
The OAA Registration Committee Manual

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Introduction

The Ontario Association of Architects (OAA, the Association) operates under a professional self-regulatory statute governance model through which committees are established to carry out the legislated duties of the OAA. As a self-governing professional association, the OAA has been empowered by the provincial government to establish and enforce standards of conduct and competence for its members and practices.

The Registration Committee derives its statutory authority from the [Architects Act, R.S.O. 1990, c. A.26](#) and [R.R.O. 1990, Regulation 27: GENERAL](#).

This Manual is to be used as a guide for the Registration Committee before, during and after a hearing in order to ensure consistency, openness, and fairness in the treatment of a case referred to the Registration Committee. This Manual is to be treated as a document that is continuously under review and subject to change and revision.

The Public Interest¹

The responsibility of self-governance is a heavy one. Self-governance is an alternative to direct licensing and regulation by government and exists only because the Legislature has delegated responsibility to the profession. Self-governance is acceptable only if it serves the public interest. The Supreme Court of Canada has stated that the primary justification of self-governance is protection of the public.² The public interest in professional regulation demands that registration proceedings be fair, transparent, timely, and efficient.

Administrative Law and the Principles of Procedural Fairness

“Administrative law” refers to the body of regulations, rules, orders and judicial and quasi-judicial decisions put in place to allow government-created administrative bodies to exercise their regulatory powers. This includes:

- The actual bylaws, rules and regulations and other forms of subordinate legislation made by administrative bodies;
- The principles of law governing the actions of administrative bodies and their decisions; and
- The legal remedies available to those affected by unlawful administrative action or improper decisions of administrative bodies.

¹ CanLII Docs 203, “Handbook on Professional Discipline Procedure”, May 2017, page 6.

² *Rocket v Royal College of Dental Surgeons (Ontario)*, [1990] 2 SCR 232, 71 DLR (4th) 68.



Since all administrative agencies, including the OAA, derive their power from the government via legislative enactment, their decisions are subject to review by a court by way of a process called “judicial review.”

The most basic requirement of administrative law is the duty to act fairly, which refers to the procedure followed in making a decision. This “duty of fairness,” also called “procedural fairness,” is a continuum of procedural requirements that is applicable to decision-making agencies, boards, commissions and Panels in varying degrees. In essence, the severity of the outcome governs the level of fairness required. For example, a quasi-judicial Panel that may affect a person’s rights, privileges, or interests will likely be held to a higher standard of fairness than an administrative board that sets policy. Where a Panel can restrict or even remove an individual’s ability to practise their chosen profession, the degree of procedural fairness expected will be at the higher end of the spectrum.

Although it is now often used interchangeably with “duty of fairness,” the term “natural justice” has been used to describe the foundational requirements of any judicial or quasi-judicial process dealing with determining a person’s rights, such as the OAA’s Registration Committee process. It is crucial that the registration hearing be conducted in accordance with the principles of natural justice, which include two basic concepts:

1. the right to be heard – this concept requires that the applicant is fully informed of the registration concerns against them and given a full and fair opportunity to respond to them; in the Registration context, this also means being fully informed of all the evidence against them and being given an opportunity to challenge it; and
2. the right to a decision from an unbiased and impartial decision-maker. The test for bias is whether there is a reasonable apprehension of bias, rather than an actual bias. The decision should be based on the evidence and argument submitted, and the decision-maker should remain uninfluenced by outside factors.

Legislation governing professional registration embodies the rules of natural justice. The courts will enforce the rules by staying or overturning decisions of registration committees where these rules are not followed.

Registrar’s Proposal

The Registration Hearing process is triggered when a Notice of Proposal is issued by the Registrar and the applicant files a request for a hearing before the Registration Committee.

Where the Registrar proposes,

- (a) to refuse an application for a licence, a Certificate of Practice or a temporary licence;
- (b) to suspend or revoke a Certificate of Practice or a temporary licence; or
- (c) to issue a licence, a Certificate of Practice or a temporary licence subject to terms, conditions or limitations,



the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant. Such a notice shall state that the applicant is entitled to a hearing by the Registration Committee if the applicant delivers, within thirty days after the notice is served, notice in writing requiring a hearing by the Registration Committee.

