

Virtual Hearing Guideline

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Virtual Hearing Guideline

Introduction

1. Oral hearings that take place under the *Legal Profession Act* (the “Act”) and the Rules of the Law Society of Alberta (the “Rules”) will be conducted as virtual hearings, or by other alternative modes where appropriate and in accordance with the Act and Rules.
2. It is in the public interest to ensure that hearings take place safely, securely and in a timely manner that provides procedural fairness to all parties.
3. All oral Law Society hearings proceed as virtual hearings, subject to the process to vary the mode of hearing. The *Virtual Hearing Guideline* (“Guideline”) provides guidance to the Benchers and parties for all such hearings conducted under the Act and the Rules, including the process to vary the mode of hearing.
4. This Guideline applies to all oral hearings and applications heard by a panel of Benchers, a Hearing Committee or other panel under the Act or Rules. The Guideline does not apply to those hearings that proceed on the basis of written materials pursuant to the Act or Rules.
5. In this Guideline, a reference to:
 - a. “Executive Director” includes the Executive Director’s delegate;
 - b. “hearing” means a hearing as defined by Rule 1(1)(h.2);
 - c. “Hearing Committee” is defined in section 1(d) of the Act, and means a three-member Hearing Committee or a Single Bencher Hearing Committee;
 - d. “lawyer” includes a student-at-law;
 - e. “panel” means an adjudicative panel of any committee, the Benchers or a panel or committee of Benchers, other than a Hearing Committee;
 - f. “parties” means the Law Society and the lawyer or other applicant(s) who are the subject of the hearing;
 - g. “pre-hearing conference chair” is defined in Rule 90.2(1);
 - h. “President” includes the President-Elect;
 - i. “Single Bencher Hearing Committee” means a hearing presided over by a single Bencher, in accordance with section 60(3) of the Act.
6. Nothing in this Guideline supersedes or replaces any provision of the Act or Rules.

Type of Hearing

7. Rule 2.5(1) provides that an oral hearing under the Rules will proceed as a virtual hearing. Rule 2.5(2) provides that, notwithstanding subrule (1), a hearing will proceed by a mode other than a virtual hearing:
 - a. where the Act or Rules specify that the hearing will be by written submissions only;
 - b. where the Act or Rules specify that the President exercises their authority and determines the hearing will proceed by a mode other than a virtual hearing;
 - c. where the parties agree to another mode of hearing; or
 - d. where a pre-hearing conference chair in accordance with Rule 90.2, or a panel or Hearing Committee, grants an application to allow part or all of a hearing to proceed by means other than a virtual hearing.
8. Pursuant to Rule 2.5(3), a hearing may proceed other than or in addition to a virtual hearing as:
 - a. an in-person hearing;
 - b. an oral hearing by teleconference; or
 - c. a hearing based on written submissions only.
9. The Hearing Committee or panel retains inherent jurisdiction to make directions about how evidence will be heard, received or examined.

Virtual Hearing Procedure

10. All oral hearings will take place as virtual hearings, unless one of the exceptions set out in paragraph 7 pursuant to Rule 2.5(2), is met.
11. Virtual hearings will proceed on the Zoom platform, unless the Tribunal Office directs otherwise, in accordance with the best practices developed by the Tribunal Office.
12. Pursuant to Rule 90(7), at least 14 days before the first scheduled hearing date, each party must submit to the Tribunal Office and the other party all exhibits and authorities to be relied upon in the hearing, in PDF format and in a clean and unannotated condition, and a complete list of witnesses. For each witness attending, the following information must also be provided to the Tribunal Office:
 - a. full name to appear when joining the virtual hearing; and
 - b. contact information, including email address and text phone number.

13. Each party is responsible to ensure that each of their witnesses is properly equipped with hardware, software, technical support and a suitable venue so that the hearing can proceed in an orderly fashion. Parties who have difficulty arranging any of these elements should contact the Tribunal Office for assistance and advice.
14. The Tribunal Office will offer technology tests with each party in advance of the hearing.
15. Tribunal Counsel will attend all virtual hearings. Tribunal Office staff will act as “host” of the virtual hearing, control admission to the hearing, manage the handling of documents and otherwise assist the panel or Hearing Committee.
16. The panel or Hearing Committee will make determinations regarding the admission of evidence, but both parties and/or their counsel should be prepared to comply with the following:
 - a. documentary evidence provided less than 14 days before the hearing will not be admitted except by leave of the panel or Hearing Committee;
 - b. witnesses:
 - i. must be clearly visible, face the camera and speak directly and audibly into the microphone,
 - ii. must be unaccompanied in the room except as permitted by the panel or Hearing Committee,
 - iii. must not use a virtual background, and
 - iv. may be excluded when not giving evidence (except a lawyer who is a party and expert witnesses).
17. A court reporter will also attend all oral virtual hearings and will prepare the transcripts as required. The virtual hearings will be recorded by the Tribunal Office for the sole purpose of serving as a back-up in case of technical problems during a hearing. All Tribunal Office recordings will be deleted at the end of each hearing day after the court reporter confirms with the Tribunal Office that the recording is not required.
18. The Tribunal Office has developed best practices for participating in virtual hearings. These will continue to be updated and will be posted on the Law Society website.

