

**Guidelines for Canadian Investor Protection Fund (“CIPF”) Appeal  
Committees Hearing In-Person Appeals  
October 6, 2014**

**A. GENERAL**

1. This document sets out non-binding guidelines for Appeal Committees hearing in-person appeals (the “Guidelines”).
2. Where there is any inconsistency between the Guidelines and the relevant Claims Procedures (the “Claims Procedures”), the Claims Procedures prevail.
3. Nothing in these Guidelines restricts an Appeal Committee from:
  - a) conducting an appeal in a manner other than the manner described in the Guidelines, if such a change is necessary to ensure a fair procedure for the appeal; and
  - b) deciding an appeal in the manner that they believe is just and appropriate in the circumstances and in accordance with the relevant CIPF Coverage Policy.

**B. COMPOSITION OF APPEAL COMMITTEES**

4. The CIPF Coverage Committee is a committee of the CIPF Board of Directors. The CIPF Coverage Committee has selected certain CIPF Coverage Committee members to hear in-person appeals as members of Appeal Committees.
5. Each member of an Appeal Committee (“Committee Member”) will be:
  - a) a Director of CIPF;
  - b) selected in accordance with criteria established by the CIPF Board of Directors, through the CIPF Coverage Committee; and
  - c) a member in good standing of the Law Society of any Canadian province or was a member in good standing of the Law Society of any Canadian province for a significant period of time.
6. An Appeal Committee may be composed of:
  - a) one Committee Member; or
  - b) two or more Committee Members.



7. An administrative coordinator, under the supervision of the Coverage Committee Chair, will schedule the appeals in advance, and advise the Appeal Committee(s) and participants accordingly.
8. Where an Appeal Committee is comprised of two or more Committee Members, the Committee Members will appoint a Chair from among the Committee Members.

### **C. THE PARTICIPANTS TO AN APPEAL**

9. The participants to an appeal are:
  - a) the customer who has submitted a request for appeal in accordance with the Claims Procedures; and
  - b) CIPF staff.
10. The participants attending the appeal hearing may have legal counsel or other advisers present.

### **D. ROLE OF INDEPENDENT LEGAL COUNSEL**

11. With the approval of CIPF Board of Directors, the Appeal Committee may engage independent legal counsel (to be compensated by CIPF) for the purpose of providing legal advice to each Appeal Committee.
12. The role of independent legal counsel is to advise the Appeal Committee in respect of conducting appeal hearings and providing well-reasoned decisions in a manner that is fair, efficient, consistent with CIPF coverage, and in accordance with the law.
13. Independent legal counsel will act independently of the customer and CIPF staff (the “participants”) and will not provide legal advice for or otherwise represent the participants.
14. An Appeal Committee may seek legal advice from independent legal counsel with respect to general issues arising from an appeal, including:
  - a) procedural issues related to the conduct of an appeal;
  - b) consistency with CIPF coverage; and
  - c) applicable legal principles.
15. If an Appeal Committee has obtained legal advice from independent legal counsel that relates to any particular appeal at any time after receiving materials with respect to an appeal, the Appeal Committee must:
  - a) disclose to the participants the fact that legal advice has been obtained;

- b) provide to the participants a summary of the content of the legal advice; and
  - c) offer an opportunity to the participants to make submissions in relation to that legal advice.
16. When independent legal counsel offers advice to an Appeal Committee in the drafting of written reasons for the disposition of an appeal, he or she will do so in the manner set out in paragraphs 32 and 33 below.

#### **E. PREPARATIONS FOR APPEAL HEARING**

17. Prior to the hearing of an appeal, an Appeal Committee and the participants will be advised by CIPF of the facilities for the appeal hearing, including location.
18. An Appeal Committee and the participants to the appeal hearing will be provided in advance of the appeal hearing with:
- a) the relevant CIPF Coverage Policy;
  - b) the relevant Claims Procedures;
  - c) Guidelines for CIPF Appeal Committees hearing in-person Appeals; and
  - d) relevant background information.
19. An Appeal Committee and the participants to the appeal hearing will also be provided in advance of the appeal hearing with:
- a) any evidence and submissions provided by the customer in support of the appeal; and
  - b) any evidence and submissions provided by CIPF staff in support of staff's recommendation to recommend or deny coverage, in whole or in part, which will include:
    - i) the summary of facts prepared by staff;
    - ii) the decision letter issued by staff; and
    - iii) a review and analysis of the basis of each claim in relation to the relevant CIPF Coverage Policy.