A hearing is a quasi-judicial proceeding held before a panel of three members of the Registration Committee. A Registration hearing is not an appeal and is not a review of the decision made by the Registrar. A hearing is a fresh opportunity for an applicant to present evidence in support of their application. The applicant bears the onus of satisfying the Registration Panel, on reasonable grounds, that they meet the requirements of the Act and the Regulations for the purpose of issuance of a licence or Certificate of Practice.

Definitions

“Association” refers to the Ontario Association of Architects.

“Applicant” refers to the individual or entity whose application for licence, Certificate of Practice, or temporary licence is the subject of the registration hearing.

“the Act” means the Ontario *Architects Act*, R.S.O. 1990, c. A.26.

“Registration Committee” refers to the Registration Committee of the Association.

“Electronic hearing” means a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another;

“Panel” refers to the panel of Registration Committee members appointed to conduct a registration hearing.

“Parties” refers to the Association and the individual or entity whose application for licence or Certificate of Practice or temporary licence is subject of the proceedings.

“Committee or Panel Chair” means the chair of the Registration Committee or Panel.

“Hearing” means the process before a Registration Panel constituted under the *Architects Act*. It includes, as the case may be, an electronic hearing, an oral hearing, a written hearing or any combination of same;

“Independent Legal Counsel” means the lawyer appointed to provide advice to the Registration Committee and/or Panel.

“Member” means a member of the Association.

“Certificate of Practice” means a Certificate of Practice to engage in the practice of architecture issued under the *Architects Act*. In the interests of brevity, the holder of a Certificate of Practice is sometimes referred to simply as a Certificate of Practice or “practice”.

“Notice of Hearing” means a document issued by the Association under the *Architects Act* to hear the proposal of the Registrar to refuse the application for licence or Certificate of Practice or temporary licence as set out in a Notice of Proposal.

“Proceeding” means the registration hearing process, and includes any step in the process, such as a motion, a pre-hearing conference, a case conference to set a Hearing date, and a Hearing.

"Record" means a copy of all exhibits from a proceeding and all written Reasons for Decision, Decision and Orders, and includes any transcripts of the Hearing.

"Representative" means a person authorized under the Law Society Act to represent a person in a proceeding.

"Virtual hearing" means a hearing held remotely by some form of electronic technology allowing persons to hear and see one another;

"Written Hearing" means a hearing under held by a Registration Panel by means of the exchange of written documents.

The Role of the Registration Committee

The Registration Committee is a statutory committee constituted under section 25 of the Architect Act and in accordance with section 20 of the Regulation under the *Architects Act*. Its function is explained in the Act. Activities of the Registration Committee are governed by the *Architects Act*, Regulation 27, [OAA Bylaws](#), OAA Council policies and the [Statutory Powers Procedure Act](#).

As set out in the *Architects Act*, the Registration Committee shall,

- where an applicant requires a hearing by the Registration Committee in accordance with section 25 of the *Architects Act*, the Registration Committee shall appoint a time for, give notice of and shall hold the hearing.

A panel of the Committee, the Panel, presides over a registration hearing and determines whether the applicant meets the requirements and qualifications of the Act and the Regulations and will engage in the practice of architecture with competence and integrity. The Panel is the impartial judge.

Although a Registration Committee is funded and supported by the Association, it is an independent body that is expected to be impartial as between the Association and the applicant. It is important to recognize and preserve the distinction between the roles of the Panel and the Registrar of the Association. In a Registration Committee hearing, the Registrar is a party, like the applicant, and the Panel must be impartial as between the two parties. The Panel must not take on the role of prosecutor or appear to be collaborating with the Association. This includes not just the lawyers acting for the Association, but the staff at the Association who instruct those lawyers – members of the Panel should never communicate with Association staff directly about a case, except for administrative staff and for purely administrative purposes (like canvassing availability for a hearing, clearing conflicts, and other procedural matters). The courts will overturn a decision if the Panel does not remain an impartial arbitrator, or appears to be biased against either the applicant or the Association.

