

# CANADIAN INVESTOR PROTECTION FUND

## Guidelines for Canadian Investor Protection Fund (“CIPF”) Appeal Committees Hearings Dated January 1, 2023

### A. GENERAL

1. This document sets out non-binding guidelines for Appeal Committees hearing in-person appeals, appeals by teleconference and appeals in writing (the “**Guidelines**”).
2. These Guidelines are applicable to in-person appeal hearings, appeal hearings by teleconference and appeal hearings in writing, unless a specific type of hearing is referred to in the particular guideline.
3. Where there is any inconsistency between the Guidelines and the relevant Claims Procedures (the “**Claims Procedures**”), the Claims Procedures prevail.
4. 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 CIPF Coverage Policy.

### B. CUSTOMER’S ELECTION OF HEARING TYPE

5. The customer may request to have their appeal heard in-person, by teleconference (with or without video) or in writing.
6. An Appeal Committee may decline to hold a hearing by teleconference or in writing if satisfied that an in-person hearing would be preferable to promote a fair and efficient adjudication of the claim.

### C. COMPOSITION OF APPEAL COMMITTEES

7. The CIPF Board of Directors has identified qualified individuals to adjudicate appeals as members of Appeal Committees. These qualified individuals include members of the Board of Directors of CIPF as well as individuals external to CIPF.
8. Each member of an Appeal Committee (a “**Committee Member**”) will be:
  - a) either:
    - i) a Director of CIPF who was not involved in the initial claim decision; or
    - ii) an adjudicator appointed by the CIPF Board of Directors for the purpose of adjudicating appeal hearings; and

- b) selected at the time of the relevant insolvency in accordance with criteria established by the CIPF Board of Directors, through the CIPF Coverage Committee, a subcommittee of the CIPF Board of Directors.
9. An Appeal Committee may be composed of:
- a) one Committee Member; or
  - b) two or more Committee Members.
10. When an Appeal Committee is comprised of two or more Committee Members, the CIPF Board of Directors will appoint a Chair of the Appeal Committee from among the Committee Members.

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

11. The participants to an appeal hearing are:
- a) the customer who has submitted a request for appeal in accordance with the Claims Procedures; and
  - b) CIPF staff.
12. The participants to an appeal hearing may have legal counsel or other advisers, but their participation is optional.

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

13. With the approval of the CIPF Board of Directors, an Appeal Committee may engage independent legal counsel (to be compensated by CIPF) for the purpose of providing legal advice to each Appeal Committee.
14. The role of independent legal counsel is to advise an Appeal Committee in relation to both the conduct of the appeal hearing and decision-making in a well-reasoned manner that is fair, efficient and consistent with the CIPF Coverage Policy and accords with the law.
15. 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.
16. 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 the CIPF Coverage Policy; and
  - c) applicable legal principles.

17. 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 the appeal, the Appeal Committee will:
  - a) disclose to the participants the fact that legal advice has been obtained;
  - b) provide to the participants a summary of the content of that legal advice; and
  - c) offer an opportunity to the participants to make submissions in relation to that legal advice.
18. 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 47 and 48 below.

## **F. PREPARATIONS FOR APPEAL HEARINGS**

19. An administrative coordinator, under the supervision of the Chair of the Coverage Committee of the CIPF Board of Directors, will schedule appeals in advance (having regard to the schedules and availability of participants), but in no event will the scheduling of an appeal be delayed unreasonably by a participant by reason of participant availability or scheduling. Where the scheduling of an appeal is not possible in a timely manner having regard to the schedules and availability of participants, the administrative coordinator may, in their discretion, elect to modify the hearing type or select the hearing date and time, provided that the administrative coordinator determines that such modification is reasonable for the parties involved. The administrative coordinator shall advise Committee Members and the participants of the date, and where relevant, the time and place that the appeal is to be conducted.
20. The customer will provide to CIPF any contact information or other information necessary for the hearing by teleconference.
21. The customer and any representative participating in the appeal will make themselves available at the scheduled time of the appeal.
22. For an appeal in writing, a written submissions schedule, which includes the date upon which each participant's submissions (including any relevant evidence) are due and the address for delivery of the submissions (the "**Written Submissions Schedule**") will be provided once the date of the appeal has been set.
23. The Written Submissions Schedule will generally indicate that submissions be provided in the following order:
  - a) Claimant's (Appellant) submissions;
  - b) CIPF's (Respondent) submissions; and
  - c) Claimant's (Appellant) reply, if any.

24. An Appeal Committee and the participants to the appeal hearing will be provided in advance of the appeal hearing with:
  - a) the CIPF Coverage Policy;
  - b) the CIPF Claims Procedures;
  - c) Guidelines for the CIPF Appeal Committees; and
  - d) relevant background information.
25. 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 CIPF Coverage Policy.