## **F. PROCEDURES AND PRACTICES DURING APPEAL HEARINGS**

20. Each Appeal Committee has the power to determine its own procedures and practices, ensuring that they are fair and reasonable. Nevertheless, in most instances, it may be advisable for an Appeal Committee to commence an appeal hearing by:
  - a) welcoming and introducing the Committee Member(s) (including any Committee Members referred to in paragraph 21 below), the customer, CIPF staff and any legal counsel that are present;
  - b) identifying the purpose of the appeal hearing (i.e. the review of an initial staff recommendation to recommend or deny CIPF coverage).
21. Directors who have been selected as Committee Members by the CIPF Board of Directors but are not hearing the appeal, may attend appeal hearings as observers only without participating in any way in the adjudication of the appeal.

## **G. EVIDENCE**

22. Following any introduction provided as referenced in paragraph 20 above, the Appeal Committee will:
  - a) identify any evidence and submissions provided by the customer in support of the appeal;
  - b) identify any evidence and submissions provided by CIPF staff in support of staff's recommendation to recommend or deny coverage, in whole or in part; and
  - c) confirm that the customer was provided with a copy of CIPF staff's evidence and submissions, including the summary of facts and decision letter.
23. The Appeal Committee may allow the participants to introduce any evidence it considers appropriate in the circumstances, including:
  - a) any documents that were not previously provided to the Appeal Committee; and
  - b) any other evidence offered with respect to the appeal.
24. The Appeal Committee may ask questions with respect to any evidence offered by any participant.

## **H. SUBMISSIONS**

25. The Appeal Committee will invite the participants to make submissions relating to the appeal.
26. The Appeal Committee may ask at any time questions with respect to the submissions or positions taken by any participant.

## **I. CONCLUSION OF THE APPEAL HEARING**

27. The Appeal Committee will customarily thank the customer and CIPF staff for their participation.
28. The Appeal Committee will advise that:
  - a) it has made its decision, which will be communicated verbally to the participants, with written reasons to follow; or
  - b) it will reserve its decision and inform the participants of the decision notification process, including the issuance of written reasons.

## **J. DELIBERATIONS**

29. The Appeal Committee will, in the absence of any participants to the appeal hearing, convene to determine the outcome of the appeal.
30. If the Appeal Committee is comprised of two or more Committee Members, the decision of the Appeal Committee will be decided by simple majority but, in the case of an evenly split decision among Committee Members, the decision of the Chair of the Appeal Committee, as appointed by the Committee Members, shall prevail.
31. The Appeal Committee will select a Committee Member to prepare a draft of written reasons for the decision.

## **K. ADVICE FROM INDEPENDENT LEGAL COUNSEL**

32. When an Appeal Committee seeks advice from independent legal counsel in connection with the preparation of written reasons, the Appeal Committee may ask independent legal counsel to review a draft of any written reasons for the purpose of advising the Appeal Committee in relation to:
  - a) issuing written reasons that are:
    - i) consistent with CIPF coverage;
    - ii) in accordance with the law; and
  - b) ensuring that the written reasons accurately reflect the rationale for its decisions.

33. With respect to advice offered by independent legal counsel relating to the drafting of reasons, the Appeal Committee and independent legal counsel must ensure: (a) that the decision of the Appeal Committee and its reasons are determined in accordance with the relevant CIPF Coverage Policy and Claims Procedures; and (b) that independent legal counsel does not detrimentally impact the fairness or integrity of the appeal process.
34. If new issues arise during the course of seeking legal advice that were not raised during the appeal hearing, the Appeal Committee must allow the participants to make submissions on those issues following the procedure set out in paragraphs 25 and 26.

#### **L. CUSTOMER NOTIFICATION OF THE DECISION**

35. The CIPF Coverage Committee will endeavor to provide its decision and issue its written reasons within 90 days from the date of the appeal hearing.
36. The CIPF Coverage Committee will advise the customer and CIPF staff in writing of the decision of the Appeal Committee.
37. The CIPF Coverage Committee will provide the customer and CIPF staff with written reasons for the decision of the Appeal Committee.