The role of the Panel is much like that of a panel of judges in a court of law. It has responsibility to control the proceedings and maintain order but it must allow the prosecution and applicant representative (or applicant if unrepresented) to present evidence and argue their cases. The Panel may make rulings on such matters as the admissibility and relevance of evidence and may question witnesses for clarification so long as it does not usurp the function of the prosecution and applicant representative.



As a matter of natural justice, the Registrar presents their case first, calling witnesses and other evidence to make the case in support of the Registrar's Proposal. After the Registrar has called all the evidence it wants to rely on (called "closing its case"), the applicant's representative then has an opportunity to respond, calling its own witnesses and other evidence. At a Registration Committee hearing, each of the parties may carry a "burden of proof" with respect to certain facts. This may mean that on some issues or facts, the applicant may be calling evidence that the Registrar should have a chance to respond to with further evidence. Ideally, any such issues will have been anticipated by the parties and sorted out through an agreed process or at a pre-hearing conference.

Both parties should be given the opportunity to summarize their contentions and make and respond to any arguments about points of law and procedure that arise.

Quorum

Three members of the Registration Committee, one of whom is an elected member of the Council, constitute a quorum. All registration decisions require the vote of a majority of the members of the Panel present at the meeting.

Role of the Independent Legal Counsel

Registration hearings are highly technical and adversarial proceedings. It is difficult to conduct these hearings and manage competing lawyers in these high stakes hearings. An independent legal counsel (often called ILC) is separate from both the Association and the applicant representative, and provides neutral advice to the Panel about legal issues. ILC can assist the Panel navigate hearings by:

- Assisting at the pre-hearing conference;
- Providing advice during the hearing itself;
- Researching legal issues that arise; and
- Reviewing and commenting on the Panel's draft reasons.

There is nothing improper in ILC giving advice on the "ultimate issue" upon which the Panel requests advice and guidance. A Panel is at liberty to accept or reject the advice. What is important is that the ultimate decision remains that of the Panel. It is both proper and desirable for the Panel to seek the advice of its counsel as to how it might improve the quality of the Reasons it has drafted so as to more effectively explain its Decision.

As a general rule, Independent Legal Counsel must:

- be knowledgeable with respect to proceedings of Administrative Panels, the *Statutory Powers Procedure Act*, the *Architects Act* and Ontario Regulation 27;
- avoid the appearance of bias;
- brief the Panel before the hearing starts;

- at the hearing, act as an advisor directly to the Panel but only when asked;
- encourage the Panel to seek advice on all but the simplest motions or objections;
- advise Panels on objections or motions with conflicting submissions of law;
- provide advice to the Panel with respect to admissibility of evidence;
- intervene when an unrepresented party is being taken advantage of;
- prevent the Panel from making procedural errors that will result in unnecessary and expensive appeals;
- provide advice to the Panel on disputed points of law raised during the submissions of the parties;
- provide advice to the Panel after the hearing has concluded;
- assist the Panel in vetting the Reasons for legal inaccuracies and making suggestions when additional relevant references to the evidence should be included.

Independent Legal Counsel must not:

- participate in the proceeding unless asked a question by the Panel, or unless an intervention is necessary to prevent an error or injustice;
- participate or intervene in the hearing in a manner that appears as if they were a member of the Panel, its Chair, a party or conducting the hearing;
- meet privately with the Panel without advising the parties: all questions and all advice given must be made known to all the parties, who must then have an opportunity to make submissions about the advice given;
- provide advice by suggesting how the Panel should decide the merits of the case;
- stay in the room while the Panel deliberates except:
 - when called in by the Panel to answer a question or
 - to assess time requirements of the Panel
- present new facts, arguments or legal issues to the Panel after the hearing is concluded.

