral at a hearing or in a written submission, shall include,

- (a) the basis of the claim, specifying the conduct of the other party that is alleged to be unreasonable, frivolous, vexatious or in bad faith;

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- (b) an estimate of the additional time expended as a result of the conduct of the other party; and,
- (c) the amount claimed for each expense, disbursement or out-of-pocket cost, together with supporting invoices and receipts.

26.8 In determining the costs to be awarded, the Board may consider the amount of the fees and out-of-pocket disbursements unnecessarily incurred by another party or person as a result of the conduct of the party or person.

26.9 If a party requesting costs was represented by an unpaid representative in the proceedings, a request may be made only for reimbursement of actual out-of-pocket expenses.

26.10 If a party requesting costs has also acted unreasonably, frivolously, vexatiously or in bad faith, the Board may decide not to award costs or may reduce the amount of costs awarded.

26.11 Costs shall not be awarded in favour of any party who has used the threat of costs against other parties or persons in an abusive manner or in an attempt to discourage them from exercising their statutory rights, including the right to initiate, defend or participate in any proceeding.

26.12 The Board may, on its own initiative, or on a motion by a party or other person having an interest in a proceeding who is affected by a withdrawal of an application, request for hearing, notice of proposal or notice of proposed order, order the withdrawing party to pay the costs of the other party or person.

26.13 If a withdrawal in a proceeding occurs after the commencement of a pre-hearing or hearing, the panel conducting the pre-hearing or hearing shall remain seized of the matter for the purposes of considering whether costs should be awarded arising out of the withdrawal.

26.14 If a withdrawal is made before the commencement of the pre-hearing or hearing, the Chair shall appoint a Member who shall remain seized of the proceeding to decide whether costs should be awarded with respect to the withdrawal.