Application to Vary Hearing Mode

19. If parties agree to another mode of hearing, they should provide notice to the Tribunal Office as soon as practicable.
20. Where a party objects to holding all or part of a hearing as a virtual hearing, an application may be made to the pre-hearing conference chair to vary the mode of hearing in accordance with Rule 2.5(2)(d).

Teleconference Hearings

21. Applications to participate by telephone will be granted only where the participant does not have access to reliable videoconference technology. In those cases, the rest of the participants will participate by virtual hearing.

Hearing by Written Submissions Only

22. In accordance with the Act, Rules and any guidelines, the following proceedings will take place by written submissions only:
- a. appeals of decisions of the Executive Director respecting applications under section 37(4) of the Act and Rules 48.4, 50(5), 51.1, 55(4), 56(1)(c), 56(2), 57.3(3), 58(4), 66(9) and 66.3;
 - b. referrals to the Credentials and Education Committee under Rule 49;
 - c. appeals of decisions of the Executive Director to dismiss a complaint under section 53(4) of the Act and Rule 86;
 - d. re-examinations following dismissals under section 57 of the Act and Rule 88.1;
 - e. appeals of Trust Safety decisions of the Executive Director that are mandated by the Act or Rules to be in writing;
 - f. appeals of decisions of the Executive Director respecting claims against the Assurance Fund or referrals to a claims or appeal panel; and
 - g. abeyance applications pursuant to Rule 90.5 and as set out in the *Pre-Hearing and Hearing Guideline*.
23. The Act and Rules provide that in some cases an oral hearing can be requested for proceedings that take place by written submission. Where an oral hearing is granted for any proceeding listed in paragraph 22, the oral hearing will take place as a virtual hearing in accordance with Rule 2.5(1).

In-Person Hearings

24. If a party to a hearing objects to proceeding by virtual hearing, that party may make an application in accordance with Rule 2.5(2)(d) to hold the hearing in person, at a date to be determined when it is appropriate to do so.
25. The application should include written submissions providing specific reasons as to why they are requesting an in-person hearing and any evidence to support the submissions. The other party will receive a copy of the application, written submissions and evidence, and will be given the opportunity to submit materials in response.

26. If no application has been made before a hearing date is set, the hearing will proceed as a virtual hearing in accordance with this Guideline, unless the Hearing Committee or panel directs otherwise.

Factors for Consideration to Vary Hearing Mode

27. It is in the public interest to avoid unnecessary delay. Likewise, the principles of procedural fairness provide for the right to a hearing without unreasonable delay. Other principles of procedural fairness include adequate notice of a hearing, the entitlement to disclosure, the right to counsel, the opportunity to present one's case and be heard by an unbiased decision maker, and the right to cross-examine witnesses. Courts and tribunals have held that the requirements of procedural fairness are satisfied by virtual hearings.
28. The pre-hearing conference chair may determine that some individuals may attend in-person in the Law Society hearing room, while others attend by teleconference or videoconference.
29. In considering an application to vary the mode of hearing, the following factors should be considered:
- a. past and future delay, as well as any waivers of delay;
 - b. the health and safety of all parties and the panel;
 - c. personal circumstances of any participants;
 - d. the cost of holding an in-person hearing;
 - e. the nature of the evidence before the panel;
 - f. whether a party will be prejudiced by the mode of hearing; and
 - g. any other factors that the pre-hearing conference chair considers relevant in the circumstances.

Public Hearings

Public Access to Virtual Hearings

30. The public is permitted to attend virtual hearings subject to an order of the panel or Hearing Committee (see paragraphs 32-34).
31. Members of the public are required to review the Tribunal Office information sheet *Public Attendance at Virtual Hearings* and confirm that they will mute their microphone and turn their camera off unless directed otherwise and will not record or rebroadcast the proceedings in any manner. A member of the public not complying with these requirements or otherwise causing disruption will be removed from the hearing.

Private Hearing Applications

32. In accordance with sections 78 and 112 of the Act and the *Pre-Hearing and Hearing Guideline*, any interested party can make an application for all or part of a hearing to be held in private, to prevent confidential and/or solicitor-client privileged information from becoming public. Private hearing applications can be made at any time before or during the proceedings.
33. The parties are to provide private hearing application notices to any witnesses, complainants and interested persons in accordance with section 78(2) of the Act. A party must notify the Tribunal Office and the other parties as soon as they become aware that a private hearing application will be made so that appropriate arrangements may be made for determining the application.
34. If an application for a private hearing is made during a virtual hearing, some individuals may need to be excluded by the Hearing Committee while the application is heard. Possible applicants will be encouraged to provide notice of their intention to bring an application in advance of the hearing so that these sessions may be scheduled appropriately.