Role of the Chair

The Chair of the Panel must have good presiding skills, as they help control the proceedings and keep the hearing on track. Generally, procedural matters and directions are dealt with and given by the Chair with or without consultation with the other Panel members after hearing from the parties' legal counsel.

The Chair maintains order in the hearing room and ensures that the participants do not interrupt each other, use inappropriate language, and that they generally conduct themselves with decorum. The Panel should always be seen to be in control of the proceedings, and the Chair should not hesitate to get legal counsel back on track if counsel appears to be digressing or prolonging an examination unreasonably.



Registration Pre-Hearing Conference

The OAA typically proceeds directly from issuing a Notice of Hearing to holding the hearing itself. However, there are times that a pre-hearing process may be utilized in order to identify participants in the proceeding, to focus and narrow the issues, promote settlement, and to establish the procedures to be followed at the hearing.³ Specifically a Panel may direct the parties to participate in a pre-hearing conference in order to:

1. identify and possibly narrow the issues;
2. advise/discuss the disclosure obligations;
3. advise of the hearing framework and procedures; and
4. any other matter that the Panel considers appropriate.⁴

For the OAA, a member of the Registration Committee conducts the pre-hearing; this member will not be on the Panel to the hearing. The member conducting the pre-hearing will be assisted by independent legal counsel and receives information without prejudice. Parties or their representatives are expected to come prepared to set hearing and disclosure dates, articulate issues, provide a list of witnesses (where applicable), discuss substantive issues and potentially achieve settlement (if possible).

Registration Hearing Procedure

This summary of process touches on some of the primary elements of a hearing. However, the Panel, in conjunction with the OAA's counsel and the applicant's representative or the applicant if unrepresented, may agree to modify the procedure to a certain extent.

The term used to describe the individual or practice subject to the Registrar's Proposal is "applicant" and is used hereafter for convenience instead of listing all individuals and entities that may be subject to the proceedings. In addition, reference to the "applicant's representative," is based upon the assumption that most applicants retain legal counsel to defend them. However, applicants may choose to represent themselves at a hearing. In some cases, individuals may choose not to attend, or may instruct legal counsel or agent to represent them in their absence. As long as the individual has been properly served with the Notice of Hearing, a hearing may proceed without the applicant's attendance, with OAA's counsel still required to present evidence in support of the Registrar's Proposal.

A Notice of Hearing must be served by the Association on the applicant when a matter is forwarded to the Registration Committee. Reasonable notice is required to ensure that the applicant can exercise the right to be heard and reply to the

³ Lorne Sossin and Emily Lawrence, "Administrative Law in Practice, Principles and Advocacy"; 2018; page 160.

⁴ Lorne Sossin and Emily Lawrence, "Administrative Law in Practice, Principles and Advocacy"; 2018; page 165.



Registrar's Proposal. Breach of the notice requirement can be a ground for overturning a decision.

It is important to note that not every hearing will proceed on an adversarial basis. In some cases, a joint submission may be made by the OAA and the applicant with respect to facts, admissions and conditions, or one or more of those elements. For example, the parties may agree on the essential facts and admissions, but may disagree on an appropriate condition(s). The Panel is not obliged to accept a joint submission. A Panel could accept the agreed facts and admissions but request further submissions as to penalty.

Whether a hearing proceeds as a contested hearing or by way of agreed statement of fact, the basic outline of process remains the same. Most importantly, the Panel remains the sole decision-maker on matters.

The proceedings typically move through the following steps:

- Opening Statements by the parties;
- Motions;
- Evidence;
- Submissions on law;
- Closing statements by the parties;
- Deliberations by Panel; and
- Decision

At the outset of the hearing, the Chair of the Panel convenes the hearing, identifies the parties, swears in the Court Reporter and any translator to record or translate the proceedings, and outlines the matter being considered. The OAA enters any agreed documentation or exhibits and any agreed statement of facts.

Opening Statements are sometimes made at hearings, generally if agreed to by the parties and Panel. Counsel for the OAA normally speaks first, and then the representative for the applicant. They briefly describe the case that will be made to the Panel.