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

26. Each Appeal Committee has the power to determine its own procedures and practices and to select from among the Committee Members those Committee Member(s) who will hear each appeal, ensuring fairness and reasonableness. Nevertheless, in most instances, it may be advisable for an Appeal Committee to commence an in-person appeal hearing or an appeal hearing by teleconference by:
  - a) welcoming and introducing the Committee Member(s) (including any Committee Members referred to in paragraph 27 below), the customer, CIPF staff and any legal counsel that are present; and
  - b) identifying the purpose of the appeal hearing (i.e. the review of an initial staff recommendation to recommend or deny CIPF coverage).
27. A Committee Member who is not hearing the appeal, may attend an in-person appeal hearing or an appeal hearing by teleconference as an observer, but may not participate in any way in the adjudication of the appeal.
28. In a hearing by teleconference, all the participants and Committee Members should be able to hear one another and any witnesses throughout the hearing.

## **H. EVIDENCE**

29. Following any introduction provided as referenced in paragraph 26 above, an 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 NewIPF 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.
30. An Appeal Committee may allow the participants to introduce any evidence the Committee 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.
31. In the case of a hearing in writing, any evidence referred to in paragraph 30 is to be received on or before the date of the scheduled appeal hearing.
32. An Appeal Committee may, at its own discretion, restrict oral evidence from being given at an in-person hearing or a hearing by teleconference in the interests of fairness.
33. Each participant is entitled to receive every document that an Appeal Committee receives in the appeal proceeding, and will be given reasonable time to review each such document.
34. An Appeal Committee may ask questions with respect to any evidence offered by any participant.

## **I. SUBMISSIONS**

35. At an in-person hearing or a hearing by teleconference, an Appeal Committee will invite the participants to make submissions relating to the appeal.
36. At an in-person hearing or a hearing by teleconference, an Appeal Committee may ask at any time questions with respect to the submissions or positions taken by any participant.
37. After the close of the Written Submissions Schedule referred to in paragraph 22, an Appeal Committee may write to the participants with any questions in relation to the submissions or positions taken by any participant.
38. If an Appeal Committee requests any additional evidence or submissions in relation to an issue, all participants will have an opportunity to submit further written submissions on that issue.

## **J. CONCLUSION OF IN-PERSON APPEAL HEARING OR APPEAL HEARING BY TELECONFERENCE**

39. An Appeal Committee will customarily thank the customer and CIPF staff for their participation.
40. An 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.

## **K. DELIBERATIONS**

41. An Appeal Committee will, without the presence of any participants to the appeal hearing, convene to determine the outcome of the appeal.
42. If an 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 CIPF Board of Directors, will prevail.
43. An Appeal Committee will select a Committee Member to prepare a draft of written reasons for the decision.

## **L. REMOVAL OF A COMMITTEE MEMBER**

44. If a Committee Member is unable to continue to serve on an Appeal Committee for any reason before the completion of the appeal hearing, which includes the rendering of a decision, the remaining Committee Member(s) will continue to hear the matter and render a decision.
45. If there are no remaining Committee Members available to continue with an appeal hearing, an appeal hearing de novo will be scheduled to be heard by another Appeal Committee.
46. If the Chair of an Appeal Committee is unable to continue to serve as the Chair of the Appeal Committee, a new Chair of the Appeal Committee will be appointed from among the remaining Committee Members, in accordance with paragraph 10 above.

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

47. 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 the CIPF Coverage Policy;
    - ii) in accordance with the law; and
  - b) ensuring that the written reasons accurately reflect the rationale for the Appeal Committee's decision.
48. With respect to advice offered by independent legal counsel to an Appeal Committee relating to the preparation of written reasons, the Appeal Committee and independent legal counsel will ensure: (a) that the decision of the Appeal Committee and its reasons are determined in accordance with the CIPF Coverage Policy and CIPF Claims Procedures; and (b) that independent legal counsel does not detrimentally impact the fairness or integrity of the appeal process.
49. If, during the course of seeking legal advice in connection with the preparation of written reasons, new issues arise that were not raised during the appeal hearing, an Appeal Committee will allow the participants to make submissions on those issues following the relevant procedure set out in Section I.

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

50. An Appeal Committee will endeavor to provide its decision and issue its written reasons within 90 days of the date of the appeal hearing.
51. An administrative coordinator, under the supervision of the Chair of the Coverage Committee of the CIPF Board of Directors, will advise the customer and CIPF staff in writing of the decision of an Appeal Committee.
52. An administrative coordinator, under the supervision of the Chair of the Coverage Committee of the CIPF Board of Directors, will provide the customer and CIPF staff with written reasons for the decision of an Appeal Committee.