The OAA will call its witnesses first. For each witness that is presented, the following procedure is generally followed:

1. **Examination-in-chief** by presenting party of own witness
 - To put before the Panel the witness's knowledge of the facts and matters in dispute, including introduction of documentary evidence;
2. **Cross-examination** of witness by other party
 - To question what the witness said, obtain helpful evidence, qualify the evidence, impeach the evidence given, or impeach the witness's credibility;
3. **Re-examination** of witnesses by presenting party
 - To clear up any issues raised by the cross-examining party; and
4. **Questions** from Panel members
 - To clarify any issues raised during the examination of the witness.



After the OAA's witnesses have appeared, the applicant may begin their case. An opening statement is sometimes made (if not presented already), and the above procedure is also followed for each of the applicant's witnesses who is called. After all the witnesses have appeared, final arguments are made, first by the OAA and then by the applicant's representative.

At the conclusion of the evidence for both parties, the Panel is entitled to require any person, including a party, to give evidence or to produce in evidence any documents or things that are specified by the Panel relevant to the subject matter of the proceedings and admissible at the hearing. It is important that the Panel avail itself of this opportunity to obtain any clarification that it believes is necessary. The Panel then retires to determine if any party is to be called as an additional witness or any additional material is required.

Following this, if the applicant has not adduced any evidence, counsel to the Association will then present their submissions to the Panel. If the applicant's representative has called evidence, they will make submissions first with counsel to the Association being given a right to reply.

Counsel to the Association makes their submissions before counsel to the applicant does so. However, the rule is as indicated above.

The Panel will wish to advise the parties as to whether they should remain in the building pending the decision of the Panel or whether they will be advised in due course of the result.

The Chair may include remarks expressing appreciation for the participation of all those involved. The Panel then retire to consider, *in camera*, the evidence submitted and reconvenes once deliberation is complete. After the completion of its deliberations the Chair will declare the hearing concluded.

Following upon a hearing, the Panel may, by order,

- a) where the Panel is of the opinion upon reasonable grounds that the applicant meets the requirements and qualifications of the Act and the Regulations and will engage in the practice of architecture with competence and integrity, direct the Registrar to issue a licence, Certificate of Practice or temporary licence, as the case may be, to the applicant;
- b) where the Panel is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications of the Act and the Regulations,
 - (i) direct the Registrar to refuse to issue a licence, Certificate of Practice or temporary licence, or to revoke the Certificate of Practice issued to the applicant, as the case may be, or
 - (ii) where the Panel is of the opinion upon reasonable grounds that the applicant will engage in the practice of architecture with competence and integrity, exempt the applicant from any of the requirements of the Act and the Regulations and direct the Registrar to issue a licence, Certificate of Practice or temporary licence, as the case may be; or



- c) where the Panel is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the practice of architecture with competence and integrity,
 - (i) require the applicant to take and successfully complete such examinations as the Panel may set or approve and to pay such fees therefor as the Panel fixes,
 - (ii) require the applicant to take such additional training as the Panel specifies, or
 - (iii) direct the Registrar to issue a licence, Certificate of Practice or temporary licence, as the case may be, subject to such terms, conditions or limitations as the Panel specifies.

Following the hearing, the Panel Chair shall prepare a written "Decision and Order of the Registration Committee" which shall be circulated to the Panel members for signature, following which it shall be forwarded to the applicant.

The Panel Chair prepares a draft of the "Reasons for Decision" which is circulated to other members of the Panel and to the counsel to the Panel for review and comment. When agreed and completed, the draft is forwarded to the Association for final typing and circulation to all Panel members for signature, after which it is sent by the Registrar to the applicant.

The Panel can:

- 1) decide, announce the decision and make the associated order, but issue reasons later, or
- 2) announce its decision when the reasons are ready at some later date.

Where the Panel directs the Registrar to carry out their proposal and refuse to issue a Licence or Certificate of Practice or Temporary Licence the applicant may wish to exercise the right to appeal under Section 36 of the *Architects Act*.

Guidelines for the Panel

Independent Legal Counsel

The Panel typically engages the services of Independent Legal Counsel or other assistance it thinks necessary or proper. ILC may advise the Panel on questions of law and procedure, and may assist the Panel with the drafting of its decisions and orders. ILC does not "represent" the Panel in the same way that the Association's lawyer or the applicant's lawyer represent their clients – rather, ILC's role is limited to giving advice about procedural and legal issues to assist the Panel, who are not legally trained.

Presiding Over a Hearing

It is important to have a good command of the relevant provisions of the *Architects Act* and relevant Bylaws in order to make an informed decision and to maintain the credibility and authority of the Registration Committee. However, legal counsel will be able to explain unfamiliar concepts, principles and procedures as the hearing unfolds, and any member of the Panel is entitled to ask questions about process.



Asking Questions

Panel members will understand the case and be in a better position to render a well-informed decision when they:

- Take an active part in asking questions of witnesses, where appropriate;
- Ask questions designed to bring out all relevant information, and not merely to be heard; and
- Ask questions designed to scrutinize or probe the assertions made at the hearing.

Ideally questions from the Panel will be asked in the sequence indicated above, as the lawyers should be able to question the witnesses without any interference. However, a balance must be struck between ensuring that the issues and arguments are understood clearly and the need to allow the hearing to proceed fairly and efficiently. It is important to note that the Panel will not get a second chance to assess the witness's credibility once they have been dismissed.

Panel members must also maintain balance between the parties. In order to preserve this balance while questioning witnesses or probing for clarification, a Panel member should:

- Maintain a neutral stance and ensure that their active involvement in hearing the case is not perceived as adversarial;
- Guard against helping "make the case" for any one party; and
- Recognize it is legal counsel's primary role to question witnesses, not the Panel's.

Expert Witnesses

Normally a witness is only permitted to testify about facts within their knowledge, and not about their opinions. As an exception to this rule, a witness may give an opinion on certain matters if the Panel qualifies that witness as an "expert" in a given subject matter, because of the witness's credentials, education, and/or experience. In order to admit evidence from an expert witness, the Panel must:

- Find that the expert's proposed evidence is necessary to assist the Panel in considering a relevant issue, and
- Determine that the expert is qualified to give the proposed evidence.

In professional registration cases it will sometimes be necessary to admit evidence from an expert witness about what the standards of practice are, and/or whether certain conduct did or did not meet the standards of practice.

Expert evidence is not binding on the Panel, but like all evidence, is evidence the Panel can accept in whole, in part, or not at all. In some cases, there may be competing expert evidence called by the prosecution and the opposing counsel.

In order to qualify an expert witness, the party may file the witness's CV in advance as an exhibit and supplement the CV with a few questions at the beginning of the examination.



Evidence

Evidence supplies the information that the Panel requires in order to arrive at the essential factual conclusions on which to base the decision. Some common types of evidence include:

- Oral testimony from witnesses;
- Opinion evidence from experts who volunteer the conclusions they would draw from fact situations;
- Affidavit evidence in written form that someone swears to be true;
- Demonstrative evidence that helps prove or disprove a factual assertion (e.g., a photograph, objects); and
- Documentary evidence (e.g., written correspondence, reports).

The Panel determines whether evidence may be admitted, and is required to apply the rules of evidence that apply in Court proceedings. Although there are many complicated historical rules of evidence, about which ILC will give advice to the Panel when necessary, generally-speaking the Panel has the discretion to admit evidence when that evidence is relevant, and reliable.

Evidence is relevant if it has any tendency to make a proposition more or less probable. Unless it tends to prove or disprove a fact necessary to the decision, it would be inefficient and possibly unfair to admit it.

Evidence is reliable if there are reasons to believe that it is accurate, and conversely may not be reliable if its accuracy cannot be effectively challenged. For example, hearsay and other second-hand information is generally not admissible as evidence, because it cannot be effectively challenged and is therefore not sufficiently reliable (subject to some exceptions). The reliability of a piece of evidence (unless perceived as too unreliable to admit) will affect the “weight” given to that evidence, or its “probative value.”⁵ The more reliable, the higher the probative value. Credibility is also an important factor in assessing probative value. However, caution should be exercised when assessing a witness’s credibility based solely on their demeanour. It is important to note that assumptions about credibility may reflect unconscious biases in perceiving how honest or dishonest a person looks and talks.

It is the duty of the Panel to listen to all of the evidence given before them and the submissions and to then make findings of fact based on the evidence the Panel finds credible. Necessarily, then, the Panel will have to determine what evidence they believe. Whenever there is a conflict in the evidence before them, the Panel will have to resolve the conflict by accepting one or other of the conflicting pieces of evidence. On a material fact, there is no “tie”.

Documents Submitted as Evidence

Any document submitted as evidence must first be reviewed by the opposing party prior to being admitted.

If the parties do not agree that the evidence should be admitted, then the Panel must hear submissions from both parties. The Panel may obtain advice from the

⁵ This means the degree to which a piece of evidence tends to prove a particular proposition or is persuasive as to the truth of an allegation.

Independent Legal Counsel prior to making a ruling. The Panel must then make a ruling on its admissibility.

If the parties agree that a document should be admitted into evidence, it is submitted to the Chair of the Panel.

The Chair of the Panel will clearly identify the document for the record, stamp the evidence as an exhibit, and number it sequentially. This is done so that there is a clear record of what is, and what is not, evidence on which the Panel can rely in making its decision.

Proving the Case

A Registration hearing is not an appeal and is not a review of the decision made by the Registrar. A hearing is a fresh opportunity for an applicant to present evidence in support of their application. The applicant bears the onus of proving to the Panel that they meet the requirements of the Act and the Regulations for the issuance of a licence, Certificate of Practice or temporary licence. The Association bears the onus of proving any grounds that it relies on for refusing to issue a licence, Certificate of Practice, or temporary licence, such as that there are grounds to believe that the applicant will not engage in the practice of architecture in accordance with the law and with honesty and integrity.

The standard of proof is a term that describes the degree to which the decision-maker must be persuaded by the evidence. In Registration hearings, the standard of proof is the “balance of probabilities”, which can also be referred to as asking whether it is “more likely than not” that a fact is true, or sometimes simply as the standard of “50% + 1”. (By contrast, the standard of proof in a criminal trial is “beyond a reasonable doubt”, which is a much higher standard). The evidence should be “sufficiently clear, cogent and convincing” to satisfy the balance of probabilities, which generally means that it should not be too speculative or uncertain

The Panel’s core role is to assess whether the evidence presented satisfies this standard of proof.

Writing the Decision

Written reasons for judgment are necessary to ensure fairness. Where adequate reasons are not provided, a decision may be susceptible to judicial review. The credibility of an administrative Panel is often judged by the reasons it publishes; they must be perceived as fair, consistent, and must demonstrate a rational application of reasoning to the facts.

As noted earlier, Independent Legal Counsel may give advice relating to the writing of the decision, but regardless of who drafts the words on the page, the Panel must be prepared to stand behind the reasons as their own. The Panel’s Reasons for Decision should contain the following six key elements:

1. Overview of the case;

This section identifies the parties and explains the nature of the proceeding before the Panel. This is generally contained in one short paragraph and contains reference to relevant legislation.

1. Facts;



This section summarizes the relevant or important facts underlying the matter so that the reader can understand the rest of the decision. It is important that the fact summary is as accurate as possible. It will include undisputed facts as well as facts as found by the Panel. The Panel should clearly state what evidence they accepted in support of these facts as well as what evidence the Panel rejected and why. This includes findings based upon credibility of witnesses.

2. Issues;

This section sets out what must be decided by the hearing. It may have both a factual component (what happened) and legal component (what consequences flow from the facts).

3. Reasons for the decision;

This section explains why the Panel made the decision and how it was made. It should clearly and completely reveal the “thought process” of the Panel in reaching its conclusion.

4. Decision;

This section sets out the ultimate finding of the hearing.

After the Hearing

Normally, the Panel’s decision ends the matter, with OAA staff to follow up to ensure any conditions imposed are satisfied. However, the *Architects Act* provides for an appeal of a Registration Committee’s decision made on questions of law or fact or both to the Ontario Divisional Court. The Court has the authority to affirm or rescind the decision of the Committee appealed from. If it does not affirm the decisions, the Court may exercise all powers of the Committee, may direct the Committee to take any action which the Committee may take and as the Court considers proper, and for such purposes the Court may substitute its opinion for that of the Committee or the Court may refer the matter back to the Committee for rehearing, in whole or in part, in accordance with such directions as the Court considers proper.

Form of Hearing

In deciding whether to conduct an oral, written or electronic hearing the Panel may consider any relevant factors including:

- the suitability of conducting a written, electronic or oral hearing considering the subject matter of the hearing;
- whether the evidence is appropriate for a written, electronic or oral hearing, including whether credibility is an issue;
- the extent to which facts are in dispute;
- the convenience of the parties, including any anticipated prejudice to a party;
- the avoidance of unnecessary delay;
- the fulfillment of the Panel’s statutory mandate; and
- any other possible effects on the fairness of the proceedings.



The Panel may, in a proceeding, hold any combination of written, electronic and oral hearings as per the *Statutory Powers Procedure Act*. If the Panel is holding a written or electronic hearing, the parties must be provided with an opportunity to object and request an oral hearing instead (health regulations permitting).

Oral Hearing (traditional form)

An oral hearing is one in which the Panel and all other participants are present in the same location and at the same time. Hearings are often oral, thus giving the parties an opportunity to submit evidence, call witnesses, make submissions and cross-examine witnesses. The Act is silent on the form of hearing, though the ability to submit oral evidence suggests that at least an oral component may be required in most cases. With the advent of virtual hearings since 2020 the above are able to be accomplished by other methods beyond in-person.

Electronic Hearing

An electronic hearing is held through a teleconference or a video conference platform.

At least 48 hours before the commencement of the Electronic Hearing, every person participating in the proceeding shall give notice to the Registrar of the telephone number or email address where they can be reached for the purposes of the proceeding.

Every person participating in the proceeding shall ensure that they can be reached at the telephone number or email address provided to the Registrar five minutes before the proceeding is scheduled to commence.

All statements made by the parties and their counsel and by the members of the Panel at the Electronic Hearing shall be recorded.

The Panel may adjourn an Electronic Hearing from time to time before it makes a ruling or an interim or final decision and order.

The Panel may order that any part of an Oral Hearing be conducted as an Electronic Hearing where the parties so consent.

Guidelines for virtual hearings have been well established and several best practice guidelines inform the process for the OAA. Namely, the [Best Practices for Remote Hearings](#), which has been collaboratively developed by the Advocates' Society, the Ontario Bar Association, the Federation of Ontario Law Associations, and the Ontario Trial Lawyers Association

Written Hearings

After consideration of the factors noted above, the Panel may hold a written hearing in a proceeding provided that all parties are in agreement. The Panel shall not hold a written hearing if a party satisfies the Panel that there is good reason for not doing so. In a written hearing, all parties are entitled to receive every document that the Panel receives in the proceeding.



Confidentiality

All Committee members, volunteers and staff are bound by the confidentiality provisions in the legislation. You may not share any information you learn with anyone not on the Committee.

Confidentiality - *Architects Act*, section 43

(1) Every person engaged in the administration of this Act, including any person making an examination or review under section 32 or an investigation under section 38, shall preserve secrecy with respect to all matters that come to the person's knowledge in the course of their duties, employment, inquiry or investigation and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of,

(i) this Act and the regulations and bylaws, or

(ii) the Professional Engineers Act and the regulations and bylaws under that Act,

or any proceedings under,

(iii) this Act or the regulations, or

(iv) the Professional Engineers Act or the regulations under that Act;

(b) to their counsel; or

(c) with the consent of the person to whom the